

APPLICATION NO. 176/56
BY THE GOVERNMENT OF THE KINGDOM OF GREECE
LODGED AGAINST
THE GOVERNMENT OF THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND

Application of the Convention
for the Protection of Human Rights and Fundamental
Freedoms to the Island of Cyprus

REPORT
OF THE EUROPEAN COMMISSION OF HUMAN RIGHTS
VOLUME II

TABLE OF CONTENTS

VOLUME TWO

PART TWO (Contd): THE ESTABLISHMENT OF THE FACTS AND THE
OPINION OF THE COMMISSION

	<u>Pages</u>
Chapter V	
<u>Curfew</u> (paras. 238-291).....	
I. Facts established by the Commission (paras. 242-248).....	
II. The legal arguments of the Parties (paras. 249-280).....	
A. Written submissions (paras. 249-250).....	
B. Hearings of 15, 16, 17 and 18 November 1956 (paras. 251-279).....	
C. Hearings of 2 and 3 July 1957 (para. 280).....	
III. Acts by the Sub-Commission and situation at 15 March 1958 (paras. 281-286).....	
IV. OPINION OF THE COMMISSION (paras. 287-289).....	
V. DISSENTING OPINIONS (paras. 290-291).....	
Chapter VI	
<u>Arrest without warrant, Detention, Deportation</u> (paras. 292-339).....	
A. <u>Arrest without warrant</u> (paras. 292-301).....	
I. The facts established by the Commission (para. 293).....	
II. The legal arguments of the Parties (paras. 294-296).....	

./.

Pages

III.. OPINION OF THE COMMISSION	(paras. 297-298).....
IV. DISSENTING OPINION	(paras. 299-301).....

B. Detention (paras. 302-321).....

I. The facts established by the Commission	(paras. 306-309)..
II. The legal arguments of the Parties	(paras. 310-312).....
III. Question put by the Sub-Commission and present state of legislation and case-law	(paras. 313-314).....
IV. The investigation on the spot	(paras. 315-317).....
V. OPINION OF THE COMMISSION	(para. 318).....
VI. DISSENTING OPINION	(paras. 319-321).....

C. Deportation (paras. 322-339).....

I. The facts established by the Commission	(paras. 325-329)..
II. The legal arguments of the Parties	(paras. 330-336).....
III. OPINION OF THE COMMISSION	(para. 337).....
IV. DISSENTING OPINION	(paras. 338-339).....

Chapter VII

<u>Alleged violation of Articles</u>	
<u>8, 9, 10 and 11 of the Convention</u>	
(paras. 340-365).....	

I. The facts established by the Commission	(paras. 341-354).....
A. Written submissions	(paras. 341-345).....
B. Oral hearings from 14 to 18 November 1956	(paras. 346-354).....

Pages

	II. The legal arguments of the Parties (paras. 335-362).....	
	III. OPINION OF THE COMMISSION (paras. 363-364).....	
	IV. DISSENTING OPINION (para. 365)..	
Chapter VIII	<u>Destruction of buildings and plantations considered as a collective punishment</u> (paras. 366-377).....	
	I. The facts established by the Commission (paras. 336-369).....	
	II. The legal arguments of the Parties (paras. 370-373).....	
	III. Situation as at 15 March 1958 (para. 374).....	
	IV. OPINION OF THE COMMISSION (paras. 375-376).....	
	V. DISSENTING OPINION (para. 377)..	
Chapter IX	<u>Legislative measures referred to by the Greek Government and enacted in Cyprus after the lodging of the Application</u> (paras. 378-408).....	
	I. The facts established by the Commission (para. 378).....	
	II. The legal arguments of the Parties (paras. 379-381).....	
	III. Regulation No. 39 (A) of the "Emergency Powers (Public Safety and Order) Regulations, 1955" (para. 382).....	
	OPINION OF THE COMMISSION (paras. 382-383).....	
	IV. Regulations Nos. 52, 52(A), 53, 53(A), and 53(B) of the "Emergency Powers (Public Safety and Order) Regulations, 1955" (paras. 384-387).....	
	OPINION OF THE COMMISSION (paras. 388-389).....	
	DISSENTING OPINION (para. 390)..	

	<u>Pages</u>
V. The Emergency Powers (Amendment of the Criminal Code) Regulations, 1956 (paras. 391-394).....	
OPINION OF THE COMMISSION (paras. 395-396).....	
VI. The Emergency Powers (Public Officers' Protection) Regulations, 1956 (paras. 397-400).....	
OPINION OF THE COMMISSION (paras. 401-403).....	
VII. The Emergency Powers (Control of Sale and Circulation of Publications) Regulations, 1956...	
OPINION OF THE COMMISSION (paras. 404-405).....	
VIII. Derogations made under Article 15 of the Convention (para. 406).....	
OPINION OF THE COMMISSION (paras. 407-408).....	
CONCLUSION (para. 409).....	

Chapter V

CURFEW

238. There are two separate legislative provisions in force in Cyprus under which a curfew can be imposed:

A. A Cyprus law (the Curfews Law No. 17 of 1955) of 2nd May 1955 which reads as follows:

Short title "1. This Law may be cited as the Curfews Law, 1955.

Imposition of Curfews 2. The Governor may, if he deems it expedient so to do in the interests of public safety and the maintenance of public order, at any time by Order direct that no person in any area specified in the Order shall be out of doors between such hours as may be prescribed by the Order except under the authority of a written permit granted by such person as may be specified in the Order:

Provided that the Governor may exempt from the provisions of the Order such persons or class of persons as may be specified in such Order:

Provided further that the Governor may authorise any person specified in the Order to suspend at his absolute discretion the operation in any specified area (or any part thereof) of the Order, and similarly to terminate such suspension and to declare the Order to be in operation.

Offences and penalties 3. Any person who contravenes any of the provisions of an Order made under Section 2 shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding one year or to a fine not exceeding one hundred pounds or to both such imprisonment and fine."

The provisions of this Law were extended by a law of 5th October 1955 (Curfews (Amendment) Law, 1955 (No. 47)) which amends Law No. 17 by the insertion of a new Section reading as follows:

./.

Delegation of Governor's Powers "2 A. The Governor may, by instrument under his hand, to be published in the Gazette, delegate to any person subject to such limitations and directions as he may in such instrument provide, any of the powers conferred upon him by the provisions of Section 2 of this Law."

B. Regulation 48 of the Emergency Powers (Public Safety and Order) Regulations, No. 731 of 26th October 1955 which reads as follows:

Curfew "48 (1). The Governor may, as respects any area in the Colony, by Order direct that, subject to the exemptions for which provision may be made by the Order, no person in that area shall, between such hours as may be specified in the Order, be out of doors except under the authority of a written permit granted by the Governor or such person as may be specified in the Order.

(2). The Governor may, by Order, if it appears to him expedient so to do, delegate to any person, subject to such limitations and directions as he may in such Order provide, any of the Powers conferred upon him by the provisions of paragraph (1) of this Regulation."

Offences against the curfew Orders made under Regulation No. 48 are punishable under Regulation 75 of the Emergency Powers (Public Safety and Order) Regulations, 1955, No. 731:

Offences and penalties "75 (1). Subject to any special provisions contained in these Regulations, any person who -

- (a) contravenes or fails to comply with any of these Regulations or any Order or rule made under any of these Regulations or who does any act which is declared to be an offence under any of these Regulations; or
- (b) knowingly misleads, or otherwise interferes with or impedes any officer or other person exercising any powers or performing any duties conferred or imposed on him by or under any of these Regulations,

shall be guilty of an offence against these Regulations and shall be tried by the President of a District Court or a District Judge and on conviction shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding one hundred pounds or to both such imprisonment and fine."

239. The above Regulation 48 was revoked on 8th August, 1957, by virtue of the Emergency Powers (Public Safety and Order) (Amendment No. 4) Regulations, 1957 (No. 788). In consequence, Regulation 75 (which has not been revoked) has ceased to be applicable to offences committed under Regulation 48.

240. It will be noted that in the Curfews Laws there is an express limitation of the Governor's power to cases where he deems it expedient to impose a curfew in the interests of public safety and the maintenance of public order whereas in the Regulation the limitation is only implied.

241. There is no dispute as to the above powers of the Governor being in force or as to a curfew having been imposed in Cyprus on several occasions. Nor does the Greek Government's complaint relate to the form of the legislative provisions concerning curfew; it relates to alleged abuses of the powers which they confer upon the Governor. The abuses alleged by the Greek Government are: (a) a general practice of imposing curfew as a measure of collective punishment or as a measure ancillary to the enforcement of a collective fine, and (b) the imposition of curfew for excessively long periods of time and under inhumanly oppressive conditions.

I. FACTS ESTABLISHED BY THE COMMISSION

242. The evidence advanced by the Greek Government in support of its allegations, apart from one example of a Curfew Order (Annex 35 to the Memorial of the Greek Government of 24th July, 1956, Famagusta), an official news release (New Document No. 9) and a few copies of letters, consists of extracts from the Press. The majority of the press extracts are from the Cyprus Press, but there are also extracts from the London "Times", the "Scotsman", "Les Dernieres Nouvelles d'Alsace" and the Reuter's Press Agency (see Annexes 15-21, 26, 28, 32, 34-37 and 39 to the Greek Memorial of 24th July 1956, the new Greek Documents Nos. 1-10 of 16th and 18th November 1956 and Docs. A. 28,780, A. 30,479, A. 31,193 and A. 34,076) submitted by the Greek Government on 18th December 1956 and 4th May 1957.

Among the examples of curfew found in the evidence submitted by the Greek Government, the following contain indications of a curfew being in operation at the same time as a collective fine was being exacted:

./.

(a) Lefconiko (Annexes 15-17). According to the "Cyprus Mail", the Governor imposed a £2,000 collective fine on this village for the burning down of the Post Office and a 24-hour curfew was brought into force on 4th December 1955, until the collective fine was paid. The fine was collected house to house and by the night of the 5 December, £1,820 had been paid. The curfew was continued pending the payment of the remaining £180. At 10 o'clock on the morning of the 7th December the final pound was paid and the curfew was lifted half an hour later.

(b) Paralimni. The Commissioner of Famagusta imposed on a curfew on this village from 3 a.m. on 13th December 1955 until further notice (Annex 35). The text of the Curfew Order lays down the conditions of the curfew and the persons exempted from it but does not state the cause of the curfew or its purpose. According to the "Cyprus Mail" (Annex 36) a £1,500 collective fine had been imposed on the village; this fine was paid by 11 p.m. on 14th December and the curfew was lifted at 6 a.m. the next day. An offer by the co-operative society, the church and the village council to discharge the fine in order to let the people go to work was refused. Complaints were made of the arrest of persons visiting lavatories in their yards and of goatherds milking their goats.

In the course of its stay in Cyprus, the Investigation Party, made up of six members of the Sub-Commission, paid a visit to Paralimni and obtained from the representatives of the population information and comments on the curfew. It was alleged that the curfew had been ordered before the imposition of the collective fine in order to make it easier to collect contributions from the inhabitants of the village. It was also complained that several villagers had been assembled in the playground of the elementary school and then subjected to ill-treatment.

In reply to the Party's questions, the District Commissioner of Famagusta stated that the purpose of the curfew had been to facilitate the seizure of firearms in the possession of the villagers and that the imposition of the curfew and that of the collective fine merely happened to have coincided. Though simultaneous, they had been independent one of the other. He denied the villagers' allegations of ill-treatment.

./.

(c) Lapithos (Annexes 18-20 and 39). According to the "Cyprus Mail", a £7,000 collective fine was imposed on this village after numerous incidents including the killing of a British soldier by a bomb and the burning down of the Girls' Elementary School. A curfew was imposed on 18th March 1956, until the fine should be paid. It was continued for eight days with a single break of twelve hours on 22nd March to enable villagers who had not paid to make arrangements for the payment of their share. The curfew was lifted on 26th March after £6,800 had been collected; the remaining £200 being due from villagers not then present in Lapithos.

In the course of its visit to Pyla Camp, the Investigation Party heard the Mayor of Lapithos who declared that the villagers had suffered great hardship as a result of the curfew. The attitude of the British authorities had been that the curfew was a punishment and that it was not therefore possible to meet the needs of the population. It is to be observed, however, that Lapithos was not one of the places on the list to be visited and that the views of the British Government on these allegations were not asked for.

(d) Yialousa (Annex 18). According to the "Cyprus Mail" a collective fine of £2,000 was imposed on this village on 18th March because of failure to provide information concerning a bomb-throwing incident in which one Security Officer was killed and two injured. The fine was paid the next day and the curfew which had been imposed was lifted. It is not stated in the report when the curfew had begun.

(e) Kalcpsida (Annexes 21 and 22). According to the "Cyprus Mail", a British sergeant was killed in an ambush within this village on 10th April 1956. On 13th April a curfew was imposed at dawn, when the village was cordoned and searched and all EOKA slogans were removed. The Commissioner of Famagusta told the villagers that unless information was forthcoming about the ambush he would report to the Governor. Envelopes and paper were distributed without any information being provided. A collective fine of £1,000 was then imposed the exaction of which began at 4 p.m. and was completed at 8 p.m. The curfew was lifted at 10.15 p.m. The newspaper also mentions that many of the villagers had to borrow money or dig into their childrens' savings in order to make this prompt payment of the fine.

./.

244. The other example of curfews contained in the evidence submitted by the Greek Government are as follows:

(f) Famagusta Area (Annex 34). According to the London "Times" of 16th September 1955 a curfew had been imposed on four villages in this area two weeks previously after a raid on the police station at Paralimni. The "Times" report goes on to describe a thorough search of the villages by the 45th Commando and other troops and 60 policemen in a raid at dawn to search for concealed weapons and hidden terrorists. The report mentions that, among the men detained after the search were two men held "for trying to break the curfew" from which it would appear that a curfew was in force during the search.

(g) Limassol Area (Annex 35 bis). According to the "Cyprus Mail" of 20th October 1955 the village of Pano Kyvides in this area had recently been put under indefinite curfew after an RAF car had been burned and its occupants stoned. There had also been incidents concerning the Greek flag and the curfew was imposed until there was evidence of good behaviour.

The same issue of the "Cyprus Mail" reports that curfews had also been imposed on two other villages in the Limassol area, the Greek village of Kilani and the Turkish village of Paramali. An accidental killing of two Greek boys in the Greek village by a Turkish policeman had been followed by the burning of two Turkish houses in the Greek village. On 19th October 1955 two Greek houses in the Turkish village had been set on fire. Both villages were put under nightly curfews "until they saw their way to settle the differences between the two communities".

(h) Famagusta (Annex 37). According to the London "Times", of 22nd October 1955 a curfew was imposed on the whole town of Famagusta (25,000 inhabitants) on the night of 20th October at 10 p.m. in consequence of two outrages by terrorists, including a bomb explosion in the police headquarters. The curfew was lifted at mid-day on 21st October for five hours to permit shopping and was then reimposed every night from 5 p.m. to 5 a.m. until 31st October. The report states that on 21st October the streets were completely deserted as nobody was allowed to leave home while the police were searching various buildings. The only exception to the curfew was in the "old town" where the inhabitants are exclusively Turkish Cypriots.

./.

Questioned by the Investigation Party, the Mayor of Famagusta stated that the police headquarters lay very close to the old town and that the imposition of the curfew throughout the urban area, some parts of which were 2 or 3 miles from the old town, proved that the curfew had been imposed as a punishment.

(i) Nicosia, (March 1956 (Annexes 27 bis, 28 and 32). According to reports in the London "Times" of 17th March 1956 the "Cyprus Mail" of 20th March 1956 and the "Times of Cyprus" of 9th June 1956, a British police sergeant and a Turkish police constable were shot and killed at 9 a.m. on 14th March 1956 at the junction of Hippocrates Street and Aeschylus Street in Nicosia. The surrounding area was at once cordoned off, placed under curfew and searched. The inhabitants were requested to come forward with information concerning the crime and envelopes were distributed for the purpose. On 16th March an open-air court of inquiry was held by the District Commissioner who began by reciting that between 19th October 1955 and 14th March 1956 13 cases of murder or attempted murder had occurred within the cordoned area and 8 more in its immediate vicinity. On no occasion had eye-witnesses of these crimes given any assistance to the authorities. The Commanding Officer of the troops who had carried out the search next gave evidence to the effect that in the immediate vicinity of the crimes his men had found shotgun cartridges and cartridge-filling equipment "fairly widespread throughout the area" and some new bombs in a carpenter's shop. The envelopes which had been distributed were handed to the District Commissioner but did not, it appears, contain information. The District Commissioner asked whether anyone wished to give information and, having got no reply, stated his conclusion in the following terms:

"The inhabitants of this area, predominantly Greek Cypriot, by failing to take reasonable steps to prevent the commission of these offences; by failing to render all the assistance within their power to discover and/or arrest the offenders; by combining to suppress material evidence, and by conniving at and abetting the commission of these offences and at the escape of the perpetrators, are believed to be generally responsible for the commission of these offences in the area under curfew."

The court of inquiry was then adjourned until the afternoon.

./.

In the afternoon, the District Commissioner announced that he had recommended to the Governor the imposition of a collective punishment and that the Governor had approved Orders under Regulation No. 3 (Collective Punishment) (No. 732) of the Emergency Powers Act which decreed that twenty shops (reduced later to eighteen) and ten dwelling houses should at once be closed and kept unavailable for any human occupation for a period of three months. These shops and dwelling houses appear to have been in the immediate vicinity of the crimes. The Orders were put into effect the same day, British soldiers and policemen assisting the persons concerned to remove themselves and their belongings from the shops and houses affected by the Orders. The curfew was lifted at 1 p.m. on the following day, 17th March. This was the first curfew imposed in Nicosia.

(j) Thirteen major towns on Greek Independence Day (Annex 39). According to the "Scotsman" of 26th March 1956, thirteen major Cypriot towns were placed under curfew at 4 a.m. on Greek Independence Day when it was learned that terrorists planned to use the celebrations on that day as cover for terrorist activities. British troops patrolled the streets and only doctors and others with important reasons were given special passes. Ten Greek Cypriots who broke the curfew to attend a service in church were arrested together with the priest. British communities in the towns were put under the same restrictions as the Greek and Turkish communities.

(k) Kalogrea (Annex 36 bis p. 2). According to the "Scotsman", an attack was made on a Cypriot fisherman by masked men on the night of 27th May and a curfew was imposed on the village at dawn next morning. A search was begun for wanted men and for arms. The report adds that it had been "officially stated" that the curfew had been imposed to make the villagers erase the numerous anti-British slogans from their walls. The non-removal of such slogans had recently been made a criminal offence and the report remarks that the curfew was the first "slogan-erasing" curfew since the new law had been announced.

(l) Two village curfews (Annex 26). According to the "Cyprus Mail" of 23rd June 1956, a night curfew had been in force in the village of Strovolos, which had been "the scene of several bombing incidents in the past few days". A day curfew was imposed during which all males between the ages of 16 to 40 were finger-printed and photographed. The day curfew was then lifted and the night curfew reimposed.

./.

The report further states that two days before, a nightly curfew had been imposed "until further notice" on the village of Polis Khrysokhou after a bomb had been thrown at a mobile police patrol.

(n) Paralimni (New Document No. 1). According to the "Cyprus Mail" of 25th July 1956, a curfew had been imposed on this village after the shooting of a British soldier in a cinema on 12th June and the curfew was still in force on 24th July when "paper was again distributed to the inhabitants who are asked to state anonymously what they know about terrorists and terrorism".

The representatives of the population of Paralimni told the Investigation Party that the curfew had been imposed at 4 a.m. on 19th June 1956. Immediately, they alleged, all the male inhabitants of the village had been assembled and asked to give information on the author of this deed, failing which they would be liable to "more serious punishment". At 9 a.m., they said, the villagers had been released and at 3 p.m. the curfew had been lifted.

On 16th July 1956 the curfew had been reimposed. Mr. Savvides, Deputy Commissioner of Famagusta, had allegedly informed the men of Paralimni that as a punishment they would be forbidden to leave the village and be obliged to stay indoors from 7 p.m. to 5 a.m. until the author of the murder of 12th June was denounced. Paper and envelopes had been distributed every day for the purpose of collecting information. After six days of this, a day and night curfew had been imposed and had not been lifted until 25th July 1956. The representatives of the population stated that several incidents had occurred during the curfew and that the population had suffered considerable hardship.

Furthermore, a three-hour curfew had been imposed on 12th June 1956 after a British soldier had been shot at, without, however, being hit. The men of the village had been obliged to stay out in the sun with their arms raised in the air.

The Famagusta District Commissioner, Mr. Gillies, affirmed that the purpose of the curfew of 16th July 1956 had been to facilitate a number of police operations in and outside Paralimni, mainly searches. To do this, it was

necessary to prevent anyone from entering or leaving the village. In any case, the villagers were subjected to a house-curfew only at night. During the day there had only been a village-curfew. Generally speaking, the District Commissioner denied that the population had been ill-treated.

(n) The long curfew of Nicosia (New Documents Nos. 2-8). According to the "Cyprus Mail" of 7th October, 1956, (Document No. 3), this curfew was imposed on the walled part of Nicosia on the afternoon of 28th September, 1956, and was maintained in force for eight nights and seven days, being lifted at 6 a.m. on 6th October. Two British policemen had been murdered on 28th September at about 10.30 a.m. in Ledra Street. A close cordon of troops was established around the area which was removed at 3 p.m. the next day. Two hours later the curfew was imposed and during those two hours, the report states, anyone was free to leave the city. It also appears from the report that in addition to the policemen a British soldier and a member of the Women's Voluntary Service had been recently murdered. The area affected by the curfew comprised some ten to twelve thousand people, of whom the majority are Greek Cypriots, though there are some Turkish Cypriots and Europeans. Each day, except Sunday, the curfew was raised for one or two hours at noon to enable the population to buy food. The "Cyprus Mail" had information of only one police search, a large-scale raid on a block of buildings at the scene of the murders in Ledra Street.

The press reports comment on the rigorous character of the curfew which was enforced against everyone in the affected area, including journalists. Exceptions were made only for special cases such as women in labour and persons taken to hospitals. Doors, windows and shutters had to be kept closed. During the mid-day breaks in the curfew there was a rush to obtain food and supplies and shortages of both food and water are said to have occurred, which were only remedied after representations had been made to the Commissioner by the municipal authorities. Special arrangements were then made to ensure a rapid and organised distribution of provisions. Some of the poorer families suffered from lack of money, since the men worked on a daily basis and could not earn their daily wage during the curfew. Free distributions of food had, therefore, to be made in some of the poorer quarters of the town. According to the Mayor of Nicosia, there had been some cases of illness during the curfew and some people had been

./.

taken to the general hospital; but there were no signs of epidemic and the health of the people in the curfewed area was apparently satisfactory. The streets became dirty during the curfew and special arrangements had to be made to clean them afterwards (the rigours of the curfew are dealt with particularly in Documents Nos. 3, 5, 6 and 8).

The Mayor of Nicosia, Dr. Dervis, is reported by the "Times of Cyprus" (Document No. 5) to have afterwards condemned the curfew "as a punishment of a population without any proof of guilt". The reporter of the "Dernières Nouvelles d'Alsace" also referred to the Nicosia curfew as a "collective punishment" imposed as a last resort after failure to track down those responsible for the 21st and 22nd murders of the month (Documents Nos. 2 and 4). After the curfew had been lifted, Orders closing restaurants, coffee-shops and cinemas in the area and banning all use of bicycles and motor-cycles continued in force. The Mayor of Nicosia criticised the continuance of these Orders as "scandalous and stupid" and as "a discrimination against and punishment of a selected category of people who could be no more guilty than the rest of the population".

The Greek Cypriots who appeared before the Investigation Party stated unanimously that the above-mentioned curfew had been a punitive and vindictive one. They said that no searches had taken place, that nobody had been arrested, and that the inconvenience suffered by the population had been very great. Moreover, all Greek restaurants, theatres, cinemas and other places of entertainment had been closed by order of the Government, and were maintained closed until 30th October 1956. This also was considered to be an intolerable form of punishment.

Mr. Weston, the Nicosia District Commissioner, appearing before the Investigation Party, in reply to questions put to him, explained, in particular, why the curfew had been imposed about six hours after the crime had been committed. He said that the two murders committed during the morning had taken the British authorities completely unprepared. The Government was at that time engaged in security operations in the hill areas in the centre of the island, and a number of members of the security forces had first to be recalled to Nicosia. On the other hand, the murders had once more demonstrated that the activity of EOKA in Nicosia was great, and a curfew had to be imposed in order to operate searches.

./.

Mr. Weston acknowledged that the Security Forces had no chance whatsoever of finding the authors of the crime, since the criminals would not have needed more than a few minutes to throw away their arms and disappear. Before imposing the curfew it was, however, necessary to give the "floating population" time to leave the old town in order to return to their homes, and this involved a considerable amount of time as they all had to be searched before leaving. That caused the delay in imposing the curfew.

As to the reasons for imposing the curfew, Mr. Weston said that there was a general attempt to find clues for detecting the authors of that particular incident and of others. The real reason for the curfew was in fact to throttle the EOKA courier services between Nicosia and the hills area where the military operations were taking place. The curfew actually proved to be very useful, both because the communications between Nicosia and the hills area were stopped, and because the rate of incidents in Cyprus fell abruptly during the whole period of its duration.

During the curfew the whole area where the incident had taken place was searched, and the searches lasted the entire period of the curfew. These searches were carried out in certain areas only of the town, and this could give the impression that no searches at all were carried out, especially since security reasons had compelled the Government to prohibit the Press from entering the old town. Mr. Weston could understand the attitude of those who had not known of any searches and protested against the long duration of the curfew, but hoped that the Investigation Party would accept his explanations.

On the other hand, Mr. Weston insisted on the fact that special measures had been taken to provide the population with opportunities to get victuals and other means of comfort during one or two hours every day.

(o) Morphou (New Document No. 7). According to the "Times of Cyprus", during a curfew at this village, members of the Security Forces stood on walls of yards or gardens and threatened to shoot occupants if they tried to open the door to go into their yards to use their water-closets, and in some cases when they merely opened their windows or doors.

The said curfew had been imposed on the village of Morphou, on 12th July 1956 as from 3 a.m. until further notice, by an Order made on 11th July 1956 by Mr. C. Thom, Assistant Commissioner of Nicosia and Kyrenia. It was lifted on 19th July 1956.

According to the allegations of the Greek Cypriot witnesses heard by the Investigation Party the curfew was imposed on Morphou as a punishment because the Mayor and the Municipal Councillors had refused to comply with an invitation which Mr. Thom had addressed to them on 7th July, 1956, to attend a "public enquiry" for the purpose of considering whether a collective fine should have been imposed on the inhabitants of Morphou.

M. Christakis Loizides, Municipal Councillor of Morphou, acknowledged that various incidents had taken place in the earlier months of 1956 prior to the said curfew (which culminated in the killing of a British policeman on 8th July, 1956) but stated that this had not been the cause of imposing it. He said that no searches had taken place in the village and that the only form of enquiry had been the distribution of paper and envelopes to the population in order to collect information about EOKA. He insisted on the brutal way in which the curfew had been kept in force and especially on the fact that the Security Forces would not allow the inhabitants to leave their houses in order to reach the toilets which were situated in the backyards. He also protested against the fact that the inhabitants who were thus found out of doors in breach of the curfew had been forced to gather in a barbed wire enclosure, on the sand and under the hot sun while the temperature was 109 Fahrenheit. He said that one man had had sun-stroke and that all the people who had been put into the enclosure suffered from sunburns. He then mentioned the fact that the inhabitants of Morphou had been caused great financial inconvenience as they were prevented from looking after their crops and animals, thus suffering a loss of about £30,000. He admitted that as from the fourth or fifth day of curfew the veterinary officer and the rural constables had been active in the fields in order to reduce damages to the minimum. On the other hand, shepherds received permission to take their flocks into the fields to graze, under escort. Questioned in order to indicate how many members of the Security Forces were in Morphou during the curfew, M. Loizides said that he could not know, since he was obliged by the curfew to remain indoors. He also said that he had not been an eye-witness of the incidents related, but that he could produce evidence and witnesses.

./.

Appearing before the Investigation Party after M. Loizides, Mr. Weston, District Commissioner of Nicosia, stated that the curfew imposed on Morphou had neither a punitive nor a vindictive character, but had been an ordinary curfew imposed in order to allow searches to take place and information to be collected. In particular, he said that there was no connection whatever between the failure of the public enquiry and the curfew itself. The region of Morphou had a very bad record of incidents which culminated with the murder of a British policeman on 8th July, 1956. During the searches made after this killing, some arms and ammunition were found and this had been the reason for imposing the curfew. The delay of 4 days between the murder of the policeman and the imposing of the curfew was probably due to some fruitless discussions which took place with the communal authorities of Morphou in order to obtain information.

The British authorities, said Mr. Weston, had done their best to diminish the hardships of the population by letting the inhabitants come out of doors for at least one hour every day and by permitting doctors and midwives to carry out their duties regularly. Many measures were taken in order that the crops and animals should not suffer from the curfew. Moreover, the people who wanted to leave the village were allowed to do so. Upon the advice of a medical officer, the Assistant Commissioner ordered that persons who were detained for having been found out of doors during the curfew were released, since they had been suffering from staying in the sun.

The searches were long, even if not all the houses of the village had to be searched, and arms were found. That accounted for the length of the curfew. Mr. Weston had no recollection of the fact that envelopes and paper had been given to the population in order to obtain information, but said that this had taken place on other occasions and could not therefore deny it. He had no recollection that anybody had been arrested as a result of the curfew, but was prepared to make investigations if necessary.

(p) Nicosia Weekend Curfew (New Document No. 10). According to a Special Release from the Central News Room on 9th November, 1956, a house-curfew applicable to Greek Cypriots in Nicosia during the hours of darkness was extended so as to apply to them every week-end until further notice from 2 p.m. on Saturday and all day Sunday. The only break was to be from 7 to 9.30 a.m. on Sundays to allow attendance at Church. The Special Release states that during the previous week-end 12 bombs had been thrown during daylight,

two Cypriots murdered, one Cypriot woman seriously injured and one Security Official slightly injured. The terrorists were deliberately timing their crimes for the week-end when the streets were crowded and they could more easily make their escape. It had been "reluctantly decided that the public, in its own interest, must in future be kept off the streets during the week-end". The public was stated to "afford unwitting cover for the terrorists" while innocent bystanders fell victim to indiscriminate attacks and the week-end curfew was a necessary measure for the protection of the public. According to the Special Release, the District Security Committee recognised that "the great majority of the Greek-Cypriot community of Nicosia is in no way implicated in the activities of the terrorists" and regretted to impose "a measure which must inconvenience many law-abiding people".

According to the Order imposing the above-mentioned curfew this Order was applicable only to Greek Cypriots born after 1st January 1930.

245. In a letter dated 4th May, 1957, the Agent of the Greek Government drew the attention of the Sub-Commission "to the very unusual and severe measures which have been taken for nearly two months now against the village of Milikouri". The letter continues:

"Although described as a curfew, these measures are nothing of the sort, but a blockade of the area, cutting it off completely from the surrounding district; there would not appear to be even any legal basis for such action under the legislation in force. The United Kingdom authorities deny that the measures are intended as a punishment and say that the village is in the middle of an area where rebels are believed to be hiding. But the length of time the blockade has gone on and the lack of results so far, show the action taken to be of doubtful effectiveness and, in any event, out of all proportion to the hardship caused to the people of the village.

The plight of the village has aroused the sympathy of the whole district: collections have been made for it and there have been attempts to supply it with food." (Doc. A 34.076)

To this letter were appended:

(a) copy of a letter dated 8th April 1957, from Mr. J.C. Clerides of Nicosia to the Administrative Secretary, in which, on behalf of the inhabitants of Milikouri, he requested the Government to consider the position of the inhabitants of that village who had been under strict curfew for nearly three weeks, and were suffering great hardship. They were handicapped in the cultivation of their properties and in feeding their animals. They themselves were living in deprivation;

(b) copy of the reply, dated 10th April, 1957, from the Administrative Secretary to Mr. Clerides, stating as follows:

"I understand that, in fact, all possible measures have been taken to ensure that the restrictions which have had to be imposed cause the minimum of inconveniences and hardship to the villagers. However, I am making further enquiries and will write to you again. You will, of course, appreciate that, in the interests of the long-term safety and security of the Island as a whole, the capture of the remaining terrorists and their supplies of arms and explosives must be regarded as of paramount importance."

(c) an article from the "Cyprus Mail" of 14th March 1957, reproducing the protest by Dr. Dervis, Mayor of Nicosia, on behalf of all the Greek Mayors of the island against the continued curfew at Milikouri village, which at that time was in its third week. Dr. Dervis in his protest said:

"The Greek Mayors of Cyprus strongly protest against continuing curfew Milikouri village and area on account of which whole population including children are suffering hardship while agriculture and stock-breeding are being ruined. We ask that this illiberal, hard measure be withdrawn as being contrary to human rights and the pacification of the country."

./.

According to this article from the "Cyprus Mail", a Security Forces spokesman had said that Milikouri was in the centre of the anti-EOKA operation "Lucky Dip" which had been going on since 18th March (the date is no doubt a mistake). The spokesman continued: "villagers are allowed to circulate within the village boundaries and food supplies are organised by the authorities" and added "it is suspected that several wanted men are hiding within the area centred on Milikouri".

(d) a report from the "Times of Cyprus" dated 14th March 1957, stating that the Milikouri curfew was understood to have been in force for about 3 weeks and that an official spokesman had said it was believed

"that wanted men were in the neighbourhood though not necessarily in the village itself. During the day, he said, villagers were confined to the village boundaries but could move freely within them. There was a full house-curfew at night".

The reporter of the "Times of Cyprus", wondering whether Grivas was there, said the Security Forces appeared confident that "in time anybody who might be hiding there must run out of food and either emerge from his hideout or starve". It was announced that Mr. Wayne, District Commissioner of Troodos, would reply to the villagers personally and that "it was understood that an officially sponsored Press visit to the village, or the operational area, might be arranged".

(e) an article from the "Cyprus Mail" of 12th April 1957, stating that the villagers of Milikouri, who had been under curfew for 25 days, had sent a strong protest to the Government.

"They tell him that such measures are contrary to the spirit of the existing situation as well as to his declarations that no more collective punishments will be imposed.

They complain that their hardships are unimaginable, that their animals suffer and their fields are being destroyed".

(f) an extract from the "Cyprus Mail" dated 6th April 1957, stating:

"The village curfew on Milikouri is part of an internal Security operation and is in no way connected with punitive measures, an official government statement said yesterday as Milikouri, a village near Kykko Monastery, entered its fifth week under curfew.

The statement added that all possible measures are being taken to avoid unnecessary hardships to the villagers, but it will continue as long as the operational requirement remains.

The statement follows protests from various quarters, including one from the Greek Mayors and Trade Unionists, urging the lifting of the curfew as contrary to the human rights and to the spirit of a return to peace in the country".

In this connection, the Investigation Party obtained further particulars. This information was supplied mainly by persons interviewed at Nicosia, namely, General Fitzgeorge Balfour, Chief of Staff to the Director of Operations; the Most Reverend Bishop Anthimos of Kitium and M. John C. Klerides, President of the Human Rights Committee at Nicosia. The Party also thought it worth while to visit the village itself in order to gain a clearer picture of the situation. On this visit, during the afternoon of 21st January, 1958, it interviewed M. Panayiotis Polydorou, Pope of Milikouri, MM. Fantis, Pelikanos and Raspopoulos, representatives of the population, Mr. Wayne, District Commissioner of Troodos, and once more, General Fitzgeorge Balfour. On the eve of its visit to Milikouri, the Party received from the Cyprus Government a memorandum with appendices, on the subject of the curfew.

The curfew of Milikouri imposed on 18th March, 1957, lasted until 11th May, 1957, that is for 54 days. It took two forms: firstly, from sunset to sunrise, the local inhabitants were confined to their homes (house-curfew); secondly, for the rest of the day, although free to go about the village, they were not normally allowed to leave it (village-curfew).

In the light of this information, the Party has established the following facts:

A. Reasons for the Milikouri curfew

According to the spokesmen of the British authorities in Cyprus the curfew was imposed for purely military reasons. The Security Forces had become convinced that Grivas was in hiding somewhere in the mountainous and wooded region surrounding Milikouri. They attached the greatest importance to Grivas' capture which, they considered, would virtually mean the end of EOKA. They, therefore, decided to surround the whole area and subject it to a systematic search. In their view, once these measures had been decided upon, they were bound to be applied not only to the surrounding area but also to the village of Milikouri itself; otherwise the operation would lose much of its effectiveness. Thus Milikouri too was subjected to thorough searches and investigations.

The Greek Cypriots interviewed by the Investigation Party did not seem to deny that predominantly military reasons were at the root of the Milikouri curfew. Some of them, no doubt, asserted generally that curfews in Cyprus had been of a punitive nature but they did not single out the particular case of Milikouri in this connection.

Some of the persons interviewed, however, challenged the reality of these military considerations, pointing out that:

- the curfew at Milikouri was imposed after EOKA had announced a "truce";
- throughout the period of the curfew, the authorities found nothing to incriminate the local population (no secret hiding-places, arms, ammunition, etc.).

B. Manner of applying the curfew

- Date of announcement

Mr. Klerides described as "significant" the fact that the Order concerning the Milikouri curfew was not published until 23rd May, 1957 (Supplement No. 3 to the Cyprus Gazette of 23rd May, 1957, p. 409, No. 541), in other words after the expiry of the curfew and simultaneously with the order lifting the curfew (Cyprus Gazette No. 542, p. 410).

./.

- Duration

The British authorities pointed out that in view of the nature of the terrain a systematic combing of the area was bound to be a very slow process.

- Hardship directly caused by the curfew

The Most Reverend Anthimos, Mr. Klerides and, in particular, Mr. Fantis and Pope Panayiotis Polydoru laid great stress on the hardship suffered by the population as a result of the curfew (confinement within close limits, hunger, lack of medical attention, interruption of postal services, increased mortality of livestock, decay of crops, unemployment, etc.). The authorities were alleged to have made good only a small part of this damage.

The representatives of the United Kingdom authorities admitted that the curfew had been an unpleasant experience for the inhabitants of Milikouri and had caused some damage, but maintained that the Security Forces had avoided causing unnecessary damage and had repaired the greater part of such damage as had been done. They added that the victims had been or would be compensated to the utmost extent compatible with the principles governing this matter on the basis of a reasonable valuation of the damage. Lastly, they emphasised that every effort had been made to reduce the suffering of the population to the absolute minimum (distribution of food and money; visits by army doctors and veterinary surgeons; facilities for sending food parcels from outside; offers of employment to some of those thrown out of work, etc.).

246. It is further important to note that at the hearings held by the Sub-Commission on 2nd and 3rd July 1957, the Agent of the Greek Government referred to the curfew imposed on Milikouri in the following terms:

"Despite the cessation of acts of violence and the strict observation of the cease-fire by the patriotic EOKA Organisation, military operations on a scale hitherto unknown in the island were carried out by the British forces. Apart from their unfortunate psychological effects upon the population of Cyprus, these operations were the direct cause of a curfew being imposed on the village of Milikouri, which prolonged the sufferings and hardships of the civilian population for fifty-four days.

Hence, no one has doubted the punitive nature of these measures. They were brought to your notice in my letter of 4th May, and we believe them to be plainly at variance with the repeated statements of Governor Harding and his administration that the EOKA Organisation had been wiped out.

The Government of Cyprus, bringing into action a formidable military force of six thousand men, began a search for the now quiescent leader of the patriot movement, regardless of the privations which these operations imposed on the Cypriot population and of the fact that they were thus committing a breach of the British Government's formal undertakings to this Sub-Commission.

There can be no doubt, Mr. President, that neither security requirements nor the desire to maintain public order in the island could have justified such repressive measures, which were clearly more than the situation demanded."

The Agent of the Greek Government went on to say that during the waiting period, i.e. since 29th March, 1957, curfew had been strictly applied in more than twenty-six cases, in several of which the reason given was the obligation upon the inhabitants to remove slogans from walls (see also below, para. 280).

247. By letter dated 22nd August, 1957 (Doc. A 35.560), the Agent of the Greek Government, referring to his above-mentioned statement, informed the Sub-Commission as follows:

"Since the cessation of hostilities (proclamation by EOKA of 14th March 1957), the local authorities have on frequent occasions imposed a curfew, either in support of large-scale military operations (MILIKOURI case, letter of 4th May 1957) which, having been undertaken after calm had returned to Cyprus, could not be justified on grounds of preserving order and security, or in other cases to compel the inhabitants to erase patriotic slogans written on walls.

In view of the frequency of these latter cases, the punitive character of which cannot be denied, my Government feel bound to give the Sub-Commission all information in their possession on the application of curfew in Cyprus (see Appendices).

./.

It will be seen that the British authorities in Cyprus, without reference to the requirements of local security and despite the assurances given to the Sub-Commission by the Agent of the British Government, have continued to apply the curfew consistently and systematically, causing exasperation among the inhabitants of the island, whenever a peaceful, democratic slogan is written at all legibly on the walls of Cypriot towns or villages."

The appendices referred to in this letter are the following:

Appendix I:

1. According to the newspaper "Ethnos" of 14th July 1947, security forces blockaded the village Ayios Theodoros Karposias on 13 July, and imposed a curfew on the inhabitants after they had refused to erase slogans within a set period of time.

2. According to the same newspaper, security forces on 12 July called upon the inhabitants of Trikomo to erase the slogans appearing on the walls not later than 8 a.m. on the 13th, otherwise the village would be put under curfew. The inhabitants refused to comply and abandoned their village.

3. According to the "Times of Cyprus" of 20th July 1957, troops and police surrounded the municipal market area in the town centre of Limassol and imposed a two-hour curfew on the market and surrounding shops. This action was taken after a large number of slogans had been written on walls, such as "Harding must go", "Crimes of neo-Nazis are being found out" and "EOKA will punish". Officers in charge of the curfew operation said the area would remain under curfew until the slogans were wiped off. Men of the Oxfordshire and Buckinghamshire Regiment and the police Mobile Reserve stood by while the slogans were removed.

4. The "Times of Cyprus" of 22nd July 1957 reported that four villages in the Kyrenia district, Bellapais, Kazaphani, Ayios Epiktitos and Ayios Gheorghios, were put under curfew following the discovery of a large number of slogans printed on walls and streets. Armed soldiers stood by while Cypriot youths painted out the slogans in the hot summer sun. These slogans included "Down with the emergency", "Partition would lead to war", "Cyprus case to the United Nations", "We want liberty".

./.

In the same number the "Times of Cyprus" reports that two Greek Cypriot men protested because while on their way to Nicosia by bus they were arrested by members of the army at the eighth milestone of the road between Kyrenia and Nicosia and forced under threat of arms to remove slogans. The two Cypriots complained because they were chosen to do this work as the only Greek passengers in the bus. A British officer commented to the newspaper's correspondent:

"Our orders are to get the EOKA slogans obliterated. I know it is hard on passers-by to force them to clean them off, but after all the slogans were written by Greeks and presumably the Greeks approved of them. Besides, who else can we get to remove them? I certainly do not see why British soldiers should get down on their knees to do so."

Asked whether this sort of treatment might make pro-British Cypriots anti-British, the officer said he hoped they would have more sense. "Anyhow, we have our orders and must carry them out as best we can."

5. According to the "Times of Cyprus" of 27th July 1957 the curfew was imposed on Ayios Theodoros for the second time on 26th July in order to have slogans removed. The same thing happened at Limassol for half an hour, to oblige passers-by to obliterate slogans.

6, 7, 8, 9 and 10. The newspapers "Fileleftheros", "Ethnos" and "Eleftheria" relate several other incidents of the same kind which occurred between 1st and 8th August 1957 (Ayios Gheorghios, Tsada, Akanthou, Gialouss (Yialouse?), Goudi, Diorios, Limassol).

Appendix II:

An order by the Commissioner of Famagusta, issued on 25th July 1957 prohibiting the use of the road from Boghaz to Rizokarpaso between the 43rd and 44th milestones. This order is cited as the Removal of Illegal Slogans from Roads Order, 1957. The prohibition was imposed as from Friday, 26th July 1957 at 3 a.m. and was revoked by a second order issued on 27th July, with effect from 10 a.m. on 26th July 1957.

./.

Several Greek Cypriot witnesses heard by the Investigation Party mentioned the curfews imposed for the purpose of removing slogans (MM. Ziartides, Spyridakis, Pouyouros, Hadji Costas, Mylonas, and the priest of Paralimni, Papa Constantinou. They all affirmed that these curfews had been imposed as a form of punishment.

On the other hand, Mr. Weston, District Commissioner of Nicosia, affirmed that, at least in his former district (Famagusta), the curfew had never been used as a means of obliging the population to remove seditious slogans. Nor had he any knowledge of a case where passengers in a bus were obliged to get out in order to remove every trace of such slogans before being allowed to continue on their way. He did not, however, rule out the possibility of such an occurrence in other districts.

Mr. Gillies, District Commissioner of Famagusta, stated that under Regulation 35 (A) of the "Emergency Powers (Public Safety and Order) Regulations, 1955":

35(A) Signs and slogans on roads.

(1) Where any illegal sign or slogan is written or otherwise placed on, or in the vicinity of, any road, any police officer or any member of Her Majesty's naval, military or air forces may give directions requiring any of the inhabitants of any town, village area or quarter, to remove such sign or slogan and any person who contravenes any such directions shall be guilty of an offence and shall be liable on conviction to the penalties provided for in Regulation 75 of these Regulations.

(2) Without prejudice to the taking of any action under paragraph (1) of this Regulation, the Commissioner of the District may, by order, prohibit the use of any road, or the use of any vehicle on any road, on which, or in the vicinity of which, there is an illegal sign or slogan.

./.

In application of this Regulation, the security forces had, on several occasions, ordered the population to erase seditious slogans. While this operation was being carried out it was natural to impose a curfew in order to prevent possible disturbances, but this did not mean that the curfew was imposed as a punishment to compel the population to remove the slogans.

248. Furthermore, according to Annex 38 to the Greek Government Memorial of 24th July 1956 (extract from the London "Times" of 19th April 1956), the closing down for a week of all "restaurants, bars, clubs, coffee shops, cinemas, confectioners' shops, cabarets and, in fact, any place of entertainment or public resort owned by a Greek Cypriot" was ordered on 18th April 1956. According to the "Times" this was done on account of the public abhorrence at the murder of a Greek Cypriot policeman by EOKA terrorists. This decision which affected 90% of the places of public entertainment in the town caused a financial loss which must be reckoned in thousands of pounds.

The "Times" said "It is to be hoped that the Government's draconic order may result in some victims speaking more freely about the EOKA terrorist movement, but whether it will actually have such a result is a moot point for the fear of EOKA is very great among the 'masses'." In conclusion it stated that the order would "certainly not help to increase the number of pro-British Cypriots".

As regards the closing down of the above-mentioned places of entertainment, the Investigation Party recognised that this had been ordered under Regulation 40 of the "Emergency Powers (Public Safety and Order) Regulations" (subsequently revoked on 8th August 1957) and not under the Curfew Laws. Thus this did not come within the province of the Cyprus Investigation. Mr. Weston, District Commissioner of Nicosia, indicated, however, that this measure had been gradually relaxed, even before being revoked, and that its purpose had been to prevent people from running the risk of being the victims of possible incidents, which might have been facilitated by the gathering of a certain number of persons in the same place. It had been, on the other hand, ascertained that many places of entertainment were used by terrorists for the purpose of hiding arms and distributing leaflets, as well as for the purpose of gathering and operating under safer conditions.

All the Greek Cypriot witnesses heard by the Investigation Party, who had been subjected to the above-mentioned measure, emphasised its punitive character.

./.

II. THE LEGAL ARGUMENTS OF THE PARTIES

A. WRITTEN SUBMISSIONS

249. The Greek Government in its Memorial of 24th July 1956 (Part II Section 3) contends that the curfew power, though given to the Governor for use in the interests of public safety and order, has been abused and is openly acknowledged to be imposed as a punishment. Its more detailed contentions are:

- (1) Curfews of indefinite duration have been imposed for purposes of intimidation, examples of which are said to be the Paralimni curfew of December 1955 (Annex 35) and the Pano Kyvides curfew of October 1955 (Annex 35 bis).
- (2) Curfews have been imposed as a means of enforcing payment of a collective fine, an example of which is said to be the Paralimni curfew of December 1955 (Annex 36). (1)
- (3) Curfews impose vexations and sufferings on the people and vary with the whim of the local inhabitants, examples of which are said to be the Lefkoniko and Lapithos curfews (Annexes 15 and 19).
- (4) The Kalopsida curfew was imposed as a means of pressure to obtain information against those guilty of attacks and was maintained until payment of a fine inflicted for failure to co-operate (Annex 21).
- (5) The Kalogrea curfew was imposed because the villagers had failed to erase anti-British slogans on walls, buildings, churches, etc. (Annex 36 bis).
- (6) The Nicosia closure of all restaurants, bars, clubs, coffee shops, cinemas, confectionery shops, cabarets and places of entertainment or public resort owned by Greek Cypriots for one week was a collective punishment (Annex 38).

./.

(1) Annexes 35 and 36 evidently refer to the same curfew.

- (7) Curfews, even when imposed ostensibly for the maintenance of order, assume such proportions that they exceed what civilised governments dare to do, an example of which is said to be the Greek Independence Day curfew on thirteen major towns (Annex 39).

250. The United Kingdom Government in its Counter-Memorial of 17th October 1956 (paragraphs 68-75) draws attention to the fact that the Greek Government has not claimed that the curfew legislation is itself open to objection under the Convention and contends that it would be neither feasible nor proper for the Commission to investigate each of the several cases mentioned in the Memorial. At the same time, it does not admit that the facts of these cases have been fully or accurately stated in the Memorial and it maintains that the curfew power has consistently been applied in accordance with the law and in the interests of public safety and order. Its more detailed contentions are:

- (1) The Greek complaint of an abuse of the curfew power amounts to an allegation that the Governor has acted ultra vires. The question of the powers conferred on him by the Curfew Laws and the question of ultra vires are questions of municipal law which can and should in the first instance be examined in the local courts. The Commission would be taking a dangerous step and going outside its proper functions if it were itself to go into the question of ultra vires.
- (2) In general, curfews have been imposed to assist the apprehension of offenders, to restrict traffic and other movement as an aid to the work of the security forces, to prevent disorder, to restore law and order and to ensure the safety of the public. These purposes, it is said, fall within the proper scope of the powers conferred by the Curfew Laws.
- (3) Curfews have proved effective in putting an end to murders and disorders and in helping to restore order and frustrate terrorists. Many people are said to have expressed gratitude for the imposition of curfews and in Ktima, Polis, Limassol and elsewhere the inhabitants are said actually to have asked for a curfew in order that communal disturbances might be avoided.

- (4) Curfews have not been harshly applied so as to deprive people and animals of the essentials of life. Provision has on each occasion been made to enable food supplies to be obtained and necessary medical attention to be given.
- (5) The need for a curfew in any particular instance is essentially a matter within the competence and judgment of the authorities in Cyprus responsible for maintaining law and order and protecting the inhabitants. An example is the curfew on 25th March 1956, which was Greek Independence Day, a major political festival in Greece; it was particularly likely that, without a curfew, there would be disturbances of the peace in which innocent persons would be killed.

B. HEARINGS OF 15TH, 16TH, 17TH AND 18TH NOVEMBER 1956

- (1) Pleading by the Counsel of the Greek Government before the Sub-Commission (15th November 1956, Doc. A.30.768, pp. 71-77)

251. In his first speech on the question of curfew, the Counsel of the Greek Government amplified the contention that curfews had frequently been employed not for purposes of security but as an accessory measure of collective punishment, citing the Lefkoniko curfew of December 1955 (Annex 15), the Lapithos curfew of March 1956 (Annex 19) and the Kalopsida curfew of April 1956 (Annex 21) as instances of the imposition of curfew in furtherance of the exaction of a collective fine. (1)

./.

-
- (1) At the final session (18th November 1956 - Doc. A.30.768, p. 184), the Greek Government mentioned the Paralimni curfew of December 1955 (Annex 36) as another example. Indeed it also mentioned a second Lapithos curfew of April 1956, as a yet further example; but this is an error, due, no doubt, to the misprinting of the date of Annex 17, which in fact relates to the same curfew as Annex 15.

These examples are claimed by the Greek Government to establish that curfews are employed as a measure of constraint to enforce payment of collective fines and it maintains that such a use of curfew is an accessory measure of collective punishment. Moreover, it claims that a passage in Annex 36 bis dealing with a £6,000 collective fine on the "silent villages" of Pano and Kato Zodia contains a tacit admission by the authorities of a punitive use of curfew. (1)

The Greek Government also claims that its view of the punitive nature of curfews in the cases just cited is supported by the imposition of indefinite curfews in a similar way to compel the giving of information about terrorists, the example given being a Paralimni curfew of June-July 1956 (New Document No. 1). An indefinite curfew whether until a fine is recovered or until information is given about a terrorist attack is said to have exactly the same aim and object as the collective punishments authorised under the Collective Punishment Order.

252. Another argument advanced by the Greek Government, in the course of the hearing, was that the curfews ordered by the authorities in Cyprus are not consistent with the juridical concept of curfew as understood hitherto. Basing itself on the explanation of curfew as understood in the Encyclopaedia Britannica, the Greek Government represents that the concept of curfew today hinges on the difficulty of keeping order during the hours of darkness and is limited to the prohibition of movement during what may be termed the night even if the actual fixing of the hours of night may be somewhat arbitrary. It contends that never in the annals of the penal law has the prohibition of movement for several days and nights on end been classified as a curfew. It cites as an instance a four-day curfew imposed on four villages of the Famagusta area after an attack on the Paralimni police station (Annex 34). In this case the press report referred to a mass commando search in the area a fortnight after the lifting of the curfew and the Greek Government observes that the curfew and the security search could have had no relation to each other.

./.

-
- (1) The passage in Annex 36 bis does not in terms mention a curfew and it is not clear that the phrase "silent villages" has reference to a curfew.

253. The Greek Government adduced as further evidence of the punitive use of curfews a number of press reports concerning the "long Nicosia curfew" imposed from 28th September to 6th October 1956, which it later submitted to the Sub-Commission at the hearing (New Documents Nos. 2-8). It cited at length two reports from the "Dernières Nouvelles d'Alsace" in which the curfew was referred to as a collective punishment and in which it was stated that the official reason for the curfew was a systematic search of the houses, but that this reason was a mere "pretext". It also cited extracts from a letter of 12th October 1956, in the "Times of Cyprus" by a British journalist in which it was stated that "every government official would tell you in private that the curfew was punitive in intention". This journalist asserted that the murderers could have made their escape well before the curfew began and that no useful purpose was served by distributing paper and envelopes for obtaining information during the curfew. He further asserted that he had had no reports of police searches or investigations. The Greek Government for its part maintained that the two-hour mid-day break in the curfew each day was in itself inconsistent with the curfew being a security measure since "wanted" persons could move to a house which had already been searched and thus escape detention. It also called in question the sincerity of the distribution of paper and envelopes for information, arguing that anonymous evidence would anyhow be valueless as the basis of a prosecution. In general, it contended that in the light of this Nicosia curfew it was impossible to doubt the punitive character of curfews and the falsity of the "security" pretext for them.

(2) Pleading by Counsel for the United Kingdom Government
(16th November 1956, Doc. A.30.768, pp. 91-100)

254. One of the Counsel for the United Kingdom Government represented that the question whether curfew had been abused by the Cyprus authorities was essentially one of fact and that it would be very difficult for the Tribunal to reach a reliable conclusion except upon detailed examination of the individual instances. It also represented that the Tribunal, in reaching a conclusion of fact on questions of this kind, could not act upon "a series of newspaper comments". It stated that it does not dispute the occurrence of many of the instances mentioned in the Memorial but reserves its position as to the true facts and circumstances of each of those instances. It was ready to

./.

go into the details of individual cases if called upon. But it invited the Commission to hold that, without a much more detailed examination of the facts than is possible upon the Greek material, a fair conclusion cannot be arrived at as to whether or not in any instance the curfew has been abused.

Secondly, the United Kingdom asserted that, if there had been any abuse of curfew in any instance, there would be a domestic remedy. At the same time, it appeared not to press the point of "domestic remedies" for - Counsel for the United Kingdom Government said (Doc. A 30.768) - it would be obliged to take the point but did not do so because it accepts that as a matter of practice the onus upon the plaintiff would be very heavy indeed.

255. Thirdly, the United Kingdom Government maintained that the coincidence in point of time between the exaction of a collective fine and a curfew in any given instance is not, by itself, any proof of abuse of curfew. It represented that the place where a curfew is required for the maintenance of order is likely to be the very place where a collective fine has had to be imposed for terrorist acts. Similarly, the place where a collective fine has been imposed is very often the place where a curfew is required to facilitate the search for terrorists and weapons. Only a factual examination of each case, it states, would show whether the curfew had been imposed properly for the maintenance of law and order or for security purposes and not improperly as a punishment superimposed upon the fine.

256. Fourthly, the United Kingdom Government denied that the distribution of envelopes to obtain information was mere camouflage for the punitive imposition of a curfew. In regard to the Greek contention that any information so obtained, being anonymous, would be useless for bringing offenders to trial, the United Kingdom Government says that even anonymous information is valuable as the basis for further enquiries which may lead to legal evidence being obtained. Accordingly, the fact that the information is to be given anonymously is no indication that the request for information is not a genuine one seriously made for purposes of maintaining law and order.

257. Fifthly, the United Kingdom Government maintained that the fact that breaks of some hours have been allowed in curfews is no indication that they were not imposed generally for security reasons. Humanitarian considerations could not be totally disregarded and to allow the inhabitants out for

./.

a period to obtain food and personal necessities does not render a curfew valueless from a security point of view. In practice the area is cordoned off and although the individual terrorist may escape from one house to another during a break, it by no means follows that he escapes from the area. Again, a curfew having breaks may nevertheless frustrate a new terrorist attack by making more difficult the plan for the get-away.

258. The United Kingdom Government then dealt with some of the actual examples cited by the Greek Government as abuses of curfew in order to indicate with regard to each how dangerous it would be, without an examination of the facts, to conclude that there had been any abuse. Starting with the Lefconiko curfew (Greek Memorial, Annex 15), it said that the village had a bad record of terrorist activities ending with the burning down of the post office in broad daylight by a group of villagers marching through the streets with cans of petrol. At the public enquiry no one had come forward with information and it appeared to the United Kingdom Government to have been a case of the kind where a whole community may be implicated in a criminal act. The collective fine was in fact applied to the rebuilding of the post office. The United Kingdom Government contended that the Lefconiko case was one in which a curfew not only may properly, but must, be imposed, if law and order are to be restored and further incidents prevented. In any event, a nice investigation of the circumstances would be required before it would be safe for any tribunal to reach a conclusion on the point of fact, whether or not there had been an abuse of curfew.

259. On the question of the alleged inhumanity of the curfew the United Kingdom Government asserted that a large number of precautions had been taken to ensure that it should not be "inhuman". The women were allowed out for two spells of two hours each day to enable them to buy food, get water, etc., while curfew passes were given to the butchers, bakers, grocers, chemists and doctors. Curfew passes were also given to shepherds so that they could graze their flocks between sunrise and sunset.

260. Taking next the Lapithos curfew (Greek Memorial, Annex 19), the United Kingdom Government said that there had been repeated rioting and hooliganism in this village by young people, including the burning down of the girls school. Then on 14th March two bombs were thrown at security forces within the

./.

village and a curfew was imposed that evening until 6 a.m. next morning. Reimposed at 6 p.m. on the 15th it was lifted at 6 a.m. on the 16th and the authorities, hoping that there was calm and that order had been restored, did not renew the curfew for the night of the 16th/17th March or for that of the 17th/18th March. The only result was that on the second free night bombs were thrown into vehicles, killing one soldier and wounding two more. The curfew was, therefore, reimposed. These facts, the United Kingdom Government contended, showed that in the Lapithos case the curfew was operated for the maintenance of law and order and for purely security purposes.

261. Turning to the Kalopsida curfew (Greek Memorial, Annex 21), the United Kingdom Government said that "after some marked terrorist activity" a British sergeant was murdered in an ambush in the village. A curfew had been imposed on the 13th April from 5 a.m. to 10 p.m. because it was essential to search for terrorists and arms and security forces in fact searched the village from house to house finding a quantity of electric batteries of the kind used by terrorists for detonating bombs. Admittedly, the opportunity provided by the curfew was used for the exaction of the collective fine.; But this does not mean, so the United Kingdom Government contended, that the curfew was abused. The curfew was necessary to make possible the searching essential for security purposes.

262. The last example dealt with by the United Kingdom Government was the Pano Kyvides curfew (Greek Memorial, Annex 35 bis), in regard to which the Greek Government contended that it cannot have been for a security purpose because the search mentioned in the newspaper report took place two weeks after the lifting of the curfew. (1) The answer given by the United Kingdom Government was that there

./.

-
- (1) Note: At no time during its hearing did the Counsel of the Greek Government mention the curfew at Pano Kyvides a village not far from Limassol, imposed on 19th October 1955. On the other hand, it mentioned the curfew imposed a fortnight before 15th September 1955 (Annex No. 34) on four villages in the Famagusta area (Liopetri, Xylophagou and Sotira, as well as another village whose name is not given). It was on 15th September 1955 that there had been a commando and police search (see para. 252 above). This curfew is also mentioned in para. 244, letter (f).

were, in fact two searches one of which was contemporaneous with the curfew and the other was the one mentioned in the newspaper which took place two weeks later. It said that a party of the security forces had been heavily stoned in the village and then, on 15th October, some villagers refused to pay their taxes to the local inspector. On 18th October an RAF vehicle was attacked and burned in the village and on the following day a curfew was imposed for 36 hours during which there was a house to house search. The United Kingdom Government submitted that, although nothing was discovered in the village, the search was in these circumstances a proper security measure and the curfew reasonably necessary for carrying out the search.

263. The United Kingdom Government, in concluding its reply, reiterated its contention that it would be unsafe to reach any conclusion on the question of abuse of curfew without a detailed examination of the full circumstances of each case. It offered to go into any other cases mentioned in the Memorial which the Sub-Commission wished but said that it had not brought with it the information necessary for dealing with the new material introduced by the Greek Government at the hearing (the new documents relating especially to the Long Nicosia curfew). At the same time it asked the Sub-Commission not to take this new material, even the Reuters despatch, at its face value, as it believed that the accounts in the press reports were a rather exaggerated presentation of what had happened.

(3) Reply of Counsel for the Greek Government
(16th November 1958, Doc. A 30.768, pp. 110-113)

264. In his reply, Counsel for the Greek Government recognised that the Commission was not concerned with isolated instances of abuse on the occasion of a search or arrest but insisted that the numerous instances of abuse of curfew alleged in the Memorial did concern the Commission as evidence of a general practice contrary to the Convention. It urged that, although it might not be necessary for the Sub-Commission to ascertain the truth about all the facts in controversy, it was reasonable that a sample should be taken and verified, if the information provided by the Parties appeared to be insufficient. While understanding the United Kingdom Government's inability to deal at once with all the facts of the long Nicosia curfew, it expressed surprise that it could not deal at once with the only relevant point, namely, the relation between the curfew and security measures.

./.

265. As to the other curfew cases, the Greek Government said that the question was whether the curfews were or were not imposed as punitive measures. In regard to the cases where there was at the same time a curfew and an exaction of a collective fine, it made two points. First, it contended that one test of whether or not there was an abuse of curfew was whether there were searches in all the houses within the curfew area. In the case of the Kalopsida curfew, it was inclined to accept the United Kingdom Government's assertion that there was a search. But in the cases of the Lefconiko and Lapithos curfews it maintained that there was an abuse of curfew. It interpreted the United Kingdom observation that advantage had been taken of the curfew to collect the fine as meaning that there was no search in these cases. For it would be absurd to inflict a collective fine first and make investigations afterwards. Secondly, it contended that there had in several cases been a complete coincidence between the exaction of the fine and the duration of the curfew and that in these cases it was clear that the curfew had been employed as a measure of constraint necessary to the collective fine.

266. The Greek Government then recalled again the "official announcement" mentioned in Annex 36 bis, that a curfew had been imposed on Kalogrea to compel the population to remove anti-British slogans from walls, buildings, etc., and that this had been the first example of a curfew imposed for this reason since the passing of the new law about anti-British slogans. It stated that, as the United Kingdom Government had left the Greek Government's allegation in regard to this curfew unanswered after three months had passed, the Sub-Commission was justified in considering it to be substantiated.

The Greek Government concluded by observing that no reply had been given to its observations concerning the etymology of "curfew" and concerning its previous use in British legislation as meaning a prohibition in movement during the night. It maintained that it was a complete abuse of the notion of curfew to produce under the rubric of curfew results identical with those obtained by collective punishment. It emphasised that the Collective Punishment Order provided for a power to order the closure of all or certain shops until the order was revoked or to open only at the times and under the conditions fixed in the order and that the same applied to dwelling houses. It argued that there was no real difference between some cases of so-called curfew, as reported in the press, and orders under the Collective Punishment Regulation (No. 732).

./.

4. Rejoinder of Counsel for the United Kingdom Government
(16th November 1956, Doc. A 30.768, pp. 121-123)

267. In his rejoinder, Counsel for the United Kingdom Government repeated that on all questions of fact it simply placed itself at the disposition of the Sub-Commission. It believed this to be its correct attitude since not only the Memorial but also the Order of the Commission limited the Greek Application to legislative measures and to the existing practical and administrative measures. It further represented that, even if every instance of alleged abuse of curfew were to be accepted at its face value, the Greek Government would still be nowhere near to establishing a general administrative practice of abuse of curfew. It did not dispute the right of the Greek Government to invoke individual instances when alleging a general malpractice. It contended, however, that (a) this procedure left unanswered the question whether or not the individual instances were really instances of the alleged general malpractice; (b) it would be difficult for the Sub-Commission now to inquire into that question; (c) the Sub-Commission would not be willing to decide the question merely on newspaper extracts and the assertions and counter-assertions of counsel for the Parties.

268. Taking the case of the Kalogrea curfew (Annex 36 bis), on which the Greek Government had challenged the United Kingdom Government to reply, the latter asserted that it was inaccurate to say that the curfew had been imposed to compel the removal of anti-British slogans. Its own information was that the curfew had been imposed in order to preserve order while the slogans were being removed by the Security Forces. When slogans were being removed it was just the kind of occasion when a curfew may be of value for preserving order. Consequently, the two Governments were in dispute as to the facts of this instance and it appeared difficult for the Sub-Commission to resolve the dispute on the basis of the material submitted to it.

269. The United Kingdom Government then took the other specific case on which it had been challenged to say whether there had been a house-to-house search, namely, Lapithos. It said that there had, in fact, been no search. But it represented that the need to make a house-to-house search was by no means the only "security" or "public order" purpose for which curfews were imposed. The reasons for which curfews were imposed were set out in the Counter-Memorial (paragraph 72); to assist in the apprehension of

offenders, to restrict traffic and other movements in order to assist the security forces, to prevent disorder, to restore law and order and to ensure the safety of the public. Lاپithos, it contended, was an instance where it was clearly right to impose the curfew for the restoration and maintenance of public order.

270. The United Kingdom Government next discussed the Greek contention that the greatest significance was to be attached to the cases where there was a complete coincidence between the time of the curfew and the exaction of a collective fine. It said that, even if you made a detailed analysis of each case to see how far in fact the coincidence in time actually occurred, the result would be quite ambiguous. It represented that the period when a collective fine was being exacted was the very time when there were likely to be incidents in breach of public order and a curfew might be required. Accordingly, the coincidence of a curfew with the exaction of a fine provided an indication either way on the question whether or not there was an abuse of curfew.

271. Finally, the United Kingdom Government explained that it had not dealt with the Greek argument in regard to the etymology of the word "curfew" because it considered the argument to be without any relevance to the work of the Sub-Commission. It did not dispute that "curfew" meant something different in the Middle Ages but said that the reality of the point at issue before the Sub-Commission was the meaning of Curfew in the Cyprus legislation which depended on the texts of the laws themselves. It maintained that in current English usage there was no better word than curfew to describe an order which required persons to stay within their houses.

5. Conclusions of the Parties (16th and 17th November 1956, pp. 139 and 143 of Doc. A 30.768 and p. 2 of Annex to same document)

272. At the end of the sitting of 16th November 1956, the Greek Government submitted its general conclusions. In regard to the Curfew it requested the Commission:

... "5. to declare contrary to the said provisions (Articles 3, 5 and 7 of the Convention) the imposition of a curfew and the destruction of buildings or plantations, measures which, although taken under powers conferred by other regulations, are in effect forms of collective punishment, means of pressure, etc...;"

For its part, the United Kingdom Government, at the hearing of 17th November 1950, asked the Commission:

..."3. to refuse to make any of the declarations requested in paragraphs 3, 4, 5 and 6 of those conclusions."

6. Questions put by the Sub-Commission to the representatives of the Parties

273. The Sub-Commission at the end of the session on the afternoon of 17th November (Doc. A 30.768 p. 180), inter alia, addressed the following question to the Greek Government:

"II Curfew. What evidence exists in support of the allegation that curfew is applied, as a general practice or in a great number of cases, solely in order to collect fines or to punish the population of Cyprus?"

274. The Greek Government replied (18th November 1956, Doc. A 30.768, pp. 183-184) that it was unable to add to the material already produced in the Annexes to its Memorial and during the course of the hearing. It reiterated that the extracts from newspapers constituted at least initial evidence of the truth of the facts in regard to the incidents mentioned. If the Sub-Commission did not consider that the documents produced afforded sufficient proof, it would be for the Sub-Commission to obtain "further evidence by an enquiry on the spot".

275. The Sub-Commission also put the following question to the United Kingdom Government (17th November 1956, Doc. A 30.768, p. 181):

"III. Curfew. What are the domestic remedies available to individuals in order to complain against the possible abuse of curfew which had been referred to by the Agent of the United Kingdom Government."

276. The reply by the United Kingdom Government was given in writing and will be found in Doc. A 31.551. To allow the Commission to appreciate the question of domestic remedies, it would appear useful to quote the British reply in toto:

"1. If the Curfews Law were in fact abused in the manner alleged by the Greek Government, a person injured by that abuse would have domestic remedies available to him under the law of Cyprus.

2. Section 33 (1) of the Courts of Justice Law, 1953, (No. 40 of 1953) provides as follows:

"Every Court in the exercise of its civil or criminal jurisdiction shall apply -

- (a) the Laws of the Colony;
- (b) the Ottoman laws set out in the Second Schedule to the extent specified therein;
- (c) the common law and the doctrines of equity save insofar as other provision has been or shall be made by any Law of the Colony;
- (d) the Statutes of the Imperial Parliament, and Orders of Her Majesty in Council, applicable either to the Colonies generally or to the Colony save insofar as the same may validly be modified or other provision made by any Law of the Colony."

The effect of this is that, save where there is an express provision of local law, the remedies which would be available to a person aggrieved by an alleged abuse of the Curfews Law would be those available to him in similar circumstances in England.

3. As regards the persons liable to be sued, section 4 of the Civil Wrongs Law (Cap. 9) provides, so far as is material, as follows:

"(1) No action in respect of any civil wrong shall be brought against Her Majesty.

(2) A servant of the Crown shall be responsible for any civil wrong committed by him:

Provided that he shall be sued therefor in his personal capacity:

./.

Provided also that, subject to the provisions of sub-sections (3) and (4) hereof, it shall be a defence to any action brought against any such servant that the act complained of was within the scope of his lawful authority.

No servant of the Crown shall be responsible for any civil wrong committed by any other servant of the Crown unless he shall have expressly authorised or ratified such civil wrong."

and section 64 (1) of the Courts of Justice Law, 1953, provides as follows:

"(1) No claim of any kind whatsoever, and whether by way of original claim, counter-claim, set-off, or otherwise, against the Government, shall be entertained in any Court unless it be a claim of the same nature as claims which may be preferred against the Crown in England, under the provisions of the Act 23 and 24 Vict., Chap. 34, intituled The Petitions of Right Act, 1860."

The combined effect of these provisions appears to be that (so far as is material to the present question) where a servant of the Crown does an act which is unlawful, no action will lie against the Crown itself or against the Government or a Government Department, but an action will lie against the officer who performed the act and against any other officer who expressly authorised or ratified it. It should be added that if a claim is brought against an individual officer for an act performed by him in the course of his duty, then, as a matter of practice, the Government will stand behind him in the litigation so that any monetary judgment awarded against him would not be a barren one.

4. Under the Common Law of England (and therefore under the law of Cyprus), where an officer on whom statutory powers have been conferred for some particular purpose in fact uses them for some other purpose, he acts without lawful authority. Thus, in the case of Berney V. Attorney-General (1947) 176 LT 377 at 381, 382; 63 TLR 173 at 176, Goddard C.J. said:-

"It may be, though it is not necessary to decide it, that if the competent authority, in this case a government department, uses the powers given by an order made under a Defence Regulation for some purpose

wholly unconnected with the Regulation, or the order, they could not justify their action under the Regulation or under the order as the answer would be that they were not acting under it."

and though this dictum is expressed in tentative terms as not being necessary to the decision of the case, it is respectfully submitted that there can be no doubt that it correctly states the law. Applying it to the circumstances envisaged in the Sub-Commission's question, the officers who abused their powers would be acting without lawful authority. Under the Common Law of England, and therefore under the law of Cyprus, their conduct might then constitute any or all of the following civil wrongs:-

- (i) false imprisonment: this is in fact dealt with in Cyprus by section 25 of the Civil Wrongs Law (Cap. 9) which, however, does not appear to do more than restate the Common Law position;
- (ii) if direct force is intentionally applied to the person of the plaintiff, trespass to the person,
- (iii) if force is threatened to the person of the plaintiff, assault.

5. If it were held that any of the above wrongs had been committed, the Courts could grant any or all of the following remedies:-

- (i) an award of damages (including punitive damages in an appropriate case);
- (ii) an injunction restraining the continuance or repetition of the wrong;
- (iii) a declaration that the act complained of was unlawful.

It should be noted that, by virtue of section 45 of the Courts of Justice Law, every Court in the exercise of its civil jurisdiction has power to make binding declarations of right, whether any consequential relief is or could be claimed or not; by virtue of section 46 of the Courts of Justice Law, every Court has power to enforce obedience to any order issued by it, directing any act to be done or prohibiting the doing of any act; and by virtue of section 47 of the same Law, the Court has full power to award costs in all civil proceedings as it thinks fit.

./.

6. It need hardly be said that although a declaratory judgment or injunction (or indeed an award of damages) would in theory be binding only against the individual defendant named, in practice and insofar as the order did not depend on the peculiar facts of the individual case, recognition would be given to it by Government generally.

7. It should finally be noted that the granting of the remedies referred to in paragraph 5 is clearly within the jurisdiction of the Supreme Court of Cyprus, but the question of whether, despite section 20 (d) of the Courts of Justice Law, the District Court can also exercise such jurisdiction in any case where the proceedings of a ministerial authority are called in question is at present sub judice."

277. In a separate note addressed to the Sub-Commission on 14th December 1956 (Doc. A 31.302), the United Kingdom Government added certain comments on the list of incidents mentioned by the Greek Government on 18th November 1956 (Doc. A 30.768, pp. 183-4) to prove that the curfew is only applied, as a general practice or in a great number of cases, in order to collect fines or to punish the population of Cyprus. The comments of the United Kingdom Government are reproduced in their entirety hereafter:

- "1. Annex 35 bis to the Greek Memorial is a report of a curfew, not on the town of Limassol as what Counsel for the Greek Government said might suggest, but on the village of Pano Kyvides which is in the Limassol district. There is set out in Appendix "A" to these comments a copy of the two orders issued by the Commissioner of Limassol imposing and removing this curfew (1). As will be seen, the curfew was imposed from 5.30 p.m. on Wednesday

./.

-
- (1) Note: The orders referred to here as well as those mentioned below were made under Section 2 of Curfew Laws No. 17 and 47. The Secretariat has in its possession the texts of these Orders which were appended to Doc. A 31.302.

19th October 1955, and although it was imposed "until further notice" it was in fact terminated at first light, i.e. 6 a.m. on Friday, 21st October. The curfew lasted only 36 1/2 hours.

The curfew was imposed for the reasons given in the official account quoted in Annex 35 bis to the Greek Memorial. This was the culmination of a series of acts of lawlessness in Pano Kyvides village and it was therefore decided that a thorough search of the village was necessary, and during the following day a house-to-house search of the village was carried out. The curfew was thus imposed (a) to enable a thorough search to be made and (b) to restore calm and respect for law and order in a village whose recent behaviour gave reason to fear further outbreaks of turbulence and lawlessness.

2. On the night of 20th October 1955, two outrages occurred in the town of Famagusta. A large time bomb exploded in the Police Headquarters causing extensive damage, and terrorists shot and seriously wounded a Royal Air Force Officer. A curfew was immediately imposed so that a thorough search of various buildings could be carried out. The curfew was originally imposed for an indefinite period from 10.15 p.m. on the night of Thursday, 20th October. These searches were completed by mid-day on Friday, 21st October and the curfew was lifted at 2 p.m. But in order to ensure that there were no similar acts of violence during the hours of darkness it was decided to impose a dusk-to-dawn curfew for a period up to the 31st October. It was not found necessary to extend that period. The Orders imposing these curfews are set out in Appendix "B" to these comments.

3. The curfew at Lefkoniko was not imposed, as is suggested, to enforce payment of the collective fine, but for the following reasons:-

- (a) Severe rioting had taken place the day before, leading up to the burning down of the Post Office for which a collective fine was imposed and it was feared that further rioting would take place. The turbulent history of this village, which made such fears reasonable, was explained by the Solicitor-General in his speech on Friday morning, 16th November 1956. (Doc. A 30.768, pp. 95-96).

./.

- (b) In particular it was feared that the collection of the fine might be the occasion or the excuse for further rioting and it was thought desirable to impose a curfew to ensure order during this collection.
- (c) The curfew enabled the Police and troops to carry out a search of the area. In fact it was during this operation that information was obtained which led to the arrest of several members of EOKA.

The Order imposing the curfew is set out in Appendix "C". The curfew was imposed at 10 a.m. on Sunday, 4th December, and lifted by 10 a.m. on Wednesday, 7th December 1955. The various measures taken by the authorities to prevent hardship are described on page 6 of the Compte Rendu for Friday morning, 16th November 1956 (Doc. A 30.768, p. 96 of English text).

4. The curfew at Paralimni was imposed at 3 a.m. on Tuesday, 13th December 1955, soon after military vehicles had been ambushed in the village. Its purpose was to assist the security forces in their search for the weapons used in that ambush and to screen the inhabitants. Although the collective fine was paid up by 11 p.m. on 13th December, the searches and screening were not completed until 4 p.m. on 14th December, when the curfew was lifted. The newspaper report relied on by the Greek Government is therefore incorrect. The order imposing the curfew is set out in Appendix "D".

5. The reasons for, the purpose of, and the sequence of events in the curfews imposed on Laphthos in March 1956, were described by the Solicitor-General in the course of his argument on Friday morning, 16th November 1956 (cf. Doc. A 30.768, p. 97). The facts speak for themselves and show that there was no punitive element in the imposition of the curfew, whose purpose was purely to restore order and prevent further outrages. With reference to the allegation that the curfew had the "extortion" of the fine as its purpose, attention is called to the fact that the first curfew was imposed at 6 p.m. on Wednesday, 14th March 1956, and the fine was not imposed until the 19th March. The Order for the imposition of the first curfew is set out in Appendix "E".

./.

6. This curfew in Nicosia was imposed at 1.30 p.m. on Wednesday, 14th March 1956, to assist in the search following the killing of a Police Sergeant and the wounding of two other persons by automatic fire.

The area was cordoned off and searched sector by sector, by Police and troops. The area was large and it took some time to complete the thorough search of each house and shop. It was not until the morning of Friday, 16th March, that the Commissioner started the enquiry which resulted in the expulsion of a number of families, and the closing of some shops - not principally because of the incident which brought on the curfew, which was imposed to assist in the search which followed it, but because of a series of terrorist incidents going back to October 1955. The Order to close the premises was given on the Friday afternoon and was carried out by nightfall. The curfew was not lifted until the search of the area had been completed, that is to say at 1 p.m. on the following day, Saturday, 17th March.

The Order imposing the curfew is set out in Appendix "F".

7. In the case of Kelopsida the curfew was imposed following the death of a soldier in an ambush. It was imposed at 00.30 hours on Friday 13th April 1956 (and not at 5 a.m. as was inadvertently stated by the Solicitor-General in his argument on Friday morning, 16th November 1956). The Order imposing it is set out in Appendix "G". The purpose of the curfew was to enable the village to be cordoned off and searched, and this was in fact done. During the search batteries of the type used to detonate electric-mines were discovered. At the same time as the search was being carried out, an enquiry was held and a collective fine was imposed and collected. The fine was imposed at 4 p.m. and was collected at 8 p.m. The search went on and was completed by 10.15 p.m. when the curfew was lifted.

8. The submission of the Greek Government on this item appears to be founded on some misapprehension. In fact the only collective fine that has been imposed on Lefkoniko was the one imposed on the 4th December 1955, and the correct date of the newspaper extract which constitutes Annex 17 of the Greek Memorial is not 25th April 1956 but 8th December 1955. The photostatic copies of the original and the List of Appendices to the Greek Memorial make this clear. The curfew referred to is, therefore, the one which was imposed in December 1955 and has already been commented upon above.

./.

9. The curfew at Kalogreea was imposed at 3.45 a.m. on 28th May 1956. As is stated in Annex 36 bis to the Greek Memorial, a search was carried out in the village by security forces in an endeavour to find wanted men and arms following an attack on a Greek Cypriot fisherman by masked gunmen the previous night. The curfew was imposed for this purpose only and it is not true that it was imposed to force the removal of slogans from the walls of the village. In giving this latter as the purpose and in saying that such was officially announced to be its purpose, the newspaper was mistaken. However, while the search was being carried out and whilst the maintenance of the curfew guaranteed that there would be no disorder or breach of the peace, the opportunity was taken to have the large number of EOKA slogans removed by the villagers. It is regretted that the Solicitor-General wrongly stated, when dealing with this incident (see Compte Rendu for Friday afternoon, 16th November 1956, Doc. A 30.768, p. 122 of English text) that the slogans were removed by the Security Forces. They were in fact removed by the villagers themselves. There was no question of the curfew being used to compel this, nor, indeed, would that in any way be necessary since, as Counsel for the Greek Government himself pointed out, failure to remove an illegal slogan is itself an offence under Regulation 35A of the Emergency Powers (Public Safety and Order) Regulations, for which a heavy penalty can be imposed.

When the search of the village had been completed, the curfew was lifted at 8 a.m. The Order imposing this curfew is set out in Appendix "H".

10. The curfew at Paralimni was imposed on 16th July 1956, for operational reasons. Some time previously a soldier had been murdered in the local cinema and information had been received to suggest that the murder had been done by an inhabitant of Paralimni. It was decided, therefore, that a search should be made for the weapon used. This entailed not only a search of the buildings but also of the surrounding fields and gardens. The search was begun on 16th July and lasted eight days, during which time the villagers were under house curfew only during the hours of darkness. During the day the villagers were allowed to go about their work but were not allowed to leave the village boundaries. During this period an opportunity was also taken of distributing envelopes in the hope of collecting some further information about the crime.

./.

The Order imposing the curfew is set out in Appendix "I".

11. The curfew imposed on the Greek quarter of Nicosia at the end of September and the beginning of October, 1956, had as its main purpose to assist the security forces in their task of trying to apprehend offenders to discover weapons and generally to prevent the repetition of outrages by the terrorists. Before this curfew there had been a particularly bad spate of brutal murders, culminating in the shooting down from behind of two Police Sergeants in the principal street of Nicosia.

The allegations and implications in the New Documents 2 to 8 (especially in Document 4) submitted by Counsel for the Greek Government on 16th and 18th November, 1956 (A 30.497 of 23rd November, 1956) that there were no security operations carried out during the curfew (particularly that there were no searches) are wholly untrue. In fact searches were carried out each day of buildings in the curfew area. During the periods when the curfew was lifted, to enable people to obtain supplies, note was taken of the buildings which were visited by youths so that they could be searched.

The extracts from the official summary of the local press set out in New Document 8 (see A 30.479) and passages to a similar effect in other Documents, show that there was no question of the curfew being imposed to punish those whom it affected. If that had been the purpose, exemption would clearly have been granted to those persons, such as the Turks, who were obviously not implicated in the unlawful acts which were the cause of the curfew. The true purpose of this curfew was made known to the Mayor of Nicosia in a letter from the Administrative Secretary which stated:

"In reply, I am to draw the attention of yourself and the other Greek Cypriot members of the Municipal Council to the fact that, over the past year, no less than nineteen brutal and callous murders have been perpetrated in the area under curfew. The latest incident in which two Police Sergeants were murdered and one wounded in broad daylight and in the principal street of Nicosia was but the culmination of a series of outrages which have deeply shocked public opinion here and abroad and have given your Town an evil reputation which it will not easily or soon live down. The curfew of which you complain was imposed to assist

./.

the security forces in investigating the recent murders and in exploring means of rendering the streets of the island's capital safer for the public and less prone to use by the terrorists for their murderous purposes in future."

The Order imposing this curfew is set out in Appendix "J".

Since the avowed object of the material put in by Counsel for the Greek Government was to attempt to prove that these curfews were imposed purely or primarily for punitive purposes, the Government of the United Kingdom will not take up the time of the Sub-Commission in refuting the incidental allegations in those documents that this curfew in Nicosia was imposed in such circumstances as to involve excessive hardship for the inhabitants. They confine themselves to denying that these reports constitute an accurate account, either in detail or as a whole, of what actually took place.

12. The week-end curfew on Greek Cypriot youths in Nicosia was entirely a measure intended exclusively to assist in preventing outrages by this group of the population during a period when such persons, not being at work, were free to take part in terrorism and when, the streets being crowded, they could the more easily make their escape. It was in no sense punitive. It was applied in Nicosia for the reasons which are specifically stated in the official press release quoted in New Document No. 10 (see A 30.479).

The Order imposing it is set out in Appendix "K".

278. After hearing the verbal explanations of the representatives of the parties, the Sub-Commission by letter from its President dated 22nd November 1956, put the two following supplementary questions:

- "(a) Were the collective fines and curfew in the cases referred to in the Annexes to the Memoire of the Greek Government imposed by an Order made by the authorities and published officially?
- (b) Did each Order contain a statement of the reasons for which it was made and was such statement set out either in the text itself or in an official document published separately?

./.

"The Sub-Commission invites Her Majesty's Government if any such documents exist, to furnish it as soon as possible with copies of such documents." (Doc. A.30.713)

279. By note of 14th December 1956 (Doc. A 31.313) the United Kingdom Government replied as follows:

"All curfews are imposed by Orders made under the Curfews Law, 1955, and are published in the official Gazette of Cyprus.. An example of such an Order made by the Governor himself is attached as Appendix "A" and an example of such an Order made by a Commissioner (to whom the Governor's power has been delegated) is attached as Appendix "B". Further examples are to be found attached as appendices to the comments of the Government of the United Kingdom on the reply of the Greek Government to Question II put to the latter government by the Sub-Commission.

It is not usual for a statement of the reasons for which such Orders are made to be incorporated in the Orders themselves. All Orders made under Section 2 of the Curfews Law, 1955, recite that they are made "in the exercise of the powers vested in the Governor" by that Section which itself provides: "The Governor may if he deems it expedient so to do in the interest of public safety and the maintenance of public order at any time Order direct". Thus the reason for making the curfew order is made plain by reference."

The orders instanced in the above-mentioned note are as follows:

"No. 561 THE CURFEWS LAW, 1955

Order made under Section 2

In exercise of the powers vested in him by Section 2 of the Curfews Law, 1955, His Excellency the Governor has been pleased to make the following Order:-

1. This Order may be cited as the Curfews (Famagusta District No. 2) Order, 1955

./.

2. No person within the area of the village boundaries of Akanthou shall be out of doors between the hours of 5 a.m. on Thursday 22nd September 1955 and 5 a.m. on Friday 23rd September 1955, except under the written authority of the Commissioner of Famagusta or Assistant Superintendent of Police of Famagusta:

Provided that this Order shall not apply to any member of the Executive Council, Her Majesty's Forces or the Cyprus Police Force.

3. The Assistant Superintendent of Police of Famagusta is hereby authorised to suspend at his absolute discretion the operation within the area of the above-mentioned village boundaries (or any part thereof) of this Order and similarly to terminate such suspension and to declare this order to be in operation.

Ordered this 21st Day of September 1955,
By Command of His Excellency the Governor,

J. FLETCHER-COOKE,
Colonial Secretary.

No. 726

THE CURFEWS LAWS, 1955

LAWS 17 OF 1955 AND 47 OF 1955

- - - -

Order made under Section 2

In exercise of the powers vested in the Governor by Section 2 of the Curfews Laws, 1955, and delegated to me under Section 2A of the said Laws by Notification No. 618 published in Supplement No. 3 to the Gazette of 13th October 1955, I do hereby order as follows:-

1. This Order may be cited as the Curfews (Famagusta District No. 6) Order, 1955.

2. No person within the village area of Kalopsida shall be out of doors on the date and during the hours prescribed in the schedule hereto except with my written authority or that of the Superintendent of Police or Assistant Superintendent of Police, Famagusta.

./.

Provided that this Order shall not apply to any member of the Executive Council, Her Majesty's Forces or the Cyprus Police Force.

This Order shall come into force on the 20th day of November, 1955.

SCHEDULE

From 5 p.m. on Sunday, the 20th November 1955, until 6 a.m. on Monday, 21st November 1955.

Ordered this 20th day of November 1955

F. J. WESTON

Commissioner of Famagusta"

C. HEARINGS OF 2nd AND 3rd JULY 1957

280. The statement by the agent of the Greek Government, reproduced in para. 246 was made in the course of the hearing of 2nd July 1957 (Doc. A 35.254, pp. 6-8). The agent of the United Kingdom Government did not reply to the allegations of the Greek Government during the hearings.

A written reply was, however, given on 29th August 1957. This reply concerns the Milikouri curfew as well as the curfews imposed for the removal of slogans and condemned by the Greek Government by letter of 29th August 1957 (cf. para. 247 above). The British Government (Doc. A 35.722) contested the affirmation of the Greek Government that it had not observed the undertakings it had given concerning the curfew (cf. para. 281 below) and maintained that it had fully carried out its undertaking. Indeed, the only curfew of any duration imposed since 14th March 1957 had been that of Milikouri. However, "this was a special case, the curfew being imposed in connection with searches for high ranking members of EOKA who were believed to be hiding in the area. It was a security operation made necessary by the continued existence of EOKA as an armed terrorist organisation".

./.

In the same letter, the United Kingdom Government went on to say that:

"Curfews have not been imposed as a punishment. As members of the Sub-Commission will see from the statements submitted on behalf of the United Kingdom Government, many of the slogans are of an inflammatory character, and might themselves lead to disorder. When curfews had been imposed in connection with the removal of slogans this has been done for the preservation of order whilst the slogans were being removed and to prevent interference with those engaged in removing them."

III. ACTS BY THE SUB-COMMISSION AND SITUATION AT
15TH MARCH 1958

281. In its statement of 19th December 1956 (Doc. A 31.243), the Sub-Commission had proposed to the parties that they should accept a friendly settlement, one of the terms of which was as follows:

"The United Kingdom Government should instruct the Governor to draw the attention of the Cyprus authorities to the fact that under the relevant legislation the imposition of curfew is strictly limited to cases where this measure is expedient in the interests of public safety and for the maintenance of public order."

In his letter dated 14th January 1957, the agent of the United Kingdom Government said that his Government was willing to accept as a basis for a friendly settlement the proposals of the Sub-Committee, observing however that:

"the imposition of the curfew has always been limited to cases where this measure is expedient in the interests of public safety and for the maintenance of public order, and they have no reason to suppose that the curfew would be applied otherwise in the future."

./.

At the meeting of the group of three members held on 18th January 1957, Maître Rolin drafted a proposal to replace the Sub-Commission's wording by the following sentence: "to draw the attention of the United Kingdom Government to the fact that the curfew may no longer be imposed for any reasons other than the interests of public safety and the maintenance of public order". In his turn, by letter dated 18th January 1957 the Agent of the Greek Government regretted that no improvement had been announced in what he considered the too frequent use of the curfew and expressed little confidence in the assurance given by the United Kingdom.

282. The Sub-Commission's efforts to reach a friendly settlement are set forth in Chapter IV of Part I of the present report. Suffice it to recall that the United Kingdom Government, in reply to a question by the Sub-Commission, stated at the hearing of 28th March 1957 that if the attempt to reach a friendly settlement finally broke down, they would be prepared to maintain their acceptance of the three proposals of the Sub-Commission, including that on the curfew, made on 19th December 1956.

Nevertheless, it is clear from the statements of the Greek Government and subsequent communications by their Agent, both as regards the curfew at Milikouri, and as regards the cases quoted in the appendices to his letter of 22nd August 1957, (cf. paras. 245, 247 and 280 above), that there is still a dispute as to whether the curfew was or was not applied in the cases cited as a measure of collective punishment or means of coercion.

The replies by the two Governments to the last proposals of the Sub-Commission, dated 3rd July 1957, are known. (Cf. paras. 86-87 above.) But it should be pointed out that in the statement of 14th August 1957 in reply to the Sub-Commission's statement of 3rd July 1957 (Doc. A 35.489, pp. 16-17), the Government of the United Kingdom stated that, in connection with the relaxation of the emergency measures in Cyprus since the submission of the Greek Application, the Youth Curfew under which Greek Cypriot youths under the age of 18 living in towns were required to be indoors after dark and the Bicycle Curfew under which they were not permitted to use bicycles, had been revoked. In that Statement it was also pointed out (p. 15 and Appendix XII) that on 9th August 1957, the Governor of Cyprus had withdrawn several emergency regulations including Articles 40 and 48 of the Emergency Powers (Public Safety and Order) Regulations of 26th November 1955 (for the contents of the above-mentioned Article 48, cf. para. 238 and for the contents of Article 40, cf. para. 248).

./.

The Greek Government on 30th August 1957 replied to the above-mentioned statement of the United Kingdom Government, pointing out (Doc. A 35.718, pp. 53-7; Appendices I and II) that though there had admittedly been certain relaxations, abuses of that kind were far from having come to an end. The Greek Government held that this was the case with the youth and bicycle curfews. Furthermore, as regards the withdrawal of the other measures the Greek Government affirmed that in many cases the repeal had been only apparent since the measures rescinded were a duplication of others which were maintained in force. This was particularly the case with Article 48, since the Government of Cyprus was still free to impose curfews under Laws Nos. 17 and 47 of 1955.

283. In the course of the hearings of 4th and 5th September 1957 when the Sub-Commission heard the representatives of the parties on the question whether it should carry out an investigation in Cyprus, the agent of the Greek Government affirmed (Doc. A 35.844, p. 9) that despite the formal declarations of the agent of the United Kingdom Government, the curfew "was still being fully enforced in Cyprus". He added that he had been told that a court in Cyprus, in a verdict pronounced on 28th August, had "exonerated two Cypriot women who refused to fulfil their obligation to remove slogans from walls. Justice Ellison made a firm ruling in this matter and the women in question were acquitted with the words that henceforth the security forces would not be authorised to force Cypriot women to remove slogans inscribed on walls".

The agent of the United Kingdom Government said that apart from three points which did not concern the curfew he had "nothing to say because there is really nothing to answer in what has been said on behalf of the Greek Government" (Doc. A 35.844, p. 14).

284. On 6th September 1957, the Sub-Commission, considering, inter alia, that it was "important to carry out a direct investigation as to the circumstances in which the curfew regulations are applied", decided to carry out an on-the-spot investigation (for the full text of the Sub-Commission's decisions, see para. 55 above).

./.

285. An Investigation Party made up of six members of the Sub-Commission (cf. para. 61 above) carried out an inquiry in Cyprus from 13th to 27th January 1958. It heard several Greek Cypriot, Turkish Cypriot and British witnesses who supplied information on a number of curfews imposed in Cyprus between 1955 and 1957. It obtained information from both sides regarding certain curfews condemned by the Greek Government (Paralimni, Morphou, Milikouri, the "long Nicosia curfew" and the "Slogans Curfew") which were regarded as typical cases, with a view to obtaining particulars which would make it possible to determine whether the allegation that the curfew had been systematically employed for punitive rather than security purposes, was well-founded. In addition, the Party obtained information from those concerned regarding the Phrenaros Curfew (27th - 30th March 1956), which had not been condemned by the Greek Government. Several Greek Cypriot witnesses gave instances of other curfews which they regarded as punitive. Some of these statements are mentioned in the chapter dealing with the Commission's establishment of the facts (see paras. 243 (c) and 244 (h) above). It should however be noted, here, that neither the Cyprus authorities nor the Turkish or "neutral" witnesses were called upon to give testimony on these last cases or on other cases of curfews condemned in Cyprus but not mentioned in the present report. It is subject to this reservation that a majority of the members of the Investigation Party has expressed its opinion as set out in para. 287 below.

286. At 15th March 1958, date on which the Sub-Commission adopted its Report to the Commission, the legislative position in regard to the curfew in Cyprus was as follows: Article 48 of the "Emergency Powers" (Public Safety and Order) Regulations 1955, had been revoked but Laws Nos. 17 and 47 of 2nd May and 5th October 1955 respectively, still remained in force.

IV. OPINION OF THE COMMISSION

287. The Commission adopted the following opinion by ten votes to one:

The Commission notes that four of its members had stated as follows in the Report by the Investigation Party:

./.

"The Investigation Party has not had the possibility of examining any considerable number of, let alone all, cases of curfew imposed under the Curfews Law (1955) and Emergency Regulation 48. It has, however, been able to gather from both sides information relating to a few selected instances among which were the cases of Paralimni and Phrenaros suggested by the Greek Government, and also relating to the general administrative principles on which the authorities act in cases of curfew.

The problem with which the Investigation Party has been concerned is to establish whether curfews have been applied only for security purposes, as maintained by the United Kingdom Government, or have been used for punitive and vindictive or other abusive purposes, as maintained by the Greek Government.

All Greek witnesses have maintained that curfew had in most cases been imposed for punitive or other abusive reasons. On the other hand, whenever the responsible civil servant has been asked about such allegations, some rational security ground has always been invoked. This may have been the necessity to undertake a search, a security operation, an isolation of a certain locality in connection with military operations in the neighbourhood, or other similar action. In all cases the authorities have categorically denied any intent of punishment.

Although the distinction between the security purposes and the punitive purposes may be quite clear in principle, it may not always be easily drawn in practice. Furthermore, it is essential to distinguish between punitive effects and punitive intent.

On the basis of the statements made before the Investigation Party by both sides, there can be no doubt that the curfew creates serious inconveniences and sometimes even hardships for the persons concerned. It is only natural that people resent the restriction of their liberty to move about. It is also beyond doubt that a curfew may cause considerable economic damage. To the people who in that particular case do

./.

not know the reasons and the purposes for which a curfew order has been issued, the curfew may very well appear to be meant as a punishment, since no other reasonable explanation can be given as they see it. The numerous allegations which the Investigation Party has heard as to the punitive character of curfews may therefore very well have been made in good faith.

One of the Greek Cypriot witnesses asserted that a certain order of 15th April 1956 for the closing of Greek Cypriot places of public entertainment for a week 'as a mark of public abhorrence' was a proof of the vindictive character of curfews. This order, however, was not issued under the Curfews Law, but under Emergency Regulation No. 40 which does not fall within the present investigation.

The Investigation Party also heard explanations as to the procedure for imposing curfews. It was stated by the official witnesses that curfew orders are issued by the District Commissioner himself, except in very rare cases when the local commander of the security forces is faced with an urgent problem of security, and even so, the order has to be confirmed immediately by the District Commissioner. In all important cases of curfew which the Investigation Party examined it was informed that a representative of the civil administration had gone to the spot during the curfew. The authorities have stated that this representative has looked after the interests of the population, provided for food, medical attention and veterinary assistance, etc.

The Investigation Party has heard of a number of cases in which curfews have been imposed after consultation with, or even at the request of, representatives of the two communities in order to avoid inter-communal clashes. It has been stated that in all such cases curfew has proved an effective means of bringing the situation under control.

The Investigation Party has given particular attention to cases in which a collective fine has been imposed at the same time as the curfew. The representatives of the authorities have denied that the curfew has in any case been intended as part of the punishment. According to their statements, the

./.

typical situation has been that the curfew has been imposed in order to avoid disturbances while the fine was being collected, and often some other operation has been undertaken at the same time by the Security Forces.

Furthermore, official witnesses, in particular the District Commissioners, have stated that curfews imposed in connection with the removal of slogans have, in general, served security purposes. Under Emergency Regulation 35 A members of the Security Forces may order persons to remove slogans. For the purpose of avoiding disturbances during the act of removal, and also for the purpose of protecting the persons who receive the order from intimidation, it may prove necessary to confine people to their homes as long as the operation is carried through."

The Commission is of the opinion that, in the circumstances prevailing in Cyprus, the legislation on curfew must be recognised as a legitimate and even necessary measure for the maintenance of law and order.

Having reached this general conclusion, the Commission has had to examine whether this legislation has been applied strictly as a security measure, or whether it has been used for other purposes. On the information available to the Commission there may be room for doubt whether the imposition of curfew or the length of time for which a curfew has been maintained were in all cases motivated exclusively by security reasons. In certain cases a series of coincidental circumstances make it difficult, if not impossible, to ascertain whether or not there existed a punitive intent. A doubt may remain whether the officials concerned, because of the bad record of a village or town with respect to acts of violence may not have been influenced by a feeling that the inconveniences caused to the population were not undeserved. There may also be cases where it remains open to doubt whether the military personnel carrying out a search or other similar operation in connection with a curfew have not subjected the population to greater hardship than was strictly necessary. Whichever way these doubts may be resolved, it appears to the Commission that whatever motive there may occasionally have been to punish the population by imposing or maintaining a curfew, it cannot be established on the basis of available information that such

./.

motive has been the exclusive or decisive one. In these circumstances, the Commission is not able to reach definite conclusions on the extent to which a punitive intent may have operated in certain instances of the application of curfew.

Finally, it feels justified in stating that it has not been proved with certainty to the Commission that the curfew legislation has generally been applied in an abusive manner.

SUPPLEMENTARY OBSERVATIONS OF MR. WALDOCK

288. Sharing, as I do, the opinion of the Commission on the question of curfew, I do not propose to add any separate formulation of my own views on this question. I think it desirable, however, to refer to one point regarding the testimony presented to the Investigation Party on the subject of curfew which, though present in the minds of the Commission, is not mentioned in its opinion. This point applies generally to the testimony presented to the Investigation Party but it has perhaps a particular bearing on the testimony concerning the allegedly punitive manner in which the curfew laws were applied in Cyprus.

In its opinion in Chapter VI on "Detention" the Commission has referred to "the extreme state of the intimidation which so far pervaded the population in Cyprus as to render ordinary criminal proceedings impossible against persons suspected of being associated with EOKA terrorists". The Investigation Party had before it overwhelming evidence of this intimidation of the population by EOKA, both from official and non-official witnesses, and a great deal of this evidence related to the intimidation of the Greek-Cypriot element of the population. It is a striking fact that of the 248 persons killed by terrorist violence up to the end of 1957 well over half were not merely Greek Cypriots but Greek Cypriot civilians. In addition, the Investigation Party was informed of very numerous instances of threats, boycotts and severe beatings aimed by EOKA against Greek Cypriots to force the persons concerned to comply with its directives and policies. The Investigation Party learned that one effect of this intimidation of the population by EOKA was to make it virtually impossible for any Greek Cypriot to come forward and give evidence in a matter in which EOKA was concerned; it learned that when a witness does at first volunteer evidence against an EOKA terrorist, he is intimidated into withdrawing his evidence at or before the trial.

The point which seems to me to need stressing is that the all-pervading intimidation of the population by EOKA could not fail to affect the conditions under which the Investigation Party itself obtained testimony from non-official witnesses and particularly from Greek Cypriots. The conclusion is inescapable that any Greek Cypriot witness appearing before the Investigation Party would expose himself to the risk of severe sanctions if he did not give evidence which accorded with EOKA's directives and policies. That this is not mere supposition is clear from the demeanour before the Commission even of the "neutral" witnesses, i.e. witnesses from the small minority groups. These witnesses gave the most evident signs of their uneasiness at appearing before the Commission, and, with the exception of one group, the interviews with the "neutral" groups were virtual formalities. In another case where a Greek Cypriot witness spoke strongly in a sense contrary to EOKA and the Ethnarchy, the Investigation Party felt his position to be so delicate that they reserved for the time being the question of his evidence being included in the record.

The visit of the Investigation Party to Cyprus was public knowledge some time beforehand. Under the conditions prevailing in Cyprus the Commission could have no assurance that any Greek Cypriot witness coming forward to testify had not received admonitions from EOKA as to the evidence which he should give. The importance of this point as a factor to be taken into account in appreciating the value of some of the testimony obtained in Cyprus needs no underlining. Its particular relevance to the testimony concerning alleged misdeeds of the security forces in the course of curfews is due to the fact that, according to evidence presented to the Commission, one of the principal objectives of EOKA is to discredit the security forces. Very great caution, therefore, has to be exercised in considering this evidence. I need not pursue the point further, since, as I have said, my views on the question of curfew are in general accord with those of the Commission.

289. M. SKARPHEDINSSON stated, at the 14th Session of the Commission that, if he had participated in the vote taken at the preceding Session, he would have supported the majority's opinion on that point.

./.

290. M. DOMINEDO stated, at the 14th Session of the Commission, that if he had participated in the vote taken at the preceding Session he would, on that point, have maintained his opinion contained in the Report of the Investigation Party, which was as follows:

"I consider curfews to be justified in principle when imposed on security grounds in the form of a limited and clearly defined ban on movement within a given area.

If a violation of Human Rights is to be avoided, the following two requirements must be fulfilled:

- (a) the curfew must be imposed on adequate security grounds and limited in time and space (fixed hours in accordance with the law).
- (b) the curfew must be applied humanely and without excess so that what should be a measure of order and security shall not become a punitive or vindictive act.

I consider that in some cases brought to light by the investigation, the above conditions were not fulfilled."

DISSENTING OPINION OF M. EUSTATHIADES

291. I share M. Dominedo's opinion regarding the curfew, but I cannot subscribe to the majority opinion based on the statement of four members of the Investigation Party. This statement was itself based on the criterion of punitive intent and, in cases which that Party regarded as doubtful, on the additional criterion of exclusive punitive intent. Furthermore, in a number of cases, the majority opinion found it impossible to draw definite conclusions partly because, as generally admitted, the time devoted to examining the curfew system on the spot was very short, but chiefly owing to the fact that the position originally adopted was determined by the criteria to which I have referred. This position, which was never subsequently abandoned, necessarily led to difficulties and, in some cases, made it impossible for any conclusion to be reached as to the existence or otherwise of a punitive intent, either exclusive or partial.

./.

Hence, I find myself obliged to maintain my opinion as set out in the Report of the Investigation Party. With special reference to the very short time devoted by the Investigation Party to examination of the curfew, may I draw attention to certain regrettable facts to which I have already referred in the opinion I gave as member of the Investigation Party (cf. Section IV of the Investigation Party's Report, in particular paragraph 297 of the Report of the Sub-Commission to the Commission, Doc. DH (58) 1 of 13th March 1958) (1) as well as to the absence of any attempt to obtain a prolongation of the visit to Cyprus, such prolongation being, to my mind, absolutely essential.

I cannot subscribe to the conclusions reached by the majority of the Investigation Party which are reproduced in the majority opinion of the Commission and are based on the criterion of a punitive intention on the part of the authorities, as I am unable to accept this way of looking at the question. What the members of the Investigation Party and the Commission were expected to do was to seek facts on which they could establish the effectually punitive, or otherwise inadmissible, character of the curfew; they were not to establish the intentions of those responsible for imposing it. In criminal law, consideration of the "subjective" or psychological factor is essential in establishing the fact of fraud or negligence, whereas in municipal public law it is the act itself, considered "objectively" together with its attendant circumstances and effects, which must be examined, quite independently of the intentions of its author, in order to decide whether or not it is lawful, i.e. whether or not it conforms with legal prescript. There is absolutely no doubt as to international practice in this matter and the law books are unanimous. In the present instance, the Commission is to judge the action of the authorities in the light of the European Convention which is accordingly the legal prescript concerned, and their action is lawful if it conforms to that Convention.

The Commission must, therefore, examine the imposition of the curfew from the point of view of its "objective" conformity with the Convention. In this connection, it must be pointed out that it is not decisive merely to show that a curfew order is not in conformity with British law;

./.

(1) Para. 47 of the Report by the Investigation Party (Appendix C to this Report).

it must be shown whether or not the order and its application conform with the Convention, regardless of whether or not they are in conformity with British law. What has to be examined therefore is whether there exist cases in which the curfew has been imposed in a way that contravenes the international obligations laid down in the Convention. Three main categories here suggest themselves:

1. Curfews with an objectively punitive character. These would constitute collective penalties and, as such, be illegal either because they would contravene Article 3 of the Convention from which no derogation is allowed, or because they are inconsistent with 'obligations under international law' within the meaning of Article 15.

2. Curfews which, even though of a non-punitive character as they are imposed principally with the object of keeping the peace, nevertheless degenerate into a method of restricting freedom going beyond the essential object of a curfew (which, even according to British law, is the prevention of free movement) and culminate in the suppression of a number of rights protected by the Convention, including the right to life which, under paragraph (b) of Article 2 - the only stipulation relevant to the present case - cannot be contravened except 'in order to effect a lawful arrest or to prevent the escape of a person lawfully detained'. Similarly, paragraph 2 of Article 4 states that 'no one shall be required to perform forced or compulsory labour', whilst Article 8 protects the right of an individual to have his private and family life and his home respected.

3. Curfews which, whether or not they are of a punitive character, are imposed in such a manner as to constitute 'inhuman or degrading treatment' within the meaning of Article 3.

These principles are recalled because the adoption of a legal position such as that adopted by the four members of the Investigation Party and echoed by the Commission, which is based solely on the criterion of punitive intent, means the almost automatic elimination of much of the information derived from the evidence, thus leaving little but statements as to feelings and inner motives, whereas what is really required is to get behind these general assertions which are already familiar to the Sub-Commission from earlier proceedings and give more detailed study to the information acquired in Cyprus illustrating the circumstances in which curfews have been ordered and imposed.

./.

Having said this, and leaving aside the criterion of punitive intent, I agree that a comparison of the evidence can lead to the conclusion that in some cases the application of the curfew regulations was not, by and large, contrary to international commitments, although in other cases very serious doubts may remain, while in others again the evidence leads to the opposite conclusion, namely that the curfew regulations have, in fact, been applied in such a way as to contravene international commitments under the Convention. The essential requirement is to set out the facts in accordance with the evidence.

The first impression from the evidence is that of the wide extent and frequency of the curfews. One witness (Bishop Anthimos Kitiou) estimated that there had been over 300 and another (the Mayor of Nicosia) mentioned that in a single year (1956) a curfew had been imposed 19 times in Nicosia. Other features are the very long duration of the curfew in some cases and, in others, the disparity between the reason for the curfews and the manner of their application. Over and above these general impressions, however, certain details of curfews which were the object of factual evidence should not be overlooked. There are a number of possible classifications here and some examples should be considered as falling into more than one category. One such classification might be as follows:

A. Curfews linked with a collective fine

One example is provided by Lefkoniko. A collective fine of £2,000 was imposed on 5th December 1955, following the burning of a police station. A curfew was ordered on 6th December which it was stated would be maintained until the fine had been paid. Payment was made and the curfew was lifted on 7th December. The Mayor stated: "We were obliged to pay the fine so that the curfew should be lifted."

Another example is that of Paralimni. /Subsidiary Legislation 1955, page 892, Notification No. 823 of 13th December 1955, quotation supplied on 20th January by the barrister M. Mylonas, Chairman of the Famagusta Human Rights Committee, Legal Adviser of the inhabitants.7 This competent witness stated that the District Commissioner of Famagusta went to the village concerned and informed its representatives that a collective fine of £1,500 had been imposed on them for incidents that had occurred since September, as well as two days previously, and that a curfew would be ordered until the fine was paid. A six-member committee that appeared before the Investigation Party on 23rd January at 3 p.m. confirmed that,

./.

at 3 a.m. on the morning of 13th December, security forces announced over loudspeakers that the village was under curfew and ordered representatives of the inhabitants into the schoolyard where they waited until 7 a.m. The District Commissioner then arrived and made the following statement: "There have been a number of incidents here since September (attacks and thefts of weapons) and as a punishment we are going to impose a collective fine on you." When the figure of £1,500 was announced at 11 a.m. the Committees protested. Various persons were arrested and locked up in the school premises where they were seriously ill-treated: for example, the priest, Constantinos, was kept standing and made to walk about barefoot on the damp ground, his shoes and socks having been removed. An old man, N. Hadjisolomos, died as a result of a chill he caught there. The spokesman of the same six-member committee that appeared before the Investigation Party said that the village representatives proposed that the sum should be paid by the Church and the co-operatives but that the Commissioner refused, saying that the intention was to punish them. In reply to M. Eustathiades, the members of the Paralimni committee said that the reason for his refusal was given to four of the six members present before the Investigation Party, and that it was the same persons who were told that the intention was to penalise them all. This was elicited subsequently, in response to a question by M. Süsterhenn.

Other details relating to this curfew are as follows: The secretary of the co-operative granted certain loans and £1,496 10s. was collected but was not accepted because it was £3 10s. short. The curfew was imposed shortly before the collective fine was announced. No reason was given for lifting the curfew. This is confirmed by the evidence of Mr. Gillies, Commissioner of Famagusta, who stated that during the curfew the fine was collected and a search for arms made at the same time, this being, he said, the main reason for the curfew. Mr. Gillies did not, however, reply to the question whether the above statement was or was not made at the time payment by the Church and the co-operative was refused.

Another curfew, at Lapithos in March 1956, according to the evidence of M. St. Pavlides (16th January 1958) is a characteristic example of a curfew imposed in order to levy a collective fine. The Mayor of the town, Phidias Paraskevaides, stated (on 26th January in the camp at Pyla)

that the District Commissioner of Kyrenia sent for him and said: "We have imposed a collective fine of £7,000 and a curfew for an indefinite period because of a bomb which was thrown last night." When the Mayor asked to be allowed facilities to collect such a large sum, which represented £5 per inhabitant, the answer was: "I am here to punish you, not to grant you easy terms." Similarly, on the next day when the Mayor asked the Governor for facilities to obtain bread and water supplies, he was told that no facilities could be granted as the curfew was a punishment. It should also be recalled in this connection that Mr. Hatzinikolaou, Chief Editor of the newspaper "Eleftheria" stated in evidence (18th January 1958) that he had not dared to publish the following intelligence: "The troops forced the population into a field and obliged the young men to dig holes in which they then buried them up to the neck. Even the Turks of Lapithos were subjected to treatment of this kind."

On 22nd May 1956, at Ktima (Paphos), on account of an incident that happened three miles away, the District Commissioner, M. Muftizade, imposed a collective fine on two quarters of the town, of £2,500 and £3,000 respectively, to be paid by 268 people, excluding the Turks. When the time-limit expired (30th May 1956) £650 was still outstanding, owed by the poorer inhabitants. Because of the deficit, according to the evidence of the Mayor of Paphos, Mr. Jacovides, the District Commissioner threatened to order a curfew for the two quarters concerned. The Mayor asked to be given until 5 p.m. and as the payment was made before that hour, the curfew was not ordered. Questioned on 22nd January 1958, the District Commissioner denied definitely threatening curfew, but said he told the people concerned that if payment werenot made in full "he would take other steps".

The background of the curfew at Morfou is described in a Memorandum by the Secretariat (1), where an account is given of the Town Council's refusal to attend a meeting called by the Assistant District Commissioner. It should be added that the latter, despite the refusal, went to the appointed place so that he could at least meet some of the inhabitants, but nobody turned up (evidence of M. Loizides, 24th January 1958). This curfew seems to have been imposed in place of a collective fine, because of the Town Council's refusal to attend the

./.

-
- (1) See for this Memorandum, Appendix I to the Investigation Party Report, to be found in Appendix C to this Report.

meeting: such at least are the views of the witnesses who mentioned it, e.g. Bishop Anthimos (15th January 1958), M. Chryssaphinis, Q.C. (16th January 1958). There is also the evidence of M. Clerides (a member of the Governor's Executive Council until the exile of Archbishop Makarios, and President of the Human Rights Commission at Nicosia), who as legal adviser was consulted by the Town Council on this matter. M. Clerides recommended them not to go to the meeting called by the Assistant Commissioner to discuss the imposition of a collective fine which, in his view, was ultra vires and contrary to international law and the general legal principles recognised by civilised nations. In his evidence (pages 13 and 14) M. Clerides stated categorically that the authorities had ordered the curfew to punish the Municipal Councillors for refusing to meet the Assistant Commissioner. The District Commissioner, Mr. Weston, denied any punitive intent on the authorities' part. This case is typical and, after an objective consideration of all the circumstances, it seems clear that the curfew at Morfou was ordered and carried out as a punitive measure. Of these circumstances the following may be mentioned: the murder took place on 8th July and the curfew was not imposed until the 12th of that month. If the intention in ordering it was to facilitate the search for the murderer, action should have been taken four days earlier, before any clues disappeared. To this point, put by M. Süsterhenn, Mr. Weston replied that the delay was explained by the fact that between 8th and 12th July attempts were made to meet the Mayor and Municipal Councillors. Here it should be observed that the invitation, of which the Investigation Party was given a copy, stated that at the proposed meeting the question of imposing a collective fine would be discussed. Thus, if the meeting had taken place and its purpose, namely the imposition of such a fine, had been achieved, a curfew would not have been ordered. The date (9th July) on which the Municipal Council sent its refusal, the text of which was also submitted to the Investigation Party, also casts doubt on Mr. Weston's statement. Lastly, the manner in which the curfew order was carried out illustrates the kind of measure it was and here the account given in the Secretariat's Memorandum referred to above needs to be supplemented; it is not disputed that for the first few days the livestock remained unfed and unwatered. In addition, Councillor Loizides (24th January) explained that the sanitary arrangements necessitated going out into the yard, but the people who did so were arrested and taken to the police charged with breaking the curfew; they were then shut up in

./.

a yard and forced at pistol point to sit down on the burning sand (temperature 109 degrees Fahrenheit); when they tried to dig into the sand to get cooler they were again threatened with a gun. All day long they were deprived of food and water, and when some was brought the security forces threw it on the ground and laughed at them. Moreover, they had to relieve themselves on the spot. About 50 persons were arrested and kept in custody until sunset. One of them had sunstroke and when a dentist, G. Toumbazos, who was among the detainees, attempted to help him he was threatened with a gun. All of them suffered from sunburn. These details were provided by the same Municipal Councillor who testified to the Investigation Party on behalf of the Mayor and Corporation of Morfou. Also, the District Commissioner, as stated in the Secretariat's Memorandum, "upon the advice of a medical officer, ordered that persons who were detained for having been found out of doors during the curfew were released, since they had been suffering from staying in the sun".

With regard to certain cases of a curfew linked with the imposition of a collective fine, British witnesses stated that the curfew was ordered to avoid disorders during the collection of the fine. But it should be observed that even when regarded as supplementary to a collective penalty - whether or not the fear of disorders during the collection of the fine is well-founded - a curfew imposed to guarantee the proper application of a penalty constitutes part of the machinery for imposing that penalty, i.e. an additional measure linked with its execution, and ipso facto cannot be isolated and considered as an independent act lacking punitive intent.

B. Curfews that do not constitute adequate measures to assure security and public order

Curfews ordered "in the interests of public safety and the keeping of the peace", if they are to be legitimate, must in every case be suitable and adequate for their purpose. Neither an unavowed inner motive nor a motive openly stated suffices in itself to render a curfew legitimate; the deciding factor is the character of the curfew itself, considered objectively, as an adequate measure commensurate with the purpose it is desired to achieve.

./.

These considerations come into play in connection with (a) long-term curfews (b) so-called "operational" curfews (c) curfews ordered for the protection of British families and (d) curfews imposed during the erasure of slogans.

In some cases where there might still be some doubt as to the application of certain curfews imposed for purposes of public safety and order, and extent and duration of the curfew should be carefully examined to ascertain whether these purposes have not been exceeded.

For example, at Kissonerga (near Paphos) one of the curfews (from sunset to sunrise) on a 300-yard stretch of road through the village where a bomb had been thrown, was imposed on 4th June 1956, and lasted three months (M. Jacovides, Mayor of Paphos).

Another witness (Sir Paul Pavlides, 22nd January 1958) referring to the 18-day curfew at Limassol in November 1956, (5.30 p.m. to 6 a.m.) observed that it was imposed only inside the walls, whereas the incidents had taken place outside. He submitted copies of an article he had written for the "Times of Cyprus" on the character of this curfew.

Similarly, the curfew ordered at Nicosia on 25th July 1956 following the murder of a Maltese, applied to the old town with the exception of the Turkish quarter and continued for 7 days (5 p.m. to 4 a.m.). Two facts were stressed in the evidence of M. St. Pavlides (16th January), namely that no searches took place and that the curfew was limited to definite hours, thus clearly showing, in the opinion of the ex-Attorney-General, that it was not a security measure, since the danger of subversive activities also existed in the daytime. Questioned about this curfew, the District Commissioner, Mr. Weston (24th January), not recalling the time when the murder was committed, stated that the curfew had probably been ordered to enable information to be collected. He added that it had been impossible to impose it sooner, and ended by saying that the reasons for it were, in fact, "operational".

Neither this witness nor any others gave any explanation of the curfew imposed simultaneously in Nicosia and five other towns from 3rd November 1956, until 1st April 1957, from 5 p.m. to 5 a.m. daily, for all persons born after 1st January 1930.

./.

In connection with long-term curfews we should also mention those imposed "for operational reasons", like the "long curfew of Nicosia" and that of Milicouri.

The "operational curfews" just mentioned cannot easily be reconciled even with British law. The statements by British witnesses as to the reasons for ordering curfews classified by them as "operational" invoke considerations of a very general nature, but give no precise statement as to the link that ought necessarily to exist between public safety and order and the imposition of the curfew. This was the case with the long curfew of Nicosia, the stated reason for which was "operations in the hills" (see below).

On 5th November 1956, a curfew was ordered for all the inhabitants of 17 villages, the names of which are known (Subsidiary Legislation 1956, page 1049, Notification 1091) for a period of 32 days from 5.30 p.m. to 5.30 a.m. No reason was given either to the inhabitants or in the Notification, and no incident had occurred. The Investigation Party was told by Mr. Gillies, District Commissioner of Famagusta, that the curfew was for "operational reasons", more especially the Suez expedition, because these 17 villages bordered the Nicosia-Famagusta road.

C.

On 22nd January 1958 two witnesses, the District Commissioner of Limassol and his predecessor, justified the curfews on the grounds that they were for the protection of British families scattered about the town.

D. Curfews during the removal of slogans

The Emergency Regulation authorising the security forces to arrest any inhabitant and order him to remove slogans, and providing for criminal proceedings and sentence in the event of a refusal, was mentioned by several Greek and British witnesses, together with occasions on which it was applied. The Mayor of Limassol also quoted in this connection Article 4, para. 2, of the Convention: "No one shall be required to perform forced or compulsory labour". Some witnesses gave details; e.g. the Mayor of Paphos cited the case of G. Papantoniou at Chloraga who, for refusing to remove a slogan, was struck on the head and hand by Turkish auxiliaries. He was taken to the Liassides clinic by his parents, who reported the matter to the authorities but no

./.

action was taken. Representatives of the inhabitants of Paralimni recalled (23rd January 1958) another case which occurred in their village, where, during Mass on 11th November 1957, the priest, at the very moment when he was reading the Gospel, was obliged by the security forces, who came into the vestry, to go out immediately and remove slogans. The same witnesses said that they had not made any complaint since no reply had ever been given to the many previous complaints they had made.

Greek witnesses (M. Chryssaphinis and M. Klerides) confirmed the existence of curfews which, in their view, were imposed to force the population to remove slogans. One such case was described to the Investigation Party on 19th January 1958 when they went out to Bella Pais. This was a one-day curfew on 27th June or July, 1957, during which the priest was obliged to remove slogans in very humiliating circumstances (evidence given by villagers and the priest).

With regard to this kind of curfew, M. Mylonas, a barrister, Chairman of the Human Rights Committee at Famagusta, made the following statement (20th January 1958):

"A night curfew had been imposed on the villages of Ayios Theodoros, Gastria, Iavrosand, Vokolidha for three days as from 13th September 1956 (Subsidiary Legislation 1956, p. 894 No. 910). The same curfew also applied to the village of Karpossia. These curfews had apparently been imposed in order to erase slogans and affected not only the inhabitants of the villages concerned but also all the people who had to drive along an important road going past these villages. On 26th July 1957, at 3 a.m. curfew was imposed on the village of Ayios Theodoros in order that slogans should be erased. The District Commissioner had apparently said that the curfew would last until the slogans had been removed. The curfew was lifted on the same day at 10 a.m. (Subsidiary Legislation 1957, p. 652 No. 771). On 25th July, 1957, an order was made by the Commissioner of Famagusta that slogans should be erased along the road passing through the village of Ayios Theodoros. The order was revoked on the same day (Subsidiary Legislation 1957, p. 652 and 653, Nos. 772 and 773). All traffic was stopped for seven hours, causing great inconvenience to all those

./.

who were going to the monastery of Apostolos Andreas, further along the road. During this curfew, as well as during the others, some of the inhabitants were gathered in barbed wire enclosures and they were not allowed to receive any food or water from their relatives. During a curfew imposed on Ayios Theodoros on 18th June 1957, for the purpose of erasing slogans, the men of the village were gathered in the school yards, then on the football ground, and the security forces drenched with ink the women who were trying to supply the men with water."

The Mayor of Famagusta mentioned the case of the curfew imposed on 5th August 1956 (or 1957) on two streets in the town when the security forces announced that it would not be raised until the slogans were removed. It lasted three hours and was lifted after someone had erased the slogans. The 5th August is the eve of the Feast of the Transfiguration and many of the faithful were on their way to the fair.

Mr. Gillies, District Commissioner of Famagusta, was invited by the Chairman to supply information about curfews ordered during the removal of slogans. He at first said that there had probably been some confusion with Regulation 35 A (2) which authorises a street to be closed for the removal of slogans, but said later that it was natural to order a curfew while the orders to remove slogans were being carried out if there was any reason to fear disorders and that it was this desire to avoid disorders until the slogans were removed that had caused the curfews to be imposed for as long as was required to complete the task.

C.

Intimidation of the population is closely bound up with the imposition of certain curfews. Any attempt to look further into the question to find out whether intimidation has been the only motive present would lead to the adoption of the criterion of exclusive punitive intent (see above) whereas what is required is to establish on the basis of the evidence, in what circumstances curfews have been imposed in order to determine their nature.

./.

For example, M. Klerides (16th January 1958) mentioned the curfew at his native village of Agros from 16th to 22nd August 1955. On 15th August a Greek Cypriot policeman claimed that he had been shot at, although he had not been wounded in any way. The curfew was imposed on the following day and, independently of any search for the "culprit", eight of the leading inhabitants and a thirteen-year-old boy were arrested at the instigation of the policeman and transferred to Nicosia.

The same witness, a former member of the Executive Council, and M. St. Pavlides, a former Attorney-General, referred to the curfew imposed at Nicosia on 15th April 1956, as a result of the murder of the Assistant Superintendent of Police, M. Aristotelous - a brutal murder but not justifying such a vindictive reaction on the part of the authorities (Cyprus Gazette Suppl. 1956, p. 310). The curfew was imposed for a week and all places of entertainment were closed "as a mark of public abhorrence", to quote the official publication "Greek Irredentism and Terrorism in Cyprus" (Cyprus Printing Office, p. 129). This M. Pavlides considers to be an official admission of the punitive nature of this measure. In reply to the comment that the order in question was not issued under the Curfew Law, but under Emergency Regulation No. 40, repealed in August 1957, it should be pointed out that it was in effect a curfew, and this fact is more important than the legal basis for the order. Nor does it matter that Regulation No. 40 was later repealed, since the point at issue is the manner in which the laws were applied. In any event, this case illustrates the spirit in which the authorities acted.

A statement made in connection with the imposition of another curfew also casts light on the subject. Following the murder of an English policeman in a cinema on 19th June 1956, a curfew was imposed at Paralimni because the inhabitants would supply no information (Subsidiary Legislation, 1956, p. 643, Notification No. 706). According to the evidence of M. Mylonas (20th January 1958), no searches were made during this curfew, which was ordered on 16th July. According to evidence given by the six representatives of the inhabitants the Assistant Commissioner, M. Savvides, appeared in person in Paralimni on 23rd January and told the inhabitants "since no information has been given, I am going to punish you otherwise than by a fine; I am going to impose a curfew which will mean that you

./.

cannot leave the village and will remain behind doors from 7 p.m. to 7 a.m. Every day you will be supplied with paper and envelopes on which to write what you know about the murder". This curfew continued for 6 days and was then transformed into a full curfew which lasted until 25th July. The above announcement by the Assistant Commissioner was made to all the inhabitants by loud-speaker, according to the categorical reply given by the above mentioned witnesses at Paralimni to a question put by M. Eustathiades. It may be wondered, incidentally, why these envelopes and paper could not have been distributed without a curfew.

The curfews at Limassol in November, 1956, also deserve close examination in the light of the evidence of Sir Paul Pavlides, a former member of the Executive Council.

Last but not least, there was the curfew at Nicosia on 28th September 1956. The Secretariat has prepared a note (1) on this subject to which I have something to add, particularly as regards the statements by Greek witnesses, so that the facts may emerge more clearly. The Greek witnesses said, for instance, that since the curfew was not imposed until 5 p.m., whereas the murder took place at 10.30 a.m., those responsible had plenty of time to escape. The District Commissioner, Mr. Weston (24th January 1958) gave two reasons why the curfew was not imposed until six and a half hours later, one being that a number of the security forces were occupied elsewhere and had to be brought to Nicosia, and the other that it was necessary to give the "floating population" time to leave the old town and that they all had to be searched before leaving. He also admitted that, in these circumstances, "the security forces had no chance whatsoever of finding the authors of the crime, since the criminals would not have needed more than a few minutes to throw away their arms and disappear". Since this amounts to an admission that there was no connection between the curfew and the search for the criminals, Mr. Weston considered that the real explanation was "a general attempt to find clues for detecting the authors of that particular incident and of others." He added, however: "the real reason of the curfew was in fact to throttle the EOKA courier services between Nicosia and the hill area where military operations were taking place". After this explanation of the imposition of the curfew, the District Commissioner replied to further testimony by Greek witnesses. These (particularly the former Attorney-General, M. Pavlides, 16th January 1958) had stated that during the curfew neither searches nor arrests had taken place.

./.

(1) See Appendix II to the Investigation Party Report, to be found in Appendix C to this Report.

Questioned by Mr. Waldock, Mr. Weston explained that nothing compromising had been found and no arrests made. He went on to state that searches had been made 'only in certain parts of the town'. In this connection, there was no comment by British witnesses on references by Greek witnesses to the area covered by the curfew. Bishop Anthimos Kitiou (15th January 1958) pointed out, for instance, that the curfew extended as far as the St. John district which is a long way from Ledra Street.

With regard to the closing of public places and places of entertainment until 30th October 1956, Mr. Weston stated that this measure was not ordered under the Curfew Law but under Regulation No. 40 and explained its aim as being "to prevent people from running the risk of being victims of possible incidents which might have been facilitated by the gathering of a certain number of persons in the same place. It had been, on the other hand, ascertained that many places of entertainment were used by terrorists for the purpose of hiding arms and distributing leaflets, as well as for the purpose of gathering and operating under safer conditions." (Note by the Secretariat.) However, the statements of witnesses, and particularly of the two Queen's Counsel, point to the punitive nature of this measure which in any case indicates a punitive intent on the part of the authorities. As evidence of the punitive nature of the measure, M. St. Pavlides pointed out that it only applied to places frequented or owned by Greeks. This fact was also stressed by M. Chyssaphinis Q.C., to demonstrate its punitive character. "Greeks of Egyptian nationality", he said, "remained free to open their establishments, whereas Greek Cypriots had to close theirs. There was therefore nothing to prevent those described by the authorities as 'gangsters' from frequenting an establishment owned by an Egyptian of Greek origin or a cinema owned by a British citizen. How then can this possibly be called a security measure?"

In the brief note prepared by the Secretariat on the "long curfew of Nicosia", Mr. Weston is recorded as having "stressed the fact that special measures had been taken" to give the population an opportunity of going out for an hour or two a day to do their shopping but it should be pointed out at the same time that there was no food to be bought (Mr. Emilianides) and that people suffered from lack of water, some of the inhabitants of the town having to fetch their water from the infrequent public drinking fountains (Dr. Dervis, Mayor of Nicosia). M. Emilianides handed the

./.

Investigation Party a copy of the "Daily Telegraph" of 5th October which carried a front-page photograph of people asking for a crust of bread. With reference to the absence of searches, this witness cited the "Observer" of 7th October which stated that nothing had been found but that the curfew had "succeeded in its punitive effect" (see also the "Times" of 3rd October). All the Greek witnesses stated that the life of the town was paralysed. During the curfew, chemists' shops were closed, workers received no pay (evidence of employers and workers, 17th January 1958) and no newspapers appeared so that it was not only the sick and the workers who suffered but the whole population of the island, who were deprived of their newspapers (evidence of journalists, 18th January 1958).

Finally, it should be mentioned that the District Commissioner of Nicosia said at the end of his statement that it was really for strategic reasons that a curfew had been imposed on Nicosia because when Nicosia was 'quiet' there were fewer incidents in other parts of Cyprus. He added: "We took this measure because we no longer knew what to do."

Methods of imposing curfews
(Treatment of inhabitants)

1. In order that the story should be complete, the examples given above include information on the treatment of the inhabitants during curfews, since this is one of the factors that must be considered in assessing whether they have been of an objectively punitive nature. Moreover, in certain cases, the methods of treatment described by witnesses, even if of no value for this purpose, are of value in themselves as helping to determine whether, quite apart from the nature of the curfew, there has been "inhuman and degrading treatment" within the meaning of Article 3 of the Convention.

The presence of a representative of the authorities during certain of the curfews, mentioned by several British witnesses, is of significance as showing the desire of the authorities to cater for the needs of the population during the curfew, a task which, when carried out successfully, must be said to detract, in a greater or less degree, from the punitive nature of the measure. On the other hand, there is also no lack of evidence by representatives of the population that certain curfews were imposed in an inhuman manner. Thus, apart from whether a curfew is punitive or not, cases have been mentioned (of which a number have not been contested) where the population was subjected to very great annoyance and hardship. Here the question at issue is whether the authorities have complied with Article 3 of the Convention which is one from which no derogation is permitted under Article 15.

./.

Examples may be found in the notes on the curfews already mentioned, particularly those at Lapithos and Morphou, that at Paralimni on 13th December 1955, and the long curfew at Nicosia (see above). In addition, there is the curfew at Milikouri (see Secretariat's note) (1) which was imposed from 19th March to 11th May 1957, that is to say, after the suspension of hostilities by EOKA. This caused much hardship to the inhabitants and would have caused more if other villages had not sent assistance (testimony of Mgr. Anthimos and local representatives, 21st January 1958).

During another curfew at Paralimni on 13th June 1956, Pantelis Psomas, who had been ordered to stand upright in the burning sun but leant against the wall because he was ill, was made to stand on a barrel with two of the other people who had been rounded up, all of whom were forced to take off their shirts and go home without them. Again, during the curfew of 19th July 1956, all the men of the villages were rounded up in a place where there was excrement.

In preparation for the curfew at Phrenaros (28th to 30th March 1957) the men of the village were assembled in a barbed-wire enclosure and made to lie flat on the ground face downwards without moving or speaking while insults were hurled at them (evidence of the inhabitants, 23rd January 1958).

Mr. Gillies, District Commissioner for Famagusta, when questioned by two members of the Investigation Party as to information received on the treatment of the inhabitants of Phrenaros, made no reply (Famagusta, 23rd January 1958), considering that this question did not fall within the scope of the investigation, notwithstanding the fact that the President of the Investigation Party, while confirming that allegations of ill treatment were not as such within the Party's competence, had made it clear that the Party, though not entering into detail, had the duty to "be informed of the general atmosphere in order to determine the character - punitive or not - of the various curfews" (procès-verbal of the said sitting of 23rd January 1958).

The above examples are additional to those already mentioned.

./.

-
- (1) See Appendix III to the Investigation Party Report, to be found in Appendix C to this Report.

2. It will have been noticed that, in some of these cases, the evidence has revealed that certain curfews have been imposed in a way that has caused them to degenerate into restrictions upon rights and freedoms protected by the Convention (see above). To the various aspects of curfews already mentioned must be added infringements of the right to life during curfews, referred to by the Mayor of Paphos (see Procès-verbal, 21st January 1958, evening, pp. 1-2).

3. This material is mentioned here for the purposes explained above and should be considered in the light of Article 18 of the Convention which stipulates that the restrictions on rights and freedoms permitted under the Convention may only be applied for the reasons there laid down. Hence, the Article contains an explicit, general reservation covering all restrictions on rights and freedoms which, in our view, cannot be ignored when considering the facts revealed by witnesses, either as they affect the curfew or in a more general way.

One final observation must be made which brings me back to the remarks with which I began. In cases where it cannot be stated with complete certainty that the authorities acted with an exclusively punitive intent, it seems unreal to draw a distinction between punitive intent and punitive effect. In international law, the intentions of its authorities are not a decisive factor in deciding whether a State's action is legitimate, having regard to its international obligations. On the contrary, it is the objective nature of the action, the circumstances in which it was carried out and its effects that are relevant. It does not follow, of course, that the punitive effects of the curfew ought to be deduced merely from the feelings expressed by the population; they must be confirmed by the facts. It is admitted that the British witnesses denied any punitive intent; but it is not disputed, either, that all the Greek witnesses were speaking in good faith when they maintained the opposite. The proper factor to take into consideration in deciding whether a curfew was justly imposed or not cannot be the inner intention of the person responsible, since that would imply searching man's innermost conscience, into which it is hard to see. Thus, the factor to be taken into account is not the statements of intent made by the authors or victims of the action, but whether any particular curfew was imposed unjustly from an objective standpoint. It is therefore a question of the facts and of

./.

examining the circumstances in which each curfew was imposed with the object, not of revealing this or that intent, but of making an objective appraisal of the nature of the curfew which will not appear from statements of intent but only from all its attendant circumstances and effects. The only British witness who testified before the Investigation Party in an unofficial capacity (Mr. Ridgway, British Residents' Association, 17th January 1958, Procès-verbal p. 12) said that so far as their effects were concerned "the curfews were often of a punitive character."

After taking all the above considerations and the effects of the curfews into account, I have arrived at a similar view and I am of opinion that it is impossible to avoid the conclusion that, in a number of cases, curfews were of an abusive character.

Chapter VI - ARREST WITHOUT WARRANT, DETENTION, DEPORTATION

Section A. ARREST WITHOUT WARRANT

292. Arrests without warrant were provided for under Regulations 3 and 4 of "The Emergency Powers (Public Safety and Order) Regulations, 1955" (No. 731) of 26th November 1955 as amended by Amendments No. 1 (12th January 1956), No. 7 (27th April 1956), No. 9 (28th July 1956), and No. 10 (31st July 1956).

The principal Regulations fixed the maximum period of arrest without warrant at 48 hours. Amendment No. 1 of 12th January 1956, authorised further detention for a period not exceeding 14 days.

The texts, as amended, are as follows:

"3 Power to
arrest
without
warrant

(1) Any police officer or any member of Her Majesty's Naval, Military or Air Forces acting in the course of his duty as such may arrest without warrant any person who he has reasonable ground for suspecting has acted or is acting or is about to act in a manner prejudicial to public safety or to public order or to have committed or is committing or is about to commit an offence against these Regulations and such police officer or member of Her Majesty's Naval, Military or Air Forces may take such steps and use such force as may appear to him to be reasonably necessary for effecting such arrest."
(Amended by Amendment No. 9 of 1956)

(2) Any person so arrested shall be brought as soon as reasonably may be before:

(a) a Naval, Military or Air Force Officer not below the rank of Lieutenant-Commander, Major or Squadron Leader, respectively, within the District if the arrest was effected or made by a member of Her Majesty's Naval, Military or Air Forces; or

- (b) the Superintendent of Police or Assistant Superintendent of Police within the District, if the arrest was effected or made by a police officer,

and such person may, by order of such Naval, Military or Air Force Officer within the District or of the Superintendent of Police or Assistant Superintendent of Police within the District, as the case may be, be lodged in any place or building there to be detained for such period as may be specified in the order, not exceeding forty-eight hours.

Provided that if a police officer in charge of a Police Division is satisfied that the necessary inquiries into the circumstances of the arrest of any such person cannot be completed within the period of forty-eight hours, he may authorise the further detention of such person for an additional period, not exceeding fourteen days, but shall, on giving any such authorisation, forthwith report the circumstances to the Commissioner of Police." (Proviso added by Amendment No. 1 of 1956).

"(3) Any person detained as in this Regulation provided shall be deemed to be in legal custody during the period of such detention.

4. Power to stop, detain and search persons. Any police officer or any member of Her Majesty's Naval, Military or Air Forces may:
- (a) stop, detain and search any person and may seize anything found on such person which he has reason to suspect is being used or intended to be used for any purpose or in any way prejudicial to public safety or public order;
- (b) require any person to stop and answer any questions which may reasonably be addressed to him;

- (c) require any person to furnish him, either verbally or in writing, with any information he may require and to attend at such time and at such place as he may direct for the purpose of furnishing such information;
- (d) take such steps and use such force as may appear to him to be reasonably necessary for stopping, detaining and searching any person under the provisions of this Regulation."
(Sub-para. (d) inserted by Amendment No. 9 of 1956 and amended by Amendment No. 10 of 1956).

"If any person fails to comply with any requirement under this Regulation he shall be guilty of an offence against this Regulation.

- 4 (A). Power to take photographs, etc.
 - (1) Any police officer of or above the rank of Inspector may cause photographs, descriptions, measurements and finger prints to be taken of any person who is under arrest under the provisions of Regulation 3 of these Regulations, and any photograph, description, measurement and finger print so taken may be retained after the release of such person.
 - (2) Any such person who shall refuse to submit in a proper manner to the methods of identification aforesaid shall be guilty of an offence against these Regulations."
(Regulation added by Amendment No. 7 of 1956)

I. - THE FACTS ESTABLISHED BY THE COMMISSION

293. According to the Greek Memorial of 24th July 1956 (Doc.A 28.657) "there have been innumerable arrests without warrant and in many cases of attacks the male population of villages has been subjected to veritable round-ups for purposes of identification and interrogation, with the result that most of those arrested have been deprived of their liberty for several hours and occasionally even for more than a day" (page 27).

Examples were furnished by Appendices 55, 56, 57, 58, 59, 60 and 61. The British weekly "Observer" of 3rd June 1956 stated that, in connection with two recent bomb incidents, "long convoys of lorries drove through Famagusta and any Cypriot-Greek youth seen in the street or market was asked to enter one of them" (Appendix 62). According to this paper the number of persons arrested was 260 and according to the "Sunday Pictorial" (Appendix 63) and the "Cyprus Mail" (Appendix 64) the number was 500.

The Counter Memorial of the United Kingdom Government dated 17th October 1956 (para. 93) did not deny the facts alleged. It merely said that this power (arrest without warrant) had been essential to the maintenance of order in Cyprus where a large number of persons were wanted by the police in connection with terrorist activities and were being concealed by the local inhabitants. It was admitted that, for the purpose of detecting criminals, numbers of male inhabitants had been temporarily segregated while investigations were carried out. However, as far as possible, their reasonable comforts had been assured.

At the hearing on the afternoon of 16th November 1956 (Report, Doc. A. 30.768, page 127) Counsel for the Greek Government claimed that neither the text of the regulations referred to nor the fact of their application was in dispute.

In his pleading on 17th November 1956 (Report, page 144), the Agent for the United Kingdom Government, without disputing the facts, merely corrected Counsel for the Greek Government's mistake over the maximum period of detention which was not fourteen days, but forty-eight hours plus fourteen days, i.e. sixteen days. He submitted that this was a period which, having regard to the circumstances, could not be regarded as excessive.

II. - THE LEGAL ARGUMENTS OF THE PARTIES

294. According to the Greek Memorial (Doc. A 28.657, page 32) the measures set out in Regulations 3 and 4 of "The Emergency Powers (Public Safety and Order) Regulations 1955", were a breach of Article 5 of the Rome Convention which provided that no one might be deprived of his liberty, save in specific cases (conviction by a competent court, lawful arrest for the purpose of trial, etc.). The same Article laid down that everyone arrested should be informed of the reasons for his arrest.

./.

Furthermore, the Greek Memorial (page 34) pointed out that the principal Regulations (No. 731), authorising arrest without warrant, as well as Amendment No. 1 of 1956, which increased to fourteen days the maximum period between arrest and appearance before the magistrate, were not notified as derogations in accordance with the terms of Article 15. The Greek Government maintained that these Regulations were flagrant derogations from Article 5 of the Convention and that "since the Secretary-General was not notified of them, they must be regarded as having been and still being illegal." (page 34).

According to the British Counter Memorial, the power to arrest without warrant provided by Regulation 3 was in no sense a breach of Article 5 of the Convention "since paragraph 1 (c) of this Article seems to provide for precisely the same contingencies as Regulation 3 and this Article contains no requirement that arrest shall only be effected with a warrant" (paragraph 93 of the Counter-Memorial). It was contended that "Regulation 4 is merely a supplementary power which is obviously essential if the police and the armed forces, who are here performing police functions, are to have effective control and to be able to prevent the commission of terrorist crimes" (para. 94 of the Counter Memorial).

With regard to the failure to notify the Secretary-General, the British Counter Memorial stated as follows: "Since Regulations 3 and 4 did not, in the view of the United Kingdom Government, contravene Article 5 of the Convention, it was not considered necessary to give notice of derogation under Article 15 in connection with these Regulations" (para. 95 of the Counter Memorial).

295. In his pleading on 16th November 1956 (Doc. A 30.768, page 128), Counsel for the Greek Government claimed that the British Government had committed breaches of Articles 5 and 6 of the Convention. He referred to Article 6, which expressly stipulated that everyone charged with a criminal offence had the right "to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him". He therefore asked the Commission to agree that "it is an elementary and fundamental guarantee in every country that 'promptly' means a maximum of one, two or three days but certainly not fourteen (sc. 16) days between arrest - I stress the word 'arrest' - by any member of the Navy or Air Force - a British private has the power of arrest - and being

./.

brought before a magistrate, when the person arrested will at length be informed of the nature of the charge against him and will be able to put his case."

The Agent for the United Kingdom Government replied on 17th November 1956 (Doc. A 30.768, page 144) that it was always difficult to say what was an unreasonably long period. "It is not a question of fact; it is a question of assessment having regard to the circumstances." And he added: "there is no power under Regulation 3 to keep the person under arrest indefinitely. The period is fixed and stated; it cannot be more than sixteen days, but I suggest that having regard to the circumstances, the character of the activities in Cyprus, the difficulty of making investigations there, the fact that sometimes it is difficult to get witnesses who are prepared to disclose their names, having regard to all the circumstances, the total period of sixteen days cannot be regarded as unreasonably long."

He further contended that there was nothing in Article 5 of the Convention as to the necessity for a warrant and that arrest could not always be subject to the requirement of a warrant. In English law arrest without warrant was certainly permissible.

296. At the end of the hearing of 16th November 1956, the Greek Government submitted its supplementary conclusions. With respect to arrest without warrant, it requested the Commission:

- "6. to declare the Regulation 3 and 4 of the Emergency Powers (Public Safety and Order) Regulations of 26th November 1955, concerning arrest without warrant, (...) together with the use made of these provisions by the Cyprus administrative authorities, (...) contravene Articles 5, 6 (...) of the Convention;"

As to the United Kingdom Government, it requested the Commission, at the hearing of 17th November 1956:

"to refuse to make any of the declarations requested in paragraphs 3, 4, 5 and 6 of those conclusions."

(pages 139 and 142-143 of Doc. A 30.768, and page 2 of the Appendix to the same Document).

./.

III. OPINION OF THE COMMISSION

297. The Commission discussed whether Regulations 3 and 4, which provided for arrest without warrant and for detention over a maximum period of sixteen days without being brought before a court, constituted a violation of Article 5 of the Convention.

The Commission was of the unanimous opinion that arrest without warrant was not prohibited by the Convention.

As to the provision under Regulation 3 allowing detention for a maximum period of sixteen days without being brought before a court, Article 5, paragraph 3, of the Convention provides that everyone arrested or detained on suspicion of having committed an offence shall be brought promptly before a judge or other officer authorised by law to exercise judicial power. The Commission was unanimously of the opinion that a period of sixteen days is longer than can, as a general rule, be justified under the terms of this provision. On the other hand, the Commission was also of the opinion that the emergency situation in Cyprus was such that this provision would have been justified under the conditions set out in Article 15 of the Convention if, in fact, the United Kingdom Government had made an express derogation from Article 5, paragraph 3, in respect of this measure. The Commission noted that persons arrested under Regulation 3 were obliged to be brought before the legal authorities not later than 16 days after their arrest.

In this connection, the Commission referred to its opinion in respect of the detention legislation in which (by eight votes to three votes) it stated that the relevant derogation by the United Kingdom was, by reasons of circumstances in Cyprus, in conformity with the provision of Article 15. It considered that the provisions as to arrest without warrant, being less stringent than those regarding detention, would a fortiori have been consistent with the conditions laid down in that Article.

The Commission adopted the opinion (by ten votes against one vote) that the United Kingdom Government was in error in not having notified a derogation in respect of Regulation 3. It considered, however, that, having regard to the existence of a public emergency threatening the life of the nation in Cyprus and to the fact that a notice of derogation had been given in respect of detention of persons without trial, this omission of the United Kingdom Government was to be regarded as a technical rather than a substantial departure from the terms of the Convention.

298. M. SKARPHEDINSSON stated at the 14th Session of the Commission that, if he had participated in the vote taken at the preceding Session, he would have supported the Commission's opinion on this point.

299. M. EUSTATHIADES considered that the question of arrest without warrant should be examined in relation to Article 5 and Article 6, and not in relation to Article 15, of the Convention, and declared as follows:

300. OPINION OF M. EUSTATHIADES

While I agree with the general conclusion reached by the majority that the period of sixteen days' detention provided under Regulation 3 cannot be regarded as in conformity with Article 5 (3) of the Convention, I do not think that this action by the British authorities can be judged in the light of Article 15 of the Convention, or that it is covered by that Article. The object of Article 15 is entirely different, as the British Government is plainly aware since it has neither applied nor invoked it in connection with Regulation 3. In any case, even if the interpretation adopted by the majority be accepted, namely that the British Government's failure to notify a derogation from Regulation 3 is only a "technical" departure from the terms of the Convention in view of the fact that they have already notified a derogation in the shape of the Detention of Persons Law, this way of looking at the question only takes account of Article 5 of the Convention to which the British derogation of 7th November 1955 that I have mentioned refers whereas Article 6 of the Convention which is also relevant is not referred to either in the notification of the derogation or in the earlier opinion given by members of the Commission.

Of Articles 5, 6 and 15, therefore, only the first two are, in my opinion, relevant. While agreeing with the majority view that Regulation 3 is incompatible with Article 5 (3) of the Convention, I think that the Regulation ought also to be considered in the light of Article 5 (2) under which everyone who is arrested must be informed "promptly" (to quote the English text) of the reasons for his arrest and of any charge against him, as it seems to me that Regulation 3 contravenes this provision also. Nor do I think that we can ignore Article 6 of the Convention although, once more, the British Government has not notified any derogation from it. Here I am in agreement with the view taken by the Greek

./.

Government which rightly maintains that, in the present case, not only Article 5 but also Article 6 of the Convention has been contravened. It also seems to me that, in the earlier opinion given by members of the Commission, no account has been taken of the fact that the British Government itself knowingly admits that it thought it unnecessary to notify any derogation in connection with Regulations 3 and 4 because, in its view, they did not contravene Article 5 of the Convention. This should have led the Commission to leave Article 15 out of its calculations and, in particular, not to talk of a "technical" omission on the part of the British Government, but simply to examine the measures complained of in the light of Articles 5 and 6 of the Convention.

To sum up, the legality or otherwise of Regulation 3 cannot, in my view, be judged in the light of Article 15 but it seems to me to contravene both Article 5 and Article 6 of the Convention.

301. M. DOMINEDO stated at the 14th Session of the Commission that, if he had participated in the vote taken at the preceding Session, he would have supported M. Eustathiades' opinion on this point.

Section B. DETENTION

302. The power of detention conferred on the Governor was instituted by law No. 26 which entered into force on 16th July, 1955; entitled "The Detention of Persons Law, 1955". The law reads as follows:

- | | |
|------------------------------|--|
| "2. Deten-
tion
orders | (1) If the Governor is satisfied that any person is or has been a member of, or is or has been active in the furtherance of the purposes of, an organisation which he is satisfied has been responsible for any acts of violence directed to the overthrow by force or violence of the Government, or destruction of, or damage to, property of the Crown, and by reason thereof it is necessary to exercise control over such person, the Governor may, subject to the provisions of this Law, make an order (in this Law referred to as "detention order") against such person directing that he be detained in such a place and under such conditions as the Governor may direct. |
|------------------------------|--|

./.

(2) A copy of the detention order shall be served personally on the person concerned.

(3) A detention order may be cancelled or varied at any time by the Governor.

(4) Any person detained under a detention order shall be deemed to be in lawful custody.

3. Suspension of detention order

(1) At any time after a detention order has been made against any person, the Governor may direct that the operation of the detention order be suspended to such conditions -

(a) prohibiting or restricting the possession or use by such person of any specified articles;

(b) imposing upon such person such restrictions as may be specified in the direction in respect of his employment or business, the place of his residence, and his association or communication with other persons;

(c) prohibiting such person from being out of doors between such hours as may be so specified, except under the authority of a written permit granted by such authority or person as may be so specified;

(d) requiring such person to notify his movements in such manner, at such times, and to such authority or person as may be so specified;

(e) prohibiting such person from travelling except in accordance with permission given to such person by such authority or person as may be so specified,

./.

as the Governor thinks fit, and the Governor may revoke any such direction if he is satisfied that the person against whom the order was made has failed to observe any condition so imposed, or that the operation of the order can no longer remain suspended without detriment to the public safety or public order.

(2) If any person fails to comply with any condition attached to a direction under sub-section (1), such person shall, whether or not the direction is revoked in consequence of the failure, be guilty of an offence and shall be liable to imprisonment not exceeding one year or to a fine not exceeding one hundred pounds or to both such imprisonment and fine.

4. Advisory Committee (1) For the purposes of this Law, there shall be one or more advisory committees consisting of persons appointed by the Governor; and any person aggrieved by the making of a detention order against him, by a refusal of the Governor to suspend the operation of such an order, by any condition attached to a direction given by the Governor under sub-section (1) of section 3 or by the revocation of any such direction under the powers conferred by that sub-section may make his objection to such a committee.

(2) It shall be the duty of the Governor to secure that any person against whom a detention order is made shall be afforded the earliest practicable opportunity of making to the Governor representations in writing with respect thereto and that he shall be informed of his right, whether or not such representations are made, to make his objections to such an advisory committee as aforesaid.

(3) Any meeting of an advisory committee held to consider such objections as aforesaid shall be presided over by a chairman nominated by the Governor, and it shall be

./.

the duty of the chairman to inform the objector of the grounds on which the detention order had been made against him and to furnish him with such particulars as are, in the opinion of the chairman, sufficient to enable him to present his case."

303. The "Detention of Persons Law, 1955" was amended on 26th October, 1955, as follows:

"2. Section 2 of the principal Law is hereby amended by the deletion therefrom of sub-section (4) and the substitution therefor of the following sub-section:

"(4) Any person detained under a detention order shall be deemed to be in lawful custody and the provisions of any Law in force for the time being relating to any person in lawful custody for any criminal or other offence shall apply to a person detained under a detention order as they apply to a person in lawful custody for any criminal or other offence."

304. Apart from this Law, the "Emergency Powers (Public Safety and Order) Regulations, 1955, (No. 731)" on 26th November, 1955 included (Regulation 6) fresh provisions on detention. This Regulation was revoked by Amendment No. 4 of 8th August, 1957.

Under this Regulation:

"(1) If the Governor has any reasonable cause to believe any person:

- (a) to have been concerned in acts prejudicial to public safety or public order or in the preparation or instigation of such acts;"
(Amended by Amendment No. 6 of 13th April, 1956)
- (b) to have been or to be a member or to have been or to be active in the furtherance of the objects of an organisation which is subject to foreign influence or control;
- (c) to be an undesirable alien,

and that, by reason thereof, it is necessary to exercise control over him, the Governor may make an Order against such person, directing that he be detained in such place as may be specified in the Order and in accordance with instructions issued by him.

(2) Any person detained in pursuance of this Regulation shall be deemed to be in lawful custody and the provisions of any Law in force for the time being relating to any person in lawful custody for any criminal or other offence shall apply to a person detained under this Regulation as they apply to a person in lawful custody for any criminal or other offence.

(3) At any time after an Order has been made against any person under this Regulation, the Governor may direct that the operation of the Order be suspended subject to such conditions and restrictions as the Governor may think fit, and the Governor may revoke any such direction if he is satisfied that the person against whom the Order was made has failed to observe any condition or restriction so imposed or that the operation of the Order can no longer remain suspended without detriment to public safety or to public order.

If any person fails to comply with a condition attached or restriction imposed to a direction given by the Governor under this paragraph of this Regulation, that person shall, whether or not the direction is revoked in consequence of the failure, be guilty of an offence against this Regulation.

(4) (a) For the purposes of this Regulation, there shall be one or more advisory committees consisting of persons appointed by the Governor; and any person aggrieved by the making of an Order against him or by the suspension of the operation of such an Order may make his objection to such a committee.

- (b) Any meeting of an advisory committee held to consider any such objection as aforesaid shall be presided over by a chairman nominated by the Governor and it shall be the duty of the chairman to inform the objector of the grounds on which the Order had been made against him and to furnish him with such particulars as are, in the opinion of the chairman, sufficient to enable the objector to present his case. The chairman shall report to the Governor the findings of the advisory committee on every such objection.
- (c) It shall be the duty of the Governor to secure that any person against whom an Order is made under this Regulation shall be afforded the earliest practicable opportunity of making to the Governor representations in writing with respect thereto and that he shall be informed of his right, whether or not such representations are made, to make his objections to such an advisory committee as aforesaid."

305. On 7th October, 1955, the Permanent Representative of the United Kingdom in the Council of Europe sent the following note verbale to the Secretary-General:

"The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary-General of the Council, and has the honour to convey the following information in accordance with the obligations of Her Majesty's Government in the United Kingdom under Article 15 (3) of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on the 4th November, 1950.

A public emergency within the meaning of Article 15 (1) of the Convention exists in the following territory for whose international relations Her Majesty's Government in the United Kingdom are responsible.

Cyprus - Certain emergency powers were brought into operation in the Colony of Cyprus on the 16th of July, 1955, owing to the commission of acts of violence including murder and sabotage and in order to prevent attempts at the subversion of the lawfully constituted Government.

./.

The United Kingdom Permanent Representative has the honour to state that under legislation enacted to confer upon them powers for the purpose of bringing the emergency to an end, the Government of the Colony of Cyprus have taken and, to the extent strictly required by the exigencies of the situation, have exercised or are exercising powers to detain persons which involve derogating in certain respects from the obligations imposed by Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The United Kingdom Permanent Representative has however the honour to add that all persons now in detention are permitted, in accordance with the provisions of the relevant Regulations, to have their cases reviewed by a Committee under a judicially qualified chairman."

I. THE FACTS ESTABLISHED BY THE COMMISSION

306. In the Greek Memorial (of 24th July 1956, Doc. A 28.657, pages 28 and 29) it was stated that the manner in which the Detention Law of 15th July 1955, and the Regulations of 26th November 1955, were applied showed the inaccuracy of the official comment made by the Secretary of State for the Colonies to the House of Commons on 27th July 1955. According to the statement a person may only be detained if the Governor "is satisfied" that he is a terrorist (Appendix 54) and the regulations were aimed at active terrorists and not against persons who were peaceful advocates of political change (Appendix 66). But detention was being applied to "persons released either upon acquittal, or after a cross-examination which has failed to establish the burden of proof, and who are then immediately re-arrested under a detention order." As examples the Greek Memorial quoted some ten cases of persons sentenced to detention after their acquittal by the courts (Appendices 67, 68, 69, 70, 71 and 72).

According to the Greek Government, this action aroused the liveliest protest among the population of Cyprus, as was shown by the Declaration adopted on 21st July 1955, by the Assembly of Mayors of the Island (Appendix 77), the Resolution adopted on 22nd July 1955, by the Pan-Cyprian Bar Association (Appendices 73 and 78 bis) and the appeal by the trade unions (Appendix 79).

307. The United Kingdom Counter Memorial of 17th October 1956, without disputing the facts, stated that the power of detention was exercised "with the greatest reluctance" but that its use was inevitable in the existing situation in Cyprus. Terrorist pressure and intimidation had been such that witnesses had refused to testify. "In these circumstances", stated the Counter Memorial, "in some cases to bring an accused to trial is embarking on criminal proceedings which are certain to result in his acquittal, not because of the merits of his defence, but because of the exposed position of the witnesses for the prosecution... Therefore recourse has necessarily been had to detention orders" (paragraph 98). A representative of the International Red Cross visited the detention camps on 16th December, 1955, and found the conditions there satisfactory (Appendix III of the United Kingdom Counter Memorial).

308. Counsel for the Greek Government in his pleading (Doc. A 30.768, page 127) stated that there was no dispute as to the text of the regulations mentioned nor as to their application. Mr. Vallat, in his pleading (*ibidem*, pages 152 *et seq.*) limited himself to legal arguments on the basis of the derogation concerned.

309. Three points deserved mention which seem to have escaped the attention of the representatives of both Parties:

(1) The difference of drafting as between Law No. 26 of 16th July, 1955, and Regulation 6 of Order No. 731 of 26th November, 1955: in the former it was stated that the detention order may be made "if the Governor is satisfied that any person ... etc."; according to Order No. 731 detention may be ordered "if the Governor has any reasonable cause to believe any person ...". The statement by the Colonial Secretary in the House of Commons on 27th July, 1955, could only have referred to the Law of 16th July, 1955.

(2) The note verbale of 7th October, 1955, in which the United Kingdom Government informed the Secretary-General of the Council of Europe that powers of detention were being exercised in Cyprus which in certain respects derogated from Article 5 of the Convention, referred to Section 2 of Law No. 26 of 16th July, 1955.

./.

(3) Regulation 6 of Order No. 731 of 26th November, 1955, was not expressly made the subject of notice of derogation.

The representatives of both Parties pleaded before the Sub-Commission without pointing out the difference in the texts, and applied the notice of derogation to Regulation No. 731.

II. THE LEGAL ARGUMENTS OF THE PARTIES

310. The Greek Government maintained (Memorial, Doc. A 28,657, pages 30-35):

- that the notification of 7th October, 1955, was made nearly three months after the promulgation of the Regulation which had by that time been enforced on several occasions;
- that it could not be held that at the time this Regulation was made there existed "an emergency threatening the life of the nation", as the first British soldier was killed on 27th October, 1955;
- that there had been, in fact, a derogation from Article 6 as well as the derogation notified in respect of Article 5;
- that according to Article 6, paragraph 2, "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law" and that under paragraph 3 any accused person was entitled to every opportunity to present his case.

In this connection, the Greek Government pointed out that the advisory committee set up under the Regulations (Regulation 6, paragraph (4)) of 26th November, 1955, did not guarantee such opportunities and had not the powers of decision which seemed to be implied in the notification made to the Secretary-General.

According to the Greek Government, such a committee was not even competent to decide on the substance of the charges for which the Governor had ordered the person concerned to be detained. The Greek Government furthermore referred to a decision made by the Supreme Court of Nicosia on 30th May, 1956, in an appeal from a decision refusing a habeas corpus order (Annex 82 of the Greek Memorial).

./.

In the course of his pleading, Counsel for the Greek Government maintained that these measures of detention (and deportation) were contrary to Articles 5 and 6 of the Convention since Article 5 laid down that no one might be deprived of his liberty except for the purpose of trial and after conviction. The proceedings must be conducted in the manner set out in detail in Article 6. It had been admitted that in this matter of detention and deportation no such procedure was observed. As regards detention, it was true that the Governor took the decision, but he did not hear the person detained. This person was questioned by an advisory committee. Nothing was said about the rights of the defence in regard to this advisory committee (page 128, Reports of Sitzings of 14th to 18th November, 1956, Doc. A 30.768).

Counsel for the Greek Government then examined the scope of the right to make derogations under Article 15 of the Convention and the validity or defects of the particular derogation, which he considered to have been made too late (ibidem, pages 132-135).

311. According to the United Kingdom Government, the fact that derogation from Article 5 in respect of detention was notified to the Secretary-General on 7th October 1955, was a complete answer to the charge of a breach of the Convention (Counter Memorial, para. 100). The United Kingdom Government maintained that the delay of three months in making that notification was not excessive and that Article 15 set no time-limit for such notification which could only be made subsequently to the "measures taken" (para. 101). There did exist "an emergency threatening the life of the nation" (paras. 83 to 85). The derogation notified made no reference to Article 6 of the Convention because that Article was only concerned with establishing the civil rights of the individual and with charges under criminal law. Detention was, however, an administrative custodial measure and no question of a criminal charge arose. In the present case, the legislation, duly notified under Article 15, deprived the detainee of the civil right of liberty as soon as a detention order was made against him. Derogation from Article 6 was therefore seen to be unnecessary. Furthermore, "the person detained has his full procedural rights; as the habeas corpus proceedings, of which the judgement is given in Annex 32 to the Greek Memorial, shows." The Advisory Committee was not a tribunal; it had no powers of decision; it was there to advise the Governor. In the notification of derogation of 7th October 1955, there was nothing to suggest the contrary. However, the Advisory Committee was an extremely effective body, since out of

./.

323 detained persons which had appealed to it, it had recommended that 121 be released (paras. 101 of Counter Memorial) and in all cases except one its recommendations had been acted upon.

In his pleading, the Agent for the United Kingdom Government developed the arguments set forth in the Counter Memorial. He pointed out the difficulty for a Government to determine in what circumstances it should notify a derogation and which precise Articles of the Convention should be mentioned in the notification. This was only a technical point, since clearly there was nothing to prevent the United Kingdom Government from notifying the derogation from Article 6 of the Convention. It could not be claimed, therefore, that failure to notify invalidated the right to make derogations. As for the delay in notifying the derogation from Article 5, the Agent for the United Kingdom Government said that the Convention did not set a time-limit and that there could be certain circumstances in which it would be impossible to make notification immediately, as Counsel for the Greek Government appeared to have admitted. In any event, even if the Commission agreed "that the delay was unreasonably long", this could not have the effect of invalidating the notice or of depriving the Government of the right to derogate. He then disputed the contention of the Counsel of the Greek Government that the notification of the derogation would be null and void if made after the date of the application to the Commission. Any such inflexible procedure should have been expressly laid down in Article 15 of the Convention in the form of words such as "if the delay is excessive delay shall be held to constitute a breach of the provisions of the Convention." But a Government could not be deprived of its right to derogate nor of its right to give notice when it became aware that it had in fact, or at any rate in the view of the Commission, derogated from a provision of the Convention (see Report of Sitzings, pages 144-146).

312. At the end of the hearing of 16th November 1956, the Greek Government submitted its supplementary conclusions. With respect to detention, it requested the Commission:

- "6. To declare that (...) Regulation No. 6 confirming the detention law of 18th July 1955, (...) together with the use made of these provisions by the Cyprus administrative authorities (...) contravene Articles 5, 6 (...) of the Convention;"

./.

As to the United Kingdom Government, it requested the Commission, at the hearing of 17th November 1956:

"2. To refuse to make any of the declarations requested in paragraphs 3, 4, 5 and 6 of those conclusions."

(pages 139 and 142-143 of Doc. A 30.768, and page 2 of the Appendix to the same Document).

III. QUESTION PUT BY THE SUB-COMMISSION AND PRESENT STATE OF LEGISLATION AND CASE-LAW

313. At its sitting on 17th November 1956, on the subject of detention, the Sub-Commission asked the United Kingdom Agent:

"to give supplementary information as to the right of habeas corpus referred to in paragraph 101 of his Counter Memorial."

(Doc. A 30.768, page 181).

The following was the substance of the written reply of the United Kingdom Agent (Doc. A 31.551, Section IV):

- A person in Cyprus who believes that he is unlawfully detained may apply for a writ of habeas corpus ad subjiciendum whereby the person detaining him is ordered to produce him before the court and either justify his detention according to the law or release him. The power to grant this remedy is conferred on the Supreme Court. Nothing in the Emergency Powers Regulations purports to interfere with the exercise of this practice; it has in fact been followed at various times.
- The Emergency Powers Regulations are part of the law of Cyprus and the only authority on their interpretation are the courts of that island. In this matter the Cyprus courts follow the example of judgments given by the British courts.
- If a detainee applies to the court for a writ of habeas corpus, the person detaining him can, provided that the order for detention was made on grounds authorised by the law or the Emergency Regulations, return the prima facie good answer to the application by producing such order signed by the Governor or some other official to whom the power on his behalf has been lawfully delegated.

./.

- According to the leading cases cited in the document, "the court would not then be entitled to go behind the order to enquire whether the Governor ought in fact to have reached the conclusion which the order (or the affidavit supporting it) recites."
- It is only in cases where the order was made on grounds other than those authorised by the relevant law or regulations, or else if the applicant can show that the order has not been made in good faith or that the Governor "has not addressed his mind to all the relevant factors", that the Supreme Court may order the release of the applicant.

314. As already mentioned, Regulation 6 of Order No. 731 was revoked by Amendment No. 4 of 8th August, 1957.

IV. THE INVESTIGATION ON THE SPOT

315. The Investigation Party stated as follows in its report: (1)

"... The crucial point is whether or not measures taken in pursuance of derogations from Article 15 have gone beyond the extent strictly required by the exigencies of the situation. Practically all the Greek witnesses, in particular qualified lawyers, including the former Attorney-General, have maintained that the detention of persons without trial is a measure which is not required by the situation, stating that ordinary criminal proceedings are adequate to meet the needs of the situation. Special mention has been made of Chapters 14 and 15 of the Code of Criminal Procedure, 1948, regarding arrests and searches respectively. It was stated that in the drafting of the legislation the experience gained during the disturbances of 1931 was taken into account.

The above-mentioned lawyers have stated that normal criminal proceedings made it possible for the police to obtain a prorogation of the 16-day remand introduced by amendment of 12th January, 1956, to the then existing law. Such prorogations were ordered for 8 days and a further 8 days, and so on, by the judge, whereas the new legislation was taken because it was desired to isolate arrested persons not only from the Courts but also from their lawyers.

./.

(1) cf. Appendix C to the present Report, paras. 29-30.

British witnesses, including the Solicitor General, the chief constable and an ex-Chief Justice, have contested this view on several grounds. The first and most important ground is the difficulty of obtaining evidence due to the fact of intimidation of witnesses. Anybody who acts contrary to the interests of EOKA is likely to be stigmatized as a traitor with consequent risk of losing his life. Murders have been committed in crowded streets in full daylight, and yet no witnesses are forthcoming. Similarly, witnesses have volunteered information at the time of the murder but refused to give it again in Court. Representatives of the Government have further maintained that the need to protect witnesses from being killed by EOKA prevents their production in Court. Finally, it has been stated that, in countering the plans of a highly organised and ruthless underground organisation, the maintenance of sources of intelligence is vital for the prevention of murders and sabotage, and if a source of information were revealed during a trial, it might dry up.

The ex-Chief Justice emphasized that the guarantees of English law against the conviction of innocent persons, in particular the strict rules of evidence, may lead to the acquittal of persons who appear to be guilty beyond reasonable doubt and would therefore be convicted under other legal systems, as a result of which other measures become necessary.

According to the British witnesses, the total effect of these factors, of which the wholesale intimidation of witnesses appeared to be regarded as the most important, is an extreme difficulty in assuring the conviction of any person charged with crimes of a political character.

It has been stated by the Chief of Staff that during the years 1956-57, less than 10% of murder cases could be brought before the courts whereas the corresponding figure for the preceding year was 66%. The British authorities maintained that in these circumstances any government responsible for the protection of the lives of its citizens would seem to fail in its duties if it did not take other measures against the perpetrators of serious crimes."

./.

316. In addition to the preceding extracts of the report of the Investigation Party relating to the nature and extent of intimidation of witnesses, members of the Investigation Party have, in the course of the deliberations of the Commission, mentioned a number of specific instances brought to the notice of the Party in the course of its investigation in Cyprus.

One case in point was the murder of a man in his own house in the presence of his wife who recognised the perpetrators of the crime. She gave information to the police and the perpetrators were brought to trial. When asked to give evidence in court she pretended not to remember anything.

In another case there had been an attack on the Police Station of Laphthos. One of the policemen in charge of the station succeeded in getting hold of one of the assailants and in tearing the mask off his face. He recognised the man, who was arrested and brought to trial. In the meanwhile the policeman was decorated for his act. But when the trial took place the policeman completely denied having recognised the man, as he had been intimidated. The court could not therefore convict the accused.

317. As to the manner in which the Detention of Persons Law was applied, the Investigation Party stated, inter alia, as follows (1):

"... Under the terms of the law, the Governor must himself be satisfied that sufficient ground of detention exists, and, in answer to a question put by the Investigation Party, the Administrative Secretary stated that each case is conscientiously examined by the Governor personally."

"... As to the administration of the law, a detainee is informed of the charge on which he is detained without particulars being given. Apart from the procedure of review, which will be dealt with in the next paragraph, detainees have not the opportunity of knowing and contesting the facts upon which the detention order is based. It has been stated by the British officials that nobody is detained on loose charges. The information obtained regarding the

./.

(1) cf. Appendix C to the present Report, paras. 31, 33, 34.

activities of a suspected person is carefully sifted and checked with other sources of information. The Mayor of Limasson had brought to the attention of the Investigation Party the fact that some detention orders had been issued against dead people or persons who were abroad at that moment, and said that this was a proof of the scarce attention with which such a grave measure had been applied by the British authorities. This question was submitted to Mr. Griffith Williams, Chairman of the Advisory Committee, who confirmed that the whole procedure in this respect was within the scope of Regulation 6 of the Emergency Powers Regulations and was not relevant to the Detention of Persons Law.

As to the procedure of review, the Chairman of the Advisory Committee gave evidence before the Investigation Party. He stated that the Advisory Committee reviews each case upon complaint and advises the Governor on the question of release. He stated that in accordance with the law each detainee, on his arrival at the detention camp, is informed of his right to appeal to the Advisory Committee. He further stated that when anyone made objections to his detention, the Advisory Committee obtained particulars of his case from the Special Branch and sent certain of these particulars to the complainant. He pointed out, however, that it was not possible to give much detail for the same reason as given above. A great number of the complainants never took any further steps. They were required to put in some kind of written reply but their usual reply was complete denial of any association with EOKA. The detainee was entitled either himself or through his counsel to make representations in writing and present written evidence to the Committee. The Advisory Committee treated the information before it like evidence to the Committee. The Advisory Committee treated the information before it like evidence in a court of law. If the Committee did not recommend release, the Governor sent a letter in standard form saying that he cannot see any reason for amending the detention order.

The Investigation Party put questions to Greek Cypriots as to their experience with the procedure of review. In reply they stated that detainees were given either an answer on a stereotyped form or no answer at all.

./.

The Investigation Party saw the officer responsible for re-examining cases with a view to recommending release of detainees, quite apart from the procedure of appeal to the Advisory Committee. He informed the Investigation Party that the process of re-examining these cases is continually going on, and that detention orders are abrogated for any detainee whom it would now seem safe to release without any undue danger to the public.

The Investigation Party has been informed that the number of detainees, which, in the height of the period of active violence, was about 1,500, has now been reduced to somewhere between 600-700 persons, who mainly constitute the hard-core of the detained EOKA members. The Chairman of the Advisory Committee estimated that about two-thirds of the remaining detainees were leaders of the terrorist organisation or active terrorists, and are therefore very dangerous to the public. A Greek witness stated that 42 detainees have been detained for more than two years. According to the Camp Commandant, the average period of detention is about six to eight months, but a great number had been detained for a longer period."

In connection with this part of the report submitted by the Investigation Party, M. Sørensen informed the Commission that at his request the British authorities in Cyprus had given M. Süsterhenn and himself an opportunity to look through some of the files relating to detained persons, although these files for obvious security reasons could not be submitted to the Investigation Party like other pieces of evidence. Out of a dozen files selected by the British authorities as representative of the various categories of detainees M. Süsterhenn and he had himself chosen a few, and more particularly one, which they had gone carefully through for the purpose of getting some insight into the methods employed by the authorities in cases leading up to a detention order and of seeing on what basis the decision to arrest and detain a person was made. M. Sørensen stated as his personal impression that the investigations were carried out in a most conscientious manner. Information originating from one source was checked against information obtained from other sources, and great care was taken to avoid mistakes as to the identity of the persons concerned. The method employed was such that little room was left for the influence of informers who for vindictive or other

./.

similar personal reasons wanted to give false evidence to the authorities. The impression he had received from this examination of the files confirmed the statements made on these points to the Investigation Party by representatives of the British authorities.

V. OPINION OF THE COMMISSION

318. In examining whether the Detention of Persons Law was strictly required by the exigencies of the situation the Commission considered 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.

One group of measures which were examined in this context were those consisting of police surveillance, reporting to a police station at regular intervals, restriction of movement to a given area, etc. The Commission was informed that the Investigation Party during its visit to Cyprus heard the views of the Government on such measures. It was stated by representatives of the Government that as experience had shown, they would be wholly inadequate, because under the conditions prevailing in Cyprus it was only too easy for a wanted person to hide himself either in the towns and villages or in the mountains.

Another possible line of action which would have dispensed with the necessity of detaining suspected criminals without trial would have been to modify the judicial system in Cyprus in such a way as to eliminate the factors which render its normal functioning impossible in the circumstances prevailing in the island. It might, for instance, have been possible to try suspected persons by courts martial or by other special tribunals empowered to sit in secret and to relax the normal standards of proof and evidence applied under Cyprus law. As to this second group of alternative measures, the Commission observed that such special forms of trial, resulting in many cases in convictions of the utmost gravity, might be found to bear more hardly on suspected persons than even the Detention of Persons Law. Nor was it clear that the intimidation of witnesses and the danger to sources of information would necessarily have been overcome by recourse to such special tribunals. Furthermore, such special forms of trial might have been thought to be open to even greater objections, on grounds of principle, than the Detention of Persons Law.

./.

For these reasons, the Commission reached the conclusion that a Government which has found, as the British Government has found with respect to the situation prevailing in Cyprus, that the detention of persons without trial was the only practicable substitute for ordinary judicial proceedings, could not, by that very choice, be deemed to have gone beyond what was strictly required by the exigencies of the situation as it existed in Cyprus.

In deciding whether the Detention of Persons Law, in these circumstances, conformed with the requirements of Article 15, the Commission had to bear in mind that the detention of persons without trial for an indefinite period was an extraordinarily far-reaching measure which amounts, temporarily at least, to a suppression of one of the most fundamental rights guaranteed by the Convention, the right to personal liberty and security. It followed that any such drastic measure must be more carefully watched by the Commission. On the other hand, it clearly resulted from the wording of Article 15 that even such measures might be justified, if and insofar as they were strictly required by the exigencies of the situation. The Commission was in no way precluded by the Convention from reviewing a decision taken by a Government in derogation of the Convention under Article 15 and from examining critically the appreciation of the Government as to the exigencies of the situation. On the other hand, it was a matter of course that the Government concerned was in a better position than the Commission to know all relevant facts and to weigh in each case the different possible lines of action for the purpose of countering an existing threat to the life of the nation. Without going as far as to recognise a presumption in favour of the necessity of measures taken by the Government, the Commission was of the opinion, nevertheless, that a certain margin of appreciation must be conceded to the Government.

The Commission adopted the opinion (by eight votes against three) that the Government of the United Kingdom had not gone beyond this limit of appreciation in finding that the detention of persons without trial under the Detention of Persons Law was strictly required by the exigencies of the situation.

In reaching this conclusion, the Commission gave great weight to the extreme state of the intimidation which so far pervaded the population in Cyprus as to render ordinary criminal proceedings impossible against persons suspected

./.

of being associated with EOKA terrorists. It also took into account the representation of the Cyprus Government concerning the alleged insufficiency of other alternative measures and procedures in the special situation which prevailed in the island. Finally, it took into account the provisions of the Detention of Persons Law designed to afford safeguards against the detention of innocent persons and also the available information concerning the practice of the Cyprus authorities in applying the Detention of Persons Law. The Commission felt bound to express some doubts as to whether it might not have been possible to improve the procedures open to detained persons for presenting their case to establish their innocence. Nevertheless, having regard to the very serious situation which prevailed in Cyprus, the Commission considered that those doubts were not sufficient to negative its general conclusion that the Government of the United Kingdom in introducing and applying the Detention of Persons Law had not gone beyond the proper limits of a government's appreciation of what was strictly required by the exigencies of a situation.

VI. OPINION BY THE MINORITY

319. Three members of the Commission (MM. EUSTATHIADES and SÜSTERHEIM, and Mme JANSSEN-PEVTSCHIN) have stated as follows: In our view, the first question to be raised is the following:

"Where a person is totally deprived of his freedom by confinement in a camp for an unlimited period as the result of a detention order issued solely on the instructions of an administrative authority, without any judicial decision or control by a judge, and on mere suspicion unsupported by legal proof of guilt, is such action calculated, within the strict limits of necessity, to avert the public emergency threatening the life of the nation within the meaning of Article 15, paragraph 1, and thus capable of being considered compatible with the Convention?"

Before this question can be answered, the following postulates are necessary:

A.

The rights enshrined in the Convention are safeguarded in varying degree so far as the possibility of State interference with them is concerned. Three categories may be distinguished. The first category comprises the most rigorously guaranteed

./.

rights, such as the right to life (Art. 2), the prohibition of torture or inhuman or degrading treatment (Art. 3), the prohibition of slavery or servitude (Art. 4 para. 1), and the principle of "nulla poena sine lege" (Art. 7). In accordance with Article 15 paragraph 2 no High Contracting Party may derogate from any of its obligations under the foregoing Articles even "in time of war or other public emergency threatening the life of the nation". These rights are thus immune from any State intervention.

Rights belonging to the second category, as for instance the right to respect for private and family life, the home and correspondence (Art. 8), the right to freedom of religion (Art. 9), the right to freedom of assembly and association (Art. 11), are covered by less rigid guarantees against State interference. The second paragraphs of these Articles contain a general clause authorising the State to pass legislation restricting the exercise of such rights in specific circumstances, even if the conditions laid down in Article 15, para. 1 (war or other public emergency threatening the life of the nation) do not exist, and without the requirement that derogation shall be notified to the Secretary-General of the Council of Europe in conformity with Article 15, paragraph 3.

Finally, the Convention contains a third category of rights which, unlike those in the first category, are not absolutely immune from State interference but whose suspension is not simply made the subject of a general clause leaving it to the discretion of the national legislator, as is the case with the second category under the second paragraphs of Articles 8, 9, 10 and 11. In the third category, derogation is possible only in the special conditions laid down in Article 15, paragraph 1, that is to say in the event of war or other public emergency threatening the life of the nation, and even then only to the extent strictly required by the exigencies of the situation, and with due observance of the notification rule in Article 15, paragraph 3. These rights, then, are not wholly inviolable; they include those covered by Article 4, paragraph 2 and Articles 5, 6, 12, 13 and 14.

Articles 5 and 6 of the Convention are of special importance because the guarantees they contain are more solid. Article 5 guarantees the right to liberty and security of the person - the most fundamental of all the

./.

fundamental rights, apart from life itself; and it authorises State interference with such liberty and security only by virtue of a judicial decision. Any person deprived of his liberty can set in motion procedure whereby a court takes an urgent decision on the legality of his detention and, if it is shown to be unlawful, orders his release (Art. 5, para. 4).

Article 5, alongside the elementary right to liberty and security, thus enshrines the principle of "Habeas Corpus". This principle is part of the common heritage of political ideals and traditions, of respect for freedom and the rule of law, mentioned in the fifth paragraph of the Preamble to the Convention. In this sense the legal principle of Habeas Corpus is a specific expression of the spirit underlying the entire Convention.

Article 6 is also part of the common heritage, expressing as it does the principle of the "rule of law" to which the Preamble refers. Not content with guaranteeing everyone a fair trial, it goes on to state that everyone shall be considered innocent until proved guilty according to law (Art. 6 para. 2). It is thus not only in the best traditions of European positive law, but also expresses an ethical principle of natural law.

The two fundamental precepts in Articles 5 and 6, "no deprivation of liberty without a Court decision" and "presumption of innocence until guilt is legally proved", are the essence of law among European peoples, and indeed among all peoples of the free world. Where these two basic principles are no longer observed, not only is the formal process of law suspended but there is also a material violation of Human Rights and Fundamental Freedoms, since failing these protective prescripts, the application of substantive law is no longer guaranteed. It may even be said without exaggeration that by suspending the provisions of Articles 5 and 6 the first step is taken from a State governed by free and democratic law towards a totalitarian State. That, at least, is the effect of the method used, even though in the particular instance there is doubtless no such intention. When it is remembered that in a large part of Europe human rights are systematically suppressed by totalitarianism, free Europe must avoid creating any impression that on her side too totalitarian methods are practised. This obligation is imposed on the European Commission of Human Rights less for appearances' sake than because of the sacred nature of the values it is entrusted with upholding. Let us suppose that one of the Contracting

./.

Parties interferes with the rights protected by Articles 5 and 6, which belong to those categories accorded the strongest guarantees, and which by the solemn declaration in the Preamble concerning the rule of law are considered almost as pillars of the Convention. If the total or partial suppression of these rights is notified it is the duty of the Commission, as the guardian appointed under Article 19 to watch over the maintenance of the rights and freedoms guaranteed by the Convention, to determine by stringent enquiry, whether the derogation is necessary in principle and is within the scope of measures to "safeguard the life of the nation". Article 15, indeed, lays down the general principle that the derogation measures may be taken only to the extent strictly required by the exigencies of the situation. If, however, the issue is one of suspending such elementary legal principles as those of "no deprivation of liberty without judicial decision" and "presumption of innocence until guilt is legally proved", any High Contracting Party wishing to exercise the right of derogation laid down in Article 15 must be absolutely convinced, and must show proof beyond all possibility of doubt, that the derogation measures are in fact indispensable to avert the "emergency threatening the life of the nation".

This means first of all that, objectively speaking, the derogation measures must be designed by their aims and importance to avert "the emergency threatening the life of the nation." To justify the derogation it is therefore not sufficient that the measures in question should have other, though legitimate, aims, such as are mentioned for example in the second paragraphs of Articles 8, 9, 10 and 11, i.e. the maintenance of "national security", "public order, health or morals" or the protection "of the rights and freedoms of others". Article 15 asks for much more: the measures must be intended to avert the danger threatening "the life of the nation". This requires, *inter alia*, that they should be objectively appropriate, i.e. in principle, capable of successful application and, in practice, an effective means of averting the danger to the life of the nation. Furthermore, the suspension of the rights protected under Article 15 presupposes either that there are no other means of averting the danger or that, within the general framework of such means, it is these very derogation measures which will prove decisive. Only if clear and convincing proof is furnished that all these conditions exist can it be concluded that the derogation measures are within the "extent strictly required by the exigencies of the situation" and for that reason do not infringe the Convention.

./.

B.

The Commission has recognised that the existence and activities of EOKA are an essential factor in determining the existence "of an emergency threatening the life of the nation", even though the actions of EOKA are not directed against the population as such, but are aimed at overthrowing, if necessary by force, the present order in Cyprus - i.e. the abolition of British sovereignty over the island in favour of the people's right of self-determination. The majority of the Commission has, however, acknowledged the existence of other important factors, such as the Turkish resistance movement, whose manifest aims under the banner of "partition or death", are to overthrow British sovereignty in the island, carry out a partition and annex a part of the island for Turkey. A third factor in the emergency has been recognised as the tension between the Greek and Turkish communities, which has frequently led to bloodshed. A fourth factor admitted is the tension within the Greek Cypriot population itself, between the Rightist groups represented by EOKA and the new trade unions on the one hand, and the Left-wing groups represented by the old trade unions under communist influence, on the other. This tension, too, has often given rise to bloodshed. The dangerous situation caused by the combination of these four factors has been recognised by the majority of the Commission as a "public emergency threatening the life of the nation" within the meaning of Article 15.

Nevertheless the four factors in themselves do not fully reflect the real nature of the danger. There are two others which must be considered decisive. The emergency would never have taken on its present form and certainly would not have been so threatening nor of such long duration, if the political aims pursued had not been approved by the Greek and Turkish communities and if the struggle to achieve them had not enjoyed at least the moral and political support of the Greek and Turkish Governments.

So complex is the emergency and so decisive are these last two factors in assessing the extent of the danger as a whole, that the possibility of remedying the situation simply by police or judicial measures would seem more than doubtful. It can hardly be imagined that a danger resulting from so many causes can be successfully countered by the detention for an indeterminate period of a few hundred persons whose guilt has not been lawfully established and who are merely suspected of being members of EOKA or of having taken part in

./.

acts of violence. Even in combination with a large number of other and more appropriate security measures, involving the Police and the Army, the detention law has proved an ineffectual means of combatting a danger of such complexity, for, despite its application, the state of emergency in the island has existed for over three years, apart from some fluctuations, due to political causes, in the number of acts of violence. All the circumstances make it apparent that the removal of the danger and the pacification of the island can be effected only by political means.

C.

It may perhaps be held that, apart from all the other elements making up the state of emergency, the existence of EOKA alone, as a militant organisation whose members systematically commit acts of violence, is a threat to the life of the nation. In that case, does the derogation from Articles 5 and 6, represented by application of the detention law (i.e. suspension of the two principles "no deprivation of liberty without judicial decision" and "presumption of innocence until guilt is legally proved") constitute a measure strictly required by the situation and capable of removing the danger? On the British side this question is answered in the affirmative, on the following arguments:

1. The British criminal courts on the island are said to be in most cases unable to sentence EOKA members accused of acts of violence. Witnesses are often so intimidated by EOKA that they often dare not speak the truth in court for fear of reprisals. In addition, to ensure that the innocent are not convicted, the English code of criminal procedure insists on extremely strong proof. Consequently, the courts are frequently obliged to acquit persons who are undoubtedly guilty and who, under the procedure of other European States, would certainly have been convicted.

2. If persons accused of acts of violence were brought before a criminal court, the secret information sources on which the charge was based would inevitably be revealed. Such a proceeding would lead to the unmasking of informers who would thus be no longer able in future to supply fresh information - an indispensable element in preventing further violence by EOKA.

./.

Having regard to these circumstances, which represent a great obstacle to the application of criminal law, the British Government claims the right to abstain from criminal proceedings and to detain suspects for an indeterminate period without a court order. But a measure of this kind is not an appropriate means of reducing the difficulties of criminal courts, or of securing the results which criminal convictions are designed to achieve.

The arguments adduced on the British side call for the following detailed comments:

The English code of criminal procedure, as compared with its counterparts in other European States, may well prevent the conviction of real culprits because of the particularly strict rules of evidence. But the total suspension of criminal proceedings and their replacement by administrative measures is in no sense an appropriate remedy. If English criminal procedure really has these loopholes - and there is no reason to doubt the statement on that subject by the former Chief Justice, Mr. Griffith Williams - then the only equitable course, and certainly the only one compatible with the Convention, would be to bring the criminal procedure more in line with that of other European States, which have less difficulty in securing the conviction of offenders. Asked by a member of the Investigation Party why no such modification was introduced, Mr. Griffith Williams replied that in the opinion of Parliament and British lawyers it was undesirable because it would run counter to the great liberal traditions of English law. This statement cannot be held a decisive argument. Indeed, to suspend in its entirety the working of the criminal courts and place in abeyance the twin principles, recognised in the Convention, of "no deprivation of liberty without judicial decision" and "presumption of innocence until guilt is legally proved", constitutes a more serious attack on the liberal traditions of English criminal law than the adaptation of English criminal procedure to those of other European countries. Neither can it be claimed that these countries are not States founded in law, within the meaning of the term in the Human Rights Convention.

Similarly, the allegation that the intimidation of witnesses causes the courts unusual difficulties in proving a suspect's guilt cannot be acknowledged a sufficient motive for suspending judicial operations and substituting administrative measures. In almost all criminal cases there is some degree of difficulty in establishing proof - though this is not to say that the obstacles encountered in Cyprus are not

./.

extremely serious. Under the penal law systems of all civilised States, the difficulties of obtaining proof of guilt are expressly taken into consideration: this is demonstrated by the fact that the maxim "in dubio pro reo" is valid in all States. The same maxim is also embodied in Article 6 of the Convention, since it is at the basis of paragraph 2, "Every one charged with a criminal offence shall be presumed innocent until proved guilty according to law." "In dubio pro reo" is part of the common legal heritage of the European peoples, and of the principle of the rule of law. Difficulty in establishing proof, is no ground for suspension since the precept is in itself mandatory in such cases.

If, for the reasons stated, there are special difficulties, as in Cyprus, in establishing guilt and convicting the accused, thereby hampering the work of the criminal courts, it is the right and duty of the State responsible for order and security in the territory to take these exceptional circumstances into account by rendering the relevant criminal procedure more effective. Under the Convention the United Kingdom Government would be perfectly entitled to set up Special Courts using a procedure adapted to the situation, as has already been done in many States faced with a similar situation. Examples may be multiplied, but we shall confine ourselves here to mentioning Ireland which, to combat the Irish Republican Army, has provided for the possibility of creating "Special Criminal Courts" pursuant to the "Offences against the State Act, 1939."

There is no doubt that the United Kingdom Government could set up similar courts using a procedure adapted to the state of emergency in Cyprus. Thus, for example, the place and time of the court sittings could be kept secret; proceedings could be in camera, and the method of establishing proof more summary than under normal criminal procedure; defending Counsel suspected of relations with EOKA might be refused admission, and other measures adopted as the situation might require. The tendency of witnesses to conceal the truth for fear of reprisals by EOKA might thus be largely overcome, especially if they were also given police protection and intimidation or suborning were subjected to drastic penalties.

./.

The institution of Special Courts is certainly not an ideal solution, having regard to the principles which should govern a constitutional State. But since the situation in Cyprus is anything but ideal, an attempt must be made to master it by applying legal rules which are less ideal than would normally be the case. In any event, an exceptional penal law system of this type, applied by independent courts, is still preferable from the standpoint of the Convention to a system of detention by mere administrative order without prior court finding of the prisoner's guilt. It may certainly be held to be a measure strictly required by the exigencies of the situation, within the meaning of Article 15, paragraph 1. As against this, the suspension of the criminal courts and their replacement by administrative measures go beyond such strict requirements.

Neither can the creation of Special Courts be rejected on the ground that their judgments, like those of Courts Martial, would frequently entail the death sentence, compared with which unlimited detention in a camp, without court order, would still be the lesser of two evils. That argument overlooks the Governor's power to restrict, merely by regulation and without parliamentary intervention, the penalties to be imposed by such Special Courts. For example, he could totally prohibit them from pronouncing the death sentence; to offset this, in the interests of greater judicial security, he could also decide that their verdicts would be reviewed by the ordinary courts as soon as these were again able to function normally, i.e. when the present state of emergency came to an end. In addition, the right of amnesty could be widely exercised once order had been restored.

It is possible that even if Special Courts were set up a large number of suspects might still be acquitted for lack of adequate proof. This possibility should, however, be accepted in view of the overriding importance of Articles 5 and 6 of the Convention.

The establishment of special criminal courts would also be broadly in keeping with the British Government's understandable wish not to reveal the names of informers on whose word the evidence rests. Admittedly the sources of information could not be kept secret in all cases, and there would always be some risk that their disclosure would incite fresh acts of violence. From the British Government's standpoint this possibility is certainly regrettable, but it cannot in any

./.

sense justify the detention of mere suspects for an unlimited period as a result of a purely administrative order not based on a prior court decision. It is incompatible with the Convention that A, who is suspected of a crime not proved before a court, should be deprived of his liberty solely because the secrecy surrounding an informer B must not be lifted, in order that the said B may be able to lay information enabling the administration to prevent future acts of violence contemplated by other parties C, D, E, F, etc. Assuming that A is deprived of his liberty without judicial proof of his guilt, and there is insufficient reason to suspect that he will commit acts of violence in future, and assuming further that his detention is ordered with the sole object of maintaining the police information network intact, then A is in fact reduced to the status of an instrument, the instrument of a police security system with preventive aims. Degrading treatment of this kind runs counter to the principle of human dignity and Article 3 of the Convention, the application of which cannot be suspended by virtue of Article 15, paragraph 3.

The frequent intimidation of witnesses, the strict demands of English criminal law procedure in the matter of proof, and the importance of keeping information sources secret, obviously impede penal proceedings, but in no way justify the suspension, in derogation from Articles 5 and 6 of the Convention, of normal criminal procedure and its replacement by the interment of suspects in camps without a court order.

The illegality of the detention system in force in Cyprus is in no way mitigated by the fact that, according to British testimony, the Special Branch officials instructed to apply it carry out very careful enquiries and sift all information meticulously. Even supposing that the Special Branch officials make a real effort and act only in good faith (and the conclusions of the Investigation Party give no reason for believing otherwise), the objective value of their findings as to convincing grounds for suspicion remains, to say the least, highly doubtful. The results of Special Branch enquiries are in fact essentially based on information received through the medium of "informers" and "sources". The value of the information obtained by such means is generally admitted, from experience, to be highly questionable.

./.

The fundamental need for scepticism in the face of any system of this kind, and of that practised in Cyprus in particular, has not been dispelled, at least for M. Süsterhenn, by a study of two files submitted by the Special Branch to him and M. Sørensen as members of the Investigation Party. On the contrary, M. Süsterhenn states that these files gave him no chance of ascertaining whether there were good grounds for the suspicion against the detainees concerned. On examining one of the files, M. Süsterhenn found that a letter allegedly written by the detainee and seriously compromising him by its content, was in a handwriting entirely different from that of a letter personally written by the same man in the detention camp and addressed to the Special Branch. When M. Süsterhenn pointed out the obvious difference between the two hands to the responsible Special Branch Officer, he was told that the prisoner had probably not himself written the compromising letter, but had dictated it to a third party, so that he should not be discovered or convicted. M. Süsterhenn recalls that there was no indication in the files that the prisoner had been faced with this letter and asked to account for it. Obviously there can be no question here of considering this prisoner's case in detail, but it should be emphasised that M. Süsterhenn's findings in connection with this letter may well be thought to demonstrate the highly dubious character of the whole system. Neither is it improved by the fact that it is the Governor himself who signs the detention orders, since the Governor, too, is obliged to base his decision in the final analysis on documents submitted by Special Branch officials with their interpretation and comments.

The following facts strikingly illustrate the weakness of any detention system: under Regulation No. 6 - admittedly revoked now, but in force from November 1955 to August 1957 - the Governor had the right to order the detention of any person whom he had reasonable grounds of suspecting of acts against public order and security. The procedure under Regulation No. 6 was thus substantially the same as under the Detention Law. The Mayor of Limassol, M. Partassides, who gave testimony before the Investigation Party, stated that detention orders had even been issued under Regulation No. 6 against persons who had already been dead for some time or who had long been living outside the island. Although, according to British witnesses, it was a question in this case of a collective measure against Communist party members, these facts cannot but underline the great danger to individual freedom represented by any form of non-judicial detention.

./.

Nor can the system as practised in the island be justified by saying that the prisoners have the power to appeal to an "Advisory Committee". Such committee is not an independent court, but an administrative body, whose members are appointed by the very Governor who signs the detention orders. The Advisory Committee cannot render decisions which are binding on the Governor; it can only advise either that a detainee shall be released or that his detention shall continue - advice which is binding on nobody. According to the statements of British witnesses, however, such advice is regularly followed by the Governor. Apart from the administrative character and purely consultative function of the Advisory Committee, the procedure it adopts cannot be compared with that of a court. First of all, the charges against the prisoner and the facts on which suspicion of him is based are made known to him only in a general and incomplete manner. This is especially true of such evidence as it is in the Government's interest to keep secret, for reasons already mentioned. According to various Greek witnesses, the charge made known to the prisoner generally contains only the unspecific accusation of being an "active member of EOKA". The prisoners are given no further details, except such as do not directly or indirectly conflict with the British Government's interest in keeping their information sources secret. With such a procedure the prisoner has practically no means of defence, the more so as neither he nor his Counsel has the right to appear in person before the Advisory Committee, whereas the Special Branch representative attends the latter's meetings and may himself make out his case. The essential defects of the procedure in the Advisory Committee are most clearly demonstrated by the following: in reply to a question put to him by M. Süsterhenn as a member of the Investigation Party, the Committee's Chairman, the former Chief Justice Griffith Williams, confirmed that it was not for the Committee to prove the prisoner's guilt, but for the prisoner to prove his innocence to the Committee.

Clearly, then, although its Chairman is a former Chief Justice, the Advisory Committee, by its composition, competence and procedure, is neither a court nor yet a semi-judicial and administrative body capable of taking the place of a court.

./.

The existence of any such "substitute" body, of a highly dubious nature, cannot be claimed to justify a derogation from Articles 5 and 6, where the object is to suspend judicial control of measures involving deprivation of liberty and to suppress the fundamental principle of criminal procedure "in dubio pro reo".

D.

To say nothing of the fact that methods of improving the code of criminal procedure do exist, the illegality of derogating from Articles 5 and 6 because of the difficulties of successful prosecution is also demonstrated by the following considerations:

Even a system of criminal courts, functioning normally, would not be the only means, nor even the most effective or most decisive means, of combating the danger on the island - whether the state of emergency is considered in all its many aspects or whether the activities of EOKA alone are considered is immaterial. The importance of the criminal courts as a defence against the "danger threatening the life of the nation" and the possible need for a detention system to replace proper court proceedings on account of the difficulties besetting them, can be appreciated only in the general framework of all the means of defence available.

It should be remembered that in all States it is a basic principle that the prevention of public danger is mainly the task of the police, and only to a very small extent that of the criminal courts. The latter do not enter the field until the preventive measures have proved ineffective, i.e. when the potential danger has assumed the concrete form of a crime. Not until then will the accused be sentenced to some penalty. The criminal courts do not participate in preventive action except in the following way: a prisoner undergoing sentence, during the time of his imprisonment, is not in danger of committing other crimes. Moreover, once he has served his sentence and been released, there is reason to hope that he will be a sadder but wiser man and will sin no more. (This may be termed individual prevention). It is also hoped that the penalties provided by the law and applied by the courts for the commission of certain crimes will have a deterrent influence on the population as a whole and prevent persons contemplating crimes from actually committing them. (This may be termed general prevention.) Whether a system of criminal proceedings commonly has a deterrent effect on crime is, it

./.

must be admitted, a much disputed point both in theory and practice. The doubt becomes a virtual certainty when, as in the present case, the criminals are acting from political conviction, for such people pursue their aims in the light of their ideals and accept in advance the risk of losing life or liberty - a risk which they in any case generally consider negligible. Be that as it may, penal proceedings, even in normal conditions, are of only secondary importance by comparison with the police, who have a wide range of preventive measures at their disposal. This is especially true when, as in the particularly dangerous situation in Cyprus, police methods have reached the limit of their effectiveness and are supplemented by many other forms of repression, notably military.

In this connection the following points are relevant: the police, who were already numerous enough in Cyprus, have been considerably strengthened by the formation of an auxiliary police force consisting mainly of Turks or belonging to other non-Greek minorities. Furthermore, large British police forces from the home country or other British territories have been drafted to the island, where there are also about 30,000 British soldiers. All members of the Navy, Army and Air Force have police powers, which means that they can at any moment stop, interrogate, search and arrest any person they consider suspect; they may also seize all objects found in his possession which they consider could be used for purposes contrary to public safety and order. As part of their duty members of the British forces also have the right to use such forces as they think fit.

The curfew is another highly important security measure. Inhabitants of a certain region are sometimes forbidden to leave their houses by day and night alike, and in other cases only during the day. The measure is very widely used. Sometimes curfews have lasted for one or more weeks. While they are in force only certain people enjoying the confidence of the British authorities are granted passes to leave their houses. Curfews are applied with great severity. Greek witnesses have said that in a number of cases Greek residents have even been fired on merely because they showed themselves at their windows. During the curfew houses are often systematically searched for active members of EOKA, weapons, bombs, dynamite, propaganda leaflets, etc.

./.

It is particularly important to note that the curfew has also been used to prevent clashes between the various population groups, as well as to facilitate certain large-scale operations jointly conducted by the police and the Army. Thus a curfew was imposed on the village of Milikouri for 55 days, during which British police and the Army carried out strikes into the mountains and the surrounding forests with the object of seizing members of the EOKA General Staff in hiding.

Another severe reprisal is the imposition of large collective fines on all the Greek inhabitants of many towns and villages in whose neighbourhood shots have been fired on police or soldiers, or where bombs have exploded or other acts of violence been committed. In many cases fines have been inflicted on the population simultaneously with a curfew. For reasons of security even the destruction of houses or other property, such as plantations, has been ordered if these have been used for purposes of ambush. The concealment or carrying of firearms may entail the death penalty. Long prison sentences may be inflicted on persons accompanying others found to be bearing arms, if it is shown that they knew what their companions were carrying.

Since the British Government considers the younger element to be especially dangerous and unruly, it has ordered another very severe measure in the shape of whipping, which could be administered to minors under 18 years of age in lieu of imprisonment. In addition, young people were for a long time prohibited from going out on Sundays. It should also be pointed out that schools were closed and teachers of Greek nationality dismissed when they were suspected of inciting their pupils to disaffection.

Legislation to allow deportation without judicial decision, as applied to Archbishop Makarios and others, is a further measure of great severity. Among security measures should likewise be quoted: the prohibition of demonstrations, religious processions and political strikes, restrictions on the press, and severe control over entries and exits: limitations on listening to wireless broadcasts, the closing of cinemas, cafés, shops, etc.

These many security measures, some of which were applied in the past while others are still being applied today - and to list them in no way implies any general approval of them - constitute a well-organised defense system of such severity that it could hardly be bettered. For that very reason the

./.

argument that criminal proceedings are hampered by many difficulties is practically bereft of all its weight, with the result that the replacement of such proceedings by a detention system cannot be considered a measure strictly required by the exigencies of the situation.

The same conclusion may be reached from considering the following facts:

There are still between 600 and 700 persons in detention camps. Asked whether these persons were all dangerous, the former Chief Justice Griffith Williams, at present Chairman of the Advisory Committee, replied that in his view two-thirds of them must be so considered, or were suspected of being instigators, organisers, liaison agents or militant members of EOKA. It may thus be deduced, from the words of Mr. Griffith Williams, that one-third of those still detained in the camps, i.e. 200 to 230 persons, cannot be considered dangerous, or, in other words, as constituting a threat to the life of the nation.

But as regards those detainees thought by Mr. Griffith Williams to be dangerous, it should be remembered that, insofar as their detention is based on mere suspicion, the Commission has no means of examining the validity of the reasons for it. There is no judicial finding as to their guilt or innocence; firstly because, for the reasons already mentioned, the Public Prosecutor has not sufficiently convincing evidence to take court proceedings, and secondly because the Special Branch does not wish to produce in court the documents it claims to have in its possession, lest it reveal its secret information system. Thus it cannot be asserted that the 400 to 600 persons at present suspected of being dangerous, many of whom have been acquitted by the court for want of adequate proof, really constitute a danger threatening the life of the nation.

There is no question that the British Government is legitimately interested in seeing that persons it regards as particularly dangerous do not evade its control. It is also true that detention is both the simplest and the most thorough-going control measure. The need to exercise supervision over dangerous persons cannot, however, justify their detention without prior court decision. The Government has itself claimed that the detention measures are necessary because of the special circumstances prevailing in Cyprus, which prevent prosecutions for crimes and offences.

./.

It has already been shown that this argument is not pertinent. Neither is it any better to attempt to justify detention, which cannot be an effective substitute for an entire system of criminal proceedings, on the ground that more effective control is needed over certain persons. If such a need exists - and in the present state of affairs there is no reason to doubt it - quite different methods should be tried; for example, police surveillance, the obligation to report at the police station at regular intervals, house arrest, a ban on leaving the house during the night or on visiting certain places or regions and a ban on travel without express authorisation. We do not intend to challenge the contention that all control measures of this or similar kind are less efficient than detention, particularly in view of the special circumstances in Cyprus. But if the very broad scope of all the security measures applied by the police and the armed forces in Cyprus is borne in mind, it cannot be doubted that their effect is at least in large part identical to that aimed at by detention.

Insofar as these control measures exercised in lieu of detention infringe the right to individual freedom protected by Article 5, it could be claimed that such infringement does not exceed the bounds of what is strictly required by the exigencies of the situation and that it is therefore covered by Article 15 of the Convention.

The following data may help to give a clear picture of the detention system: since the state of emergency was declared in Cyprus, about 2,000 persons have been taken to detention camps in pursuance of the Detention Law, on the personal decision of the Governor. Since, at the time when the Investigation Party was in Cyprus, the number detained in camps was some 600 to 700, about 1,300 to 1,400 persons must in the meantime have been released. Their liberation was presumably not regarded by the Government of Cyprus as a danger to the life of the nation. This view is indirectly confirmed by the testimony of a Special Branch member, Mr. Lewis, who supervises the release. Mr. Lewis has stated that of the 400 released detainees who have passed through his hands, only one subsequently committed acts directed against the British Government, and he was feeble-minded.

./.

E.

Having regard to all the arguments set forth in Chapters I to IV, it cannot be agreed that the Detention Law is strictly necessary to avert the "emergency threatening the life of the nation". Far from it, indeed; the Law in question goes considerably beyond the "extent strictly required by the exigencies of the situation", as mentioned in Article 15, paragraph 1; it therefore infringes the principles "no deprivation of freedom without judicial decision" and "presumption of innocence until guilt is legally proved", which are enshrined in Articles 5 and 6 of the Convention and are based on the very notion of the rule of law.

320. MM. DOMINEDO and SKARPHEDINSSON stated at the 14th Plenary Session of the Commission that if they had participated in the vote taken at the preceding session they would have supported the minority's opinion on this point.

FURTHER OBSERVATIONS BY M. EUSTATHIADES

321. The following additional observations are based on evidence collected in Cyprus during the visit of the Investigation Party:

1. With regard to the application of the Detention of Persons Law, M. Chryssaphinis, former member of the Governor's Advisory Council (1937-1942), former member of the Governor's Executive Council (1946-1949), and first Cypriot to be appointed King's Counsel (1949), mentioned arrests which were contrary to the British tradition, on which Cypriot law was based, that the accused is presumed innocent until he is proved guilty, which implies that it is the duty of the authorities promptly to inform any detainee of the reasons for his arrest. M. Chryssaphinis observed that under the new "Regulations", anyone could be arrested without cause shown, so that, with 25,000 soldiers, policemen, etc., in possession of this excessive power, thousands of people had in fact been arrested, detained for a fortnight and released again without ever being charged with any offence and without knowing the reason for their arrest.

But in most cases after a delay of sixteen days detention orders came through bearing no mention of any precise offence.

./.

The lack of details concerning the reasons for detention - confirmed by British evidence and mentioned in the Report of the Investigation Party - was described by Greek lawyers interviewed, who had had detainees as clients, in the following terms: the detention orders indicated no reason for arrest; at most they gave only extremely vague reasons, such as "active member of EOKA", the most frequent charge, or "transport of arms", or "duty of supervision" without even a general indication as to when, where or how. M. Chryssaphinis, one of the witnesses mentioned above, handed the Investigation Party documents in support of this. Detainees in the camp at Pyla, who were questioned by the Investigation Party, said that all the detainees had simply received an identical duplicated paper with "member of EOKA" on it as the reason for their detention. One of the detainees questioned by the Investigation Party said: "I knew nothing about the accusations at all".

In a very great number of cases detention was simply on the basis of information supplied by "informers"; this was confirmed by the evidence of Mr. Lewis, an official in charge of the release of detainees.

2. With regard to the case described in paragraph 319, it should be pointed out that this file was chosen at random from about ten others which were the only ones made available to members of the Investigation Party after being selected by the British Authorities from between six and seven hundred cases of detention.

3. The two Queen's Counsel who gave evidence before the Investigation Party, namely M. Chryssaphinis and M. Stelios Pavlides, a former Attorney-General (1947-57) who had been in Government service for twenty-five years, stated that they themselves had very often found it well-nigh impossible to get in touch with interned clients, who often could not be traced; in the opinion of these two witnesses even greater difficulties were encountered in this respect by other lawyers who did not possess the same honorary titles, qualifications and reputation as the two Queen's Counsel.

./.

4. Evidence is reproduced below illustrating the conditions of psychological stress and the atmosphere of the detainees' environment, simply in order to give an idea of the difficulties attending their defence.

The two Queen's Counsel thought that the laws on arrest (sixteen days) and detention, which deprived the detainee of any contact with his lawyers, were not unconnected with the need to give traces of ill-treatment inflicted on detainees time to disappear. On this point one of the witnesses drew attention to the "disquieting coincidence" that the detention law followed closely on the case of the two officers found guilty of torturing persons they had arrested, while the other said that he had personally seen similar traces on several of his clients and offered to supply the Investigation Party with full details of such cases.

These witnesses were of the opinion that the Emergency Regulations had had an effect on the attitude of the Security Forces who had become tyrannical, aggressive and humiliating in their approach to Greek Cypriots, including lawyers in the exercise of their duties, and they gave several instances of indignities that they themselves had undergone, Queen's Counsel though they both were. To illustrate the kind of thing that happened when lawyers came to visit detainees several examples were given including that of the lawyers Haralambos Demetriades and Xanthos Klerides, who, after visiting a number of clients in a detention camp who had handed them documents concerning ill-treatment they had undergone, were searched on their way out; the authorities had confiscated the documents, with a promise to return them after examination, but they had still not been returned fifteen months later. A copy of a memorandum sent by the Cyprus Bar to the Governor (3rd May 1956) concerning cases of this kind was handed to the Investigation Party.

The few detainees who gave evidence before the Investigation Party revealed something of the nature of the interrogations. M. Lyssiotis, a lawyer who had been in the camp at Pyla since 23rd November 1956, gave the following instance:

./.

- 247 -

"Once an interrogator told me that a person was going to be arrested. The police would arrest the person after a telephone call by my interrogator and the blame would then fall on me since the other detainees would know that I had been interrogated the same day. I would then be called a traitor. If I would give the information wanted, the arrest would not take place. I did not give any information and that person was arrested. They were looking for a person who was in charge of the political branch of EOKA in Nicosia. I was called in and told that a person was going to be arrested and that the detainees knew that I was called in to give information. If the person were arrested they would link the two things together and call me a traitor."

The same witness related:

"I received a visit last Monday. I was asked whether I was interested in politics and my answer was 'No'. Then I was told that it was the policy of the British Government to form a Central Group between EOKA and Communism. I was asked whether I was prepared to lead such a party. If I accepted I would be released. My answer was that I was not interested in politics. Thereupon I was informed that I would have to stay in the camp until 1960".

Concerning conditions in the camps the same witness stated that armed force had several times been used against the detainees, causing some casualties; various gases were also used and collective punishment of varying length imposed on the detainees, and he gave precise details in support of his assertions.

I would stress once again that the evidence on ill-treatment is mentioned here, not in order to underline cases of ill-treatment but to illustrate the conditions of physical and psychological strain in which the detainees have to make their defence.

5. To the main reason given by British witnesses for the introduction of the new legislation, namely that it was difficult if not impossible to find witnesses prepared to give evidence in court, the Greek lawyers testifying to the Investigation Party replied that the absence of proof was no justification for the detention of innocent people. There

./.

were only about 30 yards between the police station and the court so that in serious cases the court could ask for a remand for one week, then a further week and so on (under the legislation in existence before the Detention of Persons Law), which made it possible for the police to present an effective case. However, this procedure under the old legislation, which Greek lawyers believed was sufficient, with a few minor changes of detail, to enable the authorities to carry out their responsibilities, was abandoned because the courts often found that there was not even a prima facie case. A Greek witness added - and this was said by several others - that peaceful citizens could no longer be sure that they would not be taken to a detention camp. The lawyer, Lyssiotis, detained in the camp at Pyla said: "I know of many persons who have been persecuted and subsequently acquitted that are now being detained. There are twenty-five such cases in this camp". Another lawyer, M. Jacovides, Mayor of Paphos, cited the case of two pupils aged 15 and 16 from the Paphos gymnasium (secondary school), Ant. Charalambides and Cost. Georghiou who were arrested, tried, acquitted, and on leaving the courtroom were re-arrested immediately and sent to a detention camp (criminal case No. 201 of 1956). Two other schoolboys, P. Charitou and N. Mavronicola, aged 17, were arrested with G. Zimbilos on 1st August 1955 and accused of committing acts of violence against the Government (criminal case No. 1849 of 1955). The Assize Court acquitted them but they were arrested again almost immediately afterwards and detained for more than two years. The following cases were also mentioned: C. Stephanou, teacher at the Paphos gymnasium, who was first placed under preventive detention, then released, re-arrested and sentenced to six months' imprisonment, at the end of which he was released, arrested a third time, and taken to a detention camp where he was still being held at the time of the Investigation Party's visit to Cyprus because, M. Jacovides thought, his wallet had contained a document which might be connected with EOKA activities. Then there was R. Miltiadou who was arrested on 30th August 1956 and accused of attempted murder, and detained in a camp although the charge was withdrawn on 4th January 1957. Then S. Economides, pupil at the Lycée of Ktima, who was arrested on 4th May 1956, tried and acquitted by the Special Court of Nicosia, but re-arrested and interned at the camp at Pyla where he still is to-day. Similarly there was the case of H. Nicolaides, a highly respected doctor, who was arrested on 17th November, 1955, interned on mere suspicion, in the camp of Kokkinotrimithia, without any charge being brought

against him. A long time afterwards he was told that he was suspected of being a member of EOKA. He asked to be brought to trial in order to prove his innocence but his request was refused. M. Nicolaides, who is detainee No. 127, is suffering both mentally and physically from his detention and the closure of his clinic for over two and a half years has ruined him. The recorded evidence of 21st January 1958, page 3 et seq. contains instances, all of which are stated to be drawn from the personal experience of a single lawyer, M. Jacovides. A distinguished British witness, Judge Griffith Williams, stated that there were persons who were detained although they had previously been acquitted by the courts.

One of the two files picked out by MM. Sørensen and Süsterhenn at random from among the ten selected by the British authorities (see above) was that of a detainee who was **first found guilty and then acquitted on appeal.**

6. With regard to the length of the period of detention: (1). Detention is ordered for an unspecified length of time (evidence of Mr. Hayman, the commandant of the camp at Pyla, and Judge Griffith Williams). (2). It is very long. In the case of the camp at Pyla, 1,600 persons in all had been detained up to the time of the visit of the Investigation Party, and at that time it contained about 600 detainees (see report above). Secondly, according to the Commandant of the camp, the average length of detention is between seven and eight months, an average based on the total number of detainees to date. Again, according to the Commandant, with very few exceptions, all the detainees at the time of the Investigation Party's visit have been in the camp for over six months, and most of them came in March 1956 (recorded evidence of 20th January, page 2 et seq.). It thus becomes evident that a very great number of the detainees have been in the camp for nearly two years while some of them are in their third year of detention. The latter number forty-two, according to a statement by the lawyer Lyssiotis (a detainee questioned on 20th January, page 7). The latter also said that nearly all these detainees have appealed to the Advisory Committee, only to receive a uniform printed form stating that the Government could see no grounds for their release while others received no reply at all.

./.

7. With regard to the evidence of M. Partassides, Mayor of Limassol, concerning detention orders for dead or missing persons, it should be noted that this evidence (22nd January) was supported by a detailed memorandum (23rd January) giving the names of such persons and reproducing copies of affidavits; the witness mentioned these orders - issued under Regulation No. 6 and not under Detention of Persons Law - in order to show that, if it was possible to issue detention orders against dead and missing persons on the basis of information supplied by 'informers', how much more easy it was to issue similarly based detention orders for the living and the innocent.

./.

Section C. DEPORTATION

322. Deportation was provided for under Regulations 7 - 17 of "The Emergency Powers (Public Safety and Order) Regulations, 1955" (No. 731) of 26th November, 1955. The text was as follows:

- "7. Deportation orders (1) The Governor may make an Order under his hand (in these Regulations referred to as a "deportation Order") for the deportation of any person from the Colony.
- (2) A deportation Order shall require the person in respect of whom it is made to leave and remain out of the Colony and it may be made subject to any condition which may be specified by the Governor in such Order.
8. Person to leave and remain out of the Colony A person in respect of whom a deportation Order is made shall leave the Colony in accordance with the Order and shall thereafter, so long as the Order is in force, remain out of the Colony.
9. Detention whilst awaiting deportation and whilst being deported A person in respect of whom a deportation Order is made shall be liable, whilst awaiting deportation and whilst being deported, to be kept in custody in such a manner as the Governor may by deportation Order or otherwise direct and all such custody shall be lawful custody.
10. Passage and accommodation The master of a ship about to call at any port outside the Colony and the pilot of any aircraft about to leave for a place outside the Colony shall, if so required by the Governor or by any person authorised by him in that behalf, receive any person against whom a deportation Order has been made on board the ship or aircraft and afford him a passage to that port or place, as the case may be, and proper accommodation and maintenance during the passage.

./.

11. Expenses

(1) Where a deportation Order is made, the Governor may, if he thinks fit, apply any money or property of the person in respect of whom such Order is made in payment of the whole or any part of the expenses of or incidental to the voyage from the Colony and the maintenance until departure of that person.

(2) Except so far as they are defrayed under paragraph (1) of this Regulation any such expenses shall be payable out of the public revenue.

12. Custodian
of
property
of
deportee

The Governor shall have power to appoint by warrant under his hand, any person to be the Custodian (hereinafter in these Regulations referred to as "the Custodian") of the movable and immovable property of any person against whom a deportation Order has been made under these Regulations and who has been deported from the Colony in pursuance thereof (hereinafter in these Regulations referred to as "the deportee") and thereafter the provisions in the Schedule to these Regulations shall apply

Schedule

13. Persons
undergoing
sentence

If a person in respect of whom a deportation Order is made under these Regulations has been sentenced to any term of imprisonment, such sentence shall be served before the Order is carried into effect unless the Governor otherwise directs.

14. Revocation
and
variation
of Order

(1) The Governor by Order may -

(a) at any time revoke any deportation Order;

(b) vary a deportation Order so as to permit the person mentioned therein to enter the Colony and may attach to such permission conditions as to security or otherwise.

./.

(2) Any Order made under subparagraph (b) of Paragraph (1) of this Regulation may be expressed to have effect for the duration of the Order thereby varied or for any lesser period.

(3) As soon as practicable after an Order has been made under this Regulation a copy thereof shall be served upon or sent to the person in respect of whom it is made.

15. Penalties
for breach
of Order

(1) If a person in respect of whom a deportation Order is in force returns or attempts to return to the Colony in contravention of the provisions of the Order, or, having entered the Colony in pursuance of permission given as in Regulation 14 provided, wilfully fails to observe any condition attached to such permission, he shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding one hundred pounds or to both such imprisonment and fine, and to be again deported under the original Order, and the provisions of Regulations 11 and 13 of these Regulations shall apply accordingly.

(2) ~~Nothing~~ in this Regulation shall prevent the making of a deportation Order in accordance with the provisions of these Regulations in consequence of a conviction for an offence under these Regulations."

These Regulations are still in force.

323. Detention in the Seychelles after deportation from Cyprus was provided for under "The Political Prisoners Detention Ordinance, 1956" of 12th March, 1956 (Seychelles, Ordinance No. 1 of 1956). The text was as follows:

./.

- "1. Short title This Ordinance may be cited as the Political Prisoners Detention Ordinance, 1956.
2. Definition In this Ordinance "political prisoner" and "political prisoners" mean any person or persons in respect of whom a warrant of detention has been issued under the provisions of section 3 of this Ordinance.
3. The Governor may order detention of certain persons in the Colony It shall be lawful for the Governor, with the approval of the Secretary of State, to order by warrant under his hand the detention during Her Majesty's pleasure at any place within the Colony of any person deported or brought or sent to the Colony from Cyprus.
4. Warrant under Governor's hand sufficient for detention of political prisoner A warrant issued under the provisions of section 3 of this Ordinance shall be sufficient authority for the Superintendent of Police and all police officers and for any other person duly authorised and empowered by the Governor, whether in the warrant or otherwise, to detain any political prisoner.
5. Custody and escape of political prisoner Every political prisoner detained under the provisions of this Ordinance shall be in legal custody and shall, if he escapes or attempts to escape from the place wherein he is detained or out of such custody, be guilty of an offence.
6. Orders and directions to be carried out Every person having the custody of a political prisoner shall carry out and cause to be carried out all orders and directions made or given by the Governor under the provisions of this Ordinance.

./.

7. Political prisoners may be removed from one island to another
- Any political prisoner may be removed from one island to another island of the Colony under the authority of a warrant signed by the Governor and addressed to the master of any ship or to any person and the person or persons to whom such warrant is addressed shall have power to convey the political prisoner to such island and to deliver him to any person named in the warrant as empowered by the Governor to detain the political prisoner.
8. Custody and expenditure of funds belonging to political prisoner
- (1) It shall be lawful for the Governor to receive any funds belonging or accruing to a political prisoner and to hold such funds for the account of the political prisoner.
- (2) The Governor may authorise expenditure from such funds for the maintenance of the political prisoner or for reimbursement of the Government in respect of sums spent for his maintenance.
9. Communicating with prisoner or aiding prisoner and persons to communicate or aiding escape
- Any person who, without the written authority and permission of the Governor,
- (a) communicates or attempts to communicate with a political prisoner; or
- (b) aids or attempts to aid or permits any political prisoner to communicate with any person; or
- (c) aids or attempts to aid or permits any person to communicate with a political prisoner;
- and any person who aids or attempts to aid or permits a political prisoner to escape or attempt to escape shall be guilty of an offence.
10. No writ of Habeas Corpus or other process to issue
- (1) No writ of Habeas Corpus or other process calling into question the validity of any warrant issued under this Ordinance or the legality of the deportation or detention or the bringing or sending to the Colony of a political prisoner or raising any other matter connected therewith, shall

./.

issue, lie, be allowed or entertained in any Court in the Colony or shall have any force or effect.

No suit, action or other process to lie (2) No suit, action or other process based on or connected with the deportation or detention or the bringing or sending to the Colony of a political prisoner shall lie or be allowed or entertained in any Court in the Colony.

11. The Governor may make orders and give directions (1) The Governor may make orders and give directions with regard to the detention of political prisoners and all matters connected with their detention. Without prejudice to the generality of the foregoing powers, the Governor may make orders and give directions in particular with regard to the following matters:

(a) Visits to political prisoners and the control of visitors.

(b) Parcels, articles and communications emanating from or addressed to political prisoners.

(2) Any person contravening any order made or direction given under this Ordinance shall be guilty of an Offence.

12. No provision to limit interpretation of section 10 Nothing in this Ordinance shall be construed to limit in any way the powers of the Governor to make orders and give directions under the preceding section.

13. Penalties Any person who commits an offence under this Ordinance shall be liable on conviction by the Supreme Court to imprisonment with or without hard labour for a term not exceeding two years or to a fine not exceeding Rs. 1,000 or to both such fine and imprisonment."

./.

This Ordinance is still in force although the detention Order issued by the Governor of the Seychelles on 14th March, 1956, in relation to Archbishop Makarios was subsequently revoked.-

324. On 13th April, 1956, the United Kingdom Permanent Representative in the Council of Europe handed the Secretary-General the following note verbale:

"The United Kingdom Permanent Representative to the Council of Europe presents his compliments to the Secretary-General of the Council and has the honour to convey the following information in accordance with the obligations of Her Majesty's Government in the United Kingdom under Article 15 (3) of the Convention for the Protection of Human Rights and Fundamental Freedoms signed at Rome on the 4th November, 1950.

A public emergency within the meaning of Article 15 (1) of the Convention exists in the following territory for whose international relations Her Majesty's Government in the United Kingdom are responsible.

Cyprus - Certain further emergency powers were brought into operation in the Colony of Cyprus on the 26th November, 1955, owing to the commission of acts of violence including murder and sabotage and in order to prevent attempts at subversion of the lawfully constituted Government.

The United Kingdom Permanent Representative has the honour to state that under legislation enacted to confer upon them powers for the purpose of bringing the emergency to an end, the Government of the Colony of Cyprus have exercised powers to deport persons from the Colony of Cyprus to the Colony of Seychelles; and the Government of the Colony of Seychelles have taken and to the extent strictly required by the exigencies of the situation are exercising powers to detain those persons, which involve derogating in certain respects from the obligations imposed by Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms."

./.

I. THE FACTS ESTABLISHED BY THE COMMISSION

325. The Greek Memorial of 24th July 1956 (Doc. A 28.657), maintained that, although the deportation measures were only exceptionally applied, they were accompanied by other serious measures which were not provided for or even authorised by the terms of the principal Regulations (Order No. 731). It mentioned the case of Archbishop Makarios who was deported on 9th March, 1956, with three other Cypriots and forcibly removed to the Seychelles Islands where he was interned under "The Political Prisoners Detention Ordinance, 1956" issued on 12th March, 1956 (page 33). The arrest of the Archbishop, who was the Ethnarch (National head) of the Greek population aroused the gravest consternation, not only in the island, but throughout the world (page 32).

326. The United Kingdom Counter Memorial of 17th October, 1956, did not contest the facts. It contended that the measures taken against the Archbishop and his three fellow deportees were both justified in fact and in conformity with the Convention. The Orthodox Church in Cyprus, in addition to being the national church, was a political organisation closely connected with the terrorist movement. The Archbishop had at all times refused to express disapproval of the terrorist movement. The only alternatives were to detain him and his companions in Cyprus or elsewhere. For security reasons it was decided to detain them in the Seychelles (para. 102-106 of the Counter Memorial).

327. At the hearing on 17th November, 1956, Chief Counsel for the United Kingdom Government, referring to the Grivas diaries, alleged that Archbishop Makarios had been intimately connected with the terrorist movement, had contributed considerable sums towards a shipment of arms, had failed to condemn the use of violence and murder as political weapons, etc. (Report, Doc. A 30.768, pages 162-167.)

328. Counsel for the Greek Government replied by a brief survey of the Cyprus question and declared that Archbishop Makarios had many times given proof of moderation (ibidem, pages 169-172). The Agent for the Greek Government recalled that the authenticity of the Grivas diary had been disputed by his Government and quoted the statements by Mr. Noël Baker in the House of Commons to show that the Archbishop and the Orthodox Church had always been peaceful elements (ibidem, pages 174-176).

./.

329. On 28th March, 1957, the United Kingdom Agent informed the Sub-Commission by letter that the Colonial Secretary had made on the same day the following statement in the House of Commons:

"On the 20th March I informed the House that Her Majesty's Government accepted the offer of the Secretary-General of the North Atlantic Treaty Organisation to use his good offices for conciliation of the Cyprus question. At the same time I said that if Archbishop Makarios would make a clear public statement calling for the cessation of violence by EOKA a new situation would have been created and Her Majesty's Government would be ready to bring to an end his detention in Seychelles. The Archbishop has now made a statement, copies of which will be available in the Vote Office when I sit down. While Her Majesty's Government cannot regard this statement as the clear appeal for which they asked, nevertheless they consider that in present circumstances it is no longer necessary to continue the Archbishop's detention. I have accordingly instructed the Governor of the Seychelles with the full agreement of Sir John Harding to cancel the orders for the detention of the Archbishop and his three compatriots and to arrange passages from Seychelles by the first available vessel. I must repeat that there can be no question at this stage of their return to Cyprus. In order to promote a rapid return to normal peaceful conditions in Cyprus the Governor is prepared to offer immediately a safe conduct out of Cyprus to the leader of EOKA - Grivas. If he decides to avail himself of this offer the Government of Cyprus will make the necessary arrangements with any member of the Consular Corps in Cyprus who agrees to act for him. This offer of safe conduct is open also to any other foreign nationals who are members of EOKA and are at large in Cyprus. It will be extended to any British subjects who are members of the organisation and still at large provided they give an undertaking not to enter any British territory for so long as the legal State of Emergency continues to exist in Cyprus. I should add, Sir, that Her Majesty's Government cannot accept the Greek Government's interpretation of the United Nations Resolution which as the House will see the Archbishop has adopted in another part of his statement.

./.

There is nothing inconsistent between the terms of that resolution and conciliation by the North Atlantic Treaty Organisation. Finally, I must make it clear that there can be no question of an immediate abolition of the State of Emergency in Cyprus. As and when the Governor of Cyprus considers that it is safe for relaxations of the Emergency Regulations to be made, they will be made and the House, of course, will be informed."

II. THE LEGAL ARGUMENTS OF THE PARTIES

330. According to the Greek Memorial, the detention of Archbishop Makarios and his fellow-deportees "exceeded the powers granted under the Order in Council of 21st November, 1955, which were limited to deportation ..." (page 35). As to the Ordinance enacted by the Governor of the Seychelles the Greek Memorial contended that it put forward no consideration of public danger threatening the Seychelles Islands and that "the belief of the British authorities that they could derogate in this colony from the provisions of Articles 5 and 6 of the Convention was an obvious abuse" (page 36). In his pleading before the Sub-Commission on 16th November, 1956, Counsel for the Greek Government observed that the principal Regulations (Order No. 731), contrary to its provisions in respect of detention, did not stipulate that there should be any "consultative committee to question a person who is to be deported. The deportee has not the slightest opportunity to defend himself" (Report, Doc. A 30.768, page 128).

His contention as to the option to derogate laid down in Article 15 of the Convention applied to deportation.

331. The United Kingdom Counter Memorial relied upon the right of derogation under Article 15 of the Convention. This derogation was duly notified on 13th April, 1956. Although the notice referred only to Article 5 of the Convention, the Agent of the United Kingdom Government considered that it was sufficient for the reasons set out in connection with detention.

The public emergency in Cyprus gave rise to the right of the United Kingdom Government to derogate. The only condition which is relevant here was the condition of necessity. The United Kingdom Government submitted that in the circumstances the detention of the Archbishop and his companions was necessary and that their detention in some territory belonging to the United Kingdom outside Cyprus was strictly required (paragraph 106).

./.

In his pleading before the Sub-Commission on 17th November, 1956, the Agent for the United Kingdom drew attention to the effect of the derogations and contended that Regulation 7 of the principal Regulations (Order No. 731) was not contrary to the Convention because Article 5 of the latter, from which it derogated, contemplated the legality of deportation or expulsion (Report, Doc. A 30.768, page 148).

332. At the end of the hearing of 16th November, 1956, the Greek Government submitted its supplementary conclusions. With respect to deportation it requested the Commission:

... "6. to declare that (...) Regulation No. 7 concerning deportation, (...) together with the use made of these provisions by the Cyprus administrative authorities, (...) contravene Articles 5, 6 and 8 (...) of the Convention;"

As to the United Kingdom Government, it requested the Commission, at the hearing of 17th November, 1956:

... "2. To refuse to make any of the declarations requested in paragraphs 3, 4, 5 and 6 of those conclusions."

(pages 139 and 142-143 of Doc. A 30.768 and page 2 of the Appendix to the same document).

333. The Sub-Commission, in its statement of 8th March, 1957 invited the Parties to appear before it on 28th March in order inter alia to state again their opinion on:

"the legal aspects of the detention and deportation orders with respect to Archbishop Makarios and his companions".

At the hearings on 28th-29th March, 1957, Counsel for the Greek Government mentioned this special character of the functions exercised by Archbishop Makarios in Cyprus. In spite of this "he was arrested and forthwith, without interrogation or examination, deported to the Seychelles" (Report, Doc. A 33.305, page 12).

On the legal aspect, Counsel for the Greek Government stated in substance:

./.

- that the section on deportation in the principal Regulations of 26th November, 1955, clearly constituted a grave violation of the Convention because of the absence of any limit to the discretionary powers of the Governor; that, while Regulation 6 provided that the Governor could not order detention unless he had serious reasons to believe that a person had been concerned in acts prejudicial to public safety and while there was an advisory committee before which the person detained may appear, Regulation 7 on deportation imposed no such restriction on the Governor and provided no possibility of appeal (ibidem, page 17).
- that there had been a flagrant breach of Article 5 of the Convention which was not justifiable by reason of the derogation notified in pursuance of Article 15. Even if it was admitted that there was in Cyprus a public emergency threatening the life of the nation (which was disputed) it could not be considered that imprisonment without trial, without control and without appeal satisfied the requirements of Article 15 (ibidem, page 18).
- that the Commission, in order to assess the relationship between the present situation in Cyprus and the measures protested against, should obtain a first-hand knowledge of the facts through an enquiry on the spot (ibidem, page 19).
- that, since the British Government had maintained that the term "nation" mentioned in Article 15 did not refer to the Commonwealth but to the local community, it might be asked with what right, in the case of the Seychelles, the Governor of the Seychelles might derogate from the Convention because of a public emergency threatening the life, not of the colony of the Seychelles, but of the colony of Cyprus (ibidem, page 20).
- that, apart from Article 5, there was also a breach of Article 6 of the Convention because grave accusations had been made against Archbishop Makarios and the United Kingdom Government, despite his requests, had refused him a trial in accordance with Article 6. If it was against the public interest to hold a trial at Nicosia, it was possible to hold one elsewhere. Neither of the two derogations notified referred to Article 6 (ibidem, pages 21 and 22).

./.

- that, in addition, there was a breach of Article 13 of the Convention which recognised that everyone had the right to an effective remedy before a national authority. It was this right which was refused to the Archbishop. Even supposing that international law did not forbid such a total derogation from Article 13, it must nevertheless be noted that this Article was not mentioned as one of those from which the United Kingdom authorities had derogated. The derogation must therefore be considered as illegal (ibidem, pages 22 and 23).

334. It was for these reasons that the Agent of the Greek Government made the following submissions to the Sub-Commission on 28th March, 1957:

"The Agent of the Greek Government, having revised the conclusions submitted on 16th November, 1956, begs the Sub-Commission to further declare:

1. That by formally accusing Mgr. Makarios and others of participation in acts of violence committed on the island without bringing them before the courts, the British Government has committed a breach of Article 6 of the Rome Convention; that this breach cannot be justified by the exigencies of an emergency as envisaged by Article 15, even if it were admitted that such an emergency exists; and furthermore that no notice of a derogation from Article 6 was sent to the Secretary-General of the Council of Europe;

2. That the Ordinance made by the Government of the Colony of the Seychelles empowering the Governor to order the detention of any person brought to the colony from Cyprus is clearly not justified by a war or public emergency threatening the life of the Seychelles, and that this derogation from Article 5 of the Convention notified on 13th April, 1956, by the British Government cannot therefore be considered to be lawful;

3. That the absence of any effective remedy before a judicial authority against the violation of the freedoms of persons against whom these measures of deportation and detention are taken constitutes a violation of Article 13 of the Convention, which violation cannot be justified by the exigencies of public safety and furthermore was not notified to the Secretary-General." (Doc. A 33.305, page 23).

./.

335. On 29th March, 1957, Chief Counsel for the United Kingdom Government pleaded in substance as follows:

- that Article 6 was only ancillary to Article 5 of the Convention; it provided for a right to trial in respect of the right to personal liberty which was guaranteed by the Convention. If, pursuant to a legal derogation, the latter right had already gone it mattered not that the right to try the issue raised by that right went at the same time. The same applied to Article 13 (ibidem, Doc. A 33.305, page 26).
- that it was common ground that there must exist a public emergency threatening the life of the nation if Article 15 was to be legitimately invoked; it was also agreed that the term 'nation' there referred to is for that purpose the nation in Cyprus, the "collectivité en place". In the present instance, the emergency existed because there was organised activity involving violence directed to overthrow law and order (ibidem, page 26).
- that the right to take measures strictly required by the exigencies of the situation could not be geographically limited to the area of the particular nation threatened. Provided the measures taken were within the extent required by the situation, they might be taken anywhere within the control of the particular contracting Power (ibidem, page 27).
- that, if the Sub-Commission thought it wise and advisable to go and enquire into the facts, the United Kingdom Government would have no objection, but it would be difficult for an enquiry to recapture the extent of the emergency existing in March, 1956 (ibidem, page 27).
- that the necessity for the deporting and detaining must be judged in relation to the persons concerned, to their previous history, to the importance and standing of the Ethnarch as a political and moral leader and to his repeated refusal to invite a cessation of violence (ibidem, page 28).
- that the text of the Ordinance (Ordinance No. 1) enacted by the Governor of the Seychelles was limited in its application to persons coming from Cyprus and operated only in relation to the emergency in Cyprus (ibidem, page 28).

./.

- that, as regards the absence of any right of appeal, the executive authorities had to decide what was required to maintain law and order on security grounds (ibidem, page 28).
- that, with regard to the right to be tried, the object of derogation was precisely to deal with cases where the normal judicial processes were inapplicable because of an exceptional situation (ibidem, page 30).
- that there was no clause in the Convention requiring the Contracting Parties who gave a notification provided for in Article 15, paragraph 3, to specify or state expressly from what particular provision of the Convention they were thereby derogating. It would be alarming if the Contracting Party was required at its peril to specify what Articles were involved in relation to the measures which it had taken. It was by no means easy to see at once what Articles were, or were not, involved (ibidem, page 31).

336. Chief Counsel for the United Kingdom Government consequently invited the Commission to accept the following additional submission of his Government:

"The United Kingdom Government request the European Commission of Human Rights to refuse to make any of the declarations requested in the Conclusions submitted by the Agent of the Greek Government on March 28th, 1957." (ibidem, page 31).

III. OPINION OF THE COMMISSION

337. The Commission was of the opinion that, in considering the conformity with the Convention of the order for the deportation from Cyprus of Archbishop Makarios and three other Greek Cypriots, it was necessary to view the matter in four successive phases. The first phase was the arrest and brief detention of the four men in Cyprus prior to their deportation. The second was their removal from Cyprus and transfer to the Seychelles Islands in pursuance of a deportation Order made under Regulation 7 of Order No. 731. The third was their detention within the Seychelles Islands under Seychelles Ordinance No. 1 of 1956, in respect of which a notice of derogation was given by the Government of the United Kingdom on 13th April 1956. The fourth was the maintenance of the deportation Order in force against the four men after they had been released from detention in the Seychelles on 28th March 1957 and this last phase still continues.

./.

So far as concerned the first phase, the arrest and brief detention of the four men in Cyprus afford no basis for holding that there was any breach of the Convention during that phase. So far as concerned the third phase, the Order for the detention of the four men in the Seychelles having been revoked during the course of the proceedings for a friendly settlement, the Commission, in accordance with the opinion which it had adopted (by seven votes against four votes), as mentioned in Chapter I of Part II of this Report, did not consider that it was called upon to state an opinion on the conformity of their detention in the Seychelles with the provisions of the Convention. Accordingly, it was only with the second and fourth phases of the matter that the Commission needed to concern itself, that is, with the removal of the four men from Cyprus and with the refusal to allow them to re-enter Cyprus after their release from detention.

In examining whether the removal of the four men from Cyprus and the refusal to allow them to re-enter that island were in conformity with the Convention, it was relevant to note that:-

- (a) the Orders for their removal from Cyprus and for their detention in the Seychelles Islands were in lieu of Orders for their detention in Cyprus;
- (b) the Government of the United Kingdom had previously notified a derogation from Article 5 of the Convention in regard to the detention of persons without trial in Cyprus;
- (c) the Commission had expressly found that, having regard to the notice of derogation and to the circumstances existing in that island, the detention of persons without trial in Cyprus was not a measure which violated the Convention; and
- (d) Archbishop Makarios and the other three Greek Cypriots involved were British nationals while both Cyprus and the Seychelles Islands were British territories.

It was with these points in mind that the Commission had examined whether the removal of the four men from Cyprus and the subsequent refusal to allow them to re-enter that island was a breach of Articles 5 or 8 of the Convention, as alleged by the Greek Government.

./.

Article 5, paragraph 1 of the Convention guaranteed to everyone "the right to liberty and security of person" and provided that no one should be deprived of his liberty save in certain enumerated cases and in accordance with a procedure prescribed by law. All the enumerated cases were cases in which the lawful "arrest" or the lawful "detention" of a person was recognised to be a legitimate exception to the right to liberty and security of person. Again, paragraphs 2, 3 and 4 of the Article dealt with the rights of persons who had been "arrested" or "detained". Finally, paragraph 5, which made provision for persons who were victims of a breach of the Article to have an enforceable right to compensation, made this provision only for the victims of an "arrest" or a "detention" in contravention of the Article. It was therefore clear that the "liberty and security of person" guaranteed by Article 5 was essentially the freedom of the person from arrest and detention. The Article did not contain any reference to a right to reside in the territory of the State of which an individual was the national or to a right not to be exiled or deported. On the contrary, one of the authorised exceptions mentioned in paragraph 1 of the Article was the lawful arrest or detention of a person against whom action was being taken with a view to deportation.

Having regard to the many indications that Article 5 dealt essentially with the liberty and security of the person in respect of freedom from arrest and detention, the Commission did not consider that Article 5 could properly be interpreted as including by mere implication either a general guarantee of an absolute right to reside in the national territory, and still less in a particular part of the national territory or of an absolute right not to be exiled or deported.

In this connection, it was to be observed that on this point there was a striking difference between the drafting of Article 9 of the Universal Declaration of Human Rights which read "no one shall be subjected to arbitrary arrest, detention or exile" and paragraph 1 of Article 5 of the European Convention which, as previously stated, referred only to "a right to liberty and security of person" and mentioned only cases of "arrest and detention". Having regard to the fact that Article 9 of the Universal Declaration of Human Rights had been in front of the eyes of those who drew up the European Convention, the omission of any

./.

provision concerning exile in Article 5 of the Convention could not, in the view of the Commission, be regarded as otherwise than deliberate. This view appeared to receive strong confirmation from the fact that in the draft Covenant on Human Rights presented to the United Nations the questions of freedom to reside and freedom from arbitrary exile were dealt with in a special article separately from the question of freedom from arrest and detention.

Article 8, paragraph 1, of the Convention guaranteed to everyone the right to respect for his private and family life, his home and his correspondence, while paragraph 2 excluded any interference with the exercise of this right "except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others". This Article also contained no mention of a right to reside in the territory of the State of which an individual was a national nor of a right of freedom from exile. The Commission was of the opinion that Article 8 could not be properly interpreted as including by mere implication either a general guarantee of an absolute right to reside in the territory of the State of which an individual was a national, and still less in a particular part of the national territory, or of an absolute right not to be exiled.

No other Article of the Convention made mention of a right to reside in the national territory or of a right to freedom from exile and the Commission thought it useful to recall that in a previous case, Application No. 214/56, it had itself expressly said that "the right of an individual to reside in the territory of the state of which he is a national is not, as such, guaranteed by any provision of the Convention". And the Commission had held that insofar as the Application in that case complained of a condition requiring residence abroad, it was incompatible with the provisions of the Convention and inadmissible under Article 27 (2) of the Convention. In that case there was, it is true, a special circumstance in that the individual had himself accepted an obligation to remain out of his country as a condition of his liberation from a long term of imprisonment. But, although the circumstances of that case may have been somewhat different from those of the present case, the broad point remained that the right of an individual to reside in his national territory was not, as such, guaranteed by any provision of the Convention.

./.

Turning now to the particular circumstances of the present case, the deportation of Archbishop Makarios and the three other Greek Cypriots to the Seychelles Islands for detention in those Islands, as had been previously observed, was in lieu of their detention in Cyprus. The detention of the four men in Cyprus itself would have been a measure covered by the notice of derogation given by the United Kingdom Government on 7th October, 1955, with respect to the detention of persons without trial in Cyprus. In these circumstances, the Commission was unable to find that the removal of the four men from Cyprus to another British territory was, as such, a violation of Articles 5 or 8 or any other Article of the Convention.

As to the fourth phase of the matter which still continued, Archbishop Makarios and the three other Greek Cypriots, having been released from detention on 28th March 1957, were not required to reside in the Seychelles. They were then, it seems, free and were still free to go to any British territory other than Cyprus and to any foreign country. The maintenance in force of the deportation Order involved only that they might not at present reside in Cyprus. Nor was it to be overlooked that, if these four men returned to Cyprus, the question of their being allowed to be at liberty might present itself in a different aspect to the Cyprus authorities, and the United Kingdom Government. The right to reside in the national territory, and still less in a particular part of the national territory, not being a right guaranteed as such by any provision of the Convention, the Commission was unable to see in these facts a violation of Articles 5 or 8 or any other Article of the Convention.

The Commission has been asked to pronounce on Article 5 and Article 8 of the Convention. As regards Article 5 it considered, by six votes against three and two abstentions, and as regards Article 8, by eight votes against one and two abstentions, that the above-mentioned facts concerning the deportation of Archbishop Makarios and his companions did not constitute a violation of the Convention.

IV. OPINION BY THE MINORITY

338. Three members of the Commission (MM. EUSTATHIADES and SÜSTERHENN, and Mme JANSSEN-PEVTSCHIN) have been of the opinion that deportation as applied in this case is by its very nature a punishment. Moreover, deportation in other countries is of that nature also.

./.

In France, for example, deportation is considered as a punishment imposed for a crime or political offence (ranking as such immediately after the death penalty), involving personal restraint and loss of civil rights (Art. 7 of the Penal Code), a maximum and irrevocable penalty. Deportation means that the subject is transported and condemned to live the rest of his life in a place determined by law, outside the continental territory of the Republic (Art. 7, Law of 9th September, 1835). If he returns to the territory of the Republic he is condemned, on mere evidence of identity, to penal servitude for life. Offenders have been transported to various places: New Caledonia, Devil's Island, Ile Royale, French Guiana. In the United Kingdom also deportation ("transportation") was the punishment imposed for serious crimes, both political and at common law. It was abolished in 1855 and replaced by penal servitude. It still exists in the U.S.S.R. and a number of its satellite states both as a punishment for crime or political offences and as an administrative measure.

Under French Law as in force at present, and under old English law, deportation is without doubt a punishment, and in fact a severe and defamatory punishment ranking between the death penalty and imprisonment. In the Soviet Union deportation still has this character. The fact that deportation inflicted as an administrative measure is the practice in the Soviet Union and various satellite states can only be considered as showing that the system in those countries is in flagrant contradiction with the fundamental principles of a State founded in law. It cannot in any way serve to justify deportation inflicted as an administrative measure within the field of competence of the Commission of Human Rights.

Deportation as applied in the present case is thus without doubt a form of punishment and its imposition without trial is therefore a breach of Article 6, paragraphs 1 and 2 of the Convention.

But deportation is also a breach of Article 5 of the Convention because it is an infringement of individual liberty, which consists not only in the right not to be detained but also in the right to decide freely where one shall reside and also the right to freedom of movement. Deportation is likewise a violation of Article 8 of the Convention, which lays down that every person is entitled to respect for his private and family life and his home.

./.

To remove a person forcibly from his house, to separate him from his family, his homeland, his profession, his circle of friends and the life of his religious community constitutes interference with the liberty of the individual laid down by Article 5, an interference which in view of its consequences must be regarded as tantamount to detention. The same is true if a person is prohibited from returning to his normal environment, or if his return would expose him to serious punishment depriving him of his freedom. If a person is forcibly removed from his home and separated from his family and prohibited from returning, this is also an infringement of Article 8.

The majority opinion of the Commission, that the Convention does not protect individuals against deportation inflicted as an administrative measure without trial is, in the view of the minority, unwarranted (1).

Briefly, the treatment to which Archbishop Makarios was subjected by the British authorities was as follows: the Archbishop and three other Greek Cypriots were arrested and imprisoned by order of the Governor of Cyprus; they were then taken against their will from Cyprus to the Seychelles Islands; there they were detained by order of the Governor of those islands. This factual situation corresponds with the classical definition of deportation as given in Article 17 of the French law of 9th September, 1835, referred to above.

The fact that the measures taken against Makarios and his three companions were legally in two phases, the first being their expulsion from Cyprus in pursuance of Regulation No. 7 of the "Emergency Powers Regulations, 1955, No. 731" of the Governor of Cyprus, and the second their detention in the Seychelles Islands under the "Political Prisoners Detention Ordinance, 1956" of the Governor of the Seychelles Islands, is of no more than formal significance and in no way affects the de facto situation being seen as a single whole since the Governors are both in the service of the British Government which was responsible for taking these steps. The forced expulsion ./.

-
- (1) In the case of Application No. 214/56, the Commission found that the right of an individual to reside in his national territory was not as such guaranteed by any provision of the Convention. But the facts in that case were entirely different from those in the case of Archbishop Makarios. The applicant was not forcibly expelled from his country, as was Archbishop Makarios; he voluntarily accepted an obligation to reside out of his country as a condition of his release from imprisonment, a release to which he had no legal right.

of the Archbishop from Cyprus and his detention in the Seychelles Islands must also be considered as one and the same measure because the ordinance of the Governor of the Seychelles Islands states expressly that it is to be applied only to persons who have been deported from the colony of Cyprus (Section 3). The responsibility of the British Government for the detention of the Cypriots deported to the Seychelles Islands also emerges from the fact that the Governor cannot give effect to a detention order without the approval of the Secretary of State in London. Moreover, the British Government itself regards the measures taken against Makarios as a single self-same act. This is evident from the Note Verbale sent by the British Government to the Secretary-General of the Council of Europe on 13th April, 1956, informing him of the expulsion of the Archbishop from Cyprus and his detention in the Seychelles Islands; in this Note the British Government expressly referred to derogation from Article 5. The Note contains the following passage:

"The United Kingdom Permanent Representative has the honour to state that under legislation enacted to confer upon them powers for the purpose of bringing the emergency to an end, the Government of the Colony of Cyprus have exercised powers to deport persons from the Colony of Cyprus to the Colony of Seychelles; and the Government of the Colony of Seychelles have taken, and to the extent strictly required by the exigencies of the situation are exercising powers to detain those persons, which involve derogating in certain respects from the obligations imposed by Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms."

That the detention order of the Governor of the Seychelles Islands has since been revoked, whilst the deportation order of the Governor of Cyprus is still in force, does not affect the position that the measures taken against the Archbishop form in fact and in law a single act; nor can it alter the punitive nature of these measures as such. In every system of criminal law in the world there exists the possibility of partially revoking certain penalties without thereby modifying the nature of the original sentence, a sentence which also includes that part of the penalty later revoked.

./.

It is because the measures taken by the two Governors against the Archbishop according to a pre-arranged plan and on the sole responsibility of the British Government constitute in fact and in law a single act that the Commission cannot consider as outside its purview the detention order made by the Governor of the Seychelles Islands.

And even if from a purely formal point of view the division into two phases is accepted, it is impossible to disregard the forcible transfer and banishment from the island which constitutes a violation of the right to individual freedom, the free choice of residence and freedom of movement (Article 5) as well as a violation of the right to respect for private and family life and the home (Article 8).

It should, moreover, be particularly noted that the partial revocation of a measure of restraint applied in one and the same act and without trial and which by its very nature and in the light of the historical development of legal institutions must be regarded as a punishment, cannot efface the violation of Article 6 of the Convention according to which every person has the right to a fair hearing.

In this connection we hold that great importance should be attached to the fact that Regulation No. 7 of the "Deportation Order", far from envisaging any legal action against a measure of deportation, does not even provide for an appeal through administrative channels to the "Advisory Committee" or by any other procedure. Contrary to what may be noted with regard to the detention regulation, a deportation order lies solely within the discretion of the Governor and is subject to no condition: the "Detention Ordinance" of the Governor of the Seychelles Islands expressly stipulates (Section 10):

./.

"No writ of Habeas Corpus or other process calling into question the validity of any warrant issued under this ordinance or the legality of the deportation or detention or the bringing or sending to the Colony of a political prisoner or raising any other matter connected therewith, shall issue, lie, be allowed or entertained in any Court in the Colony or shall have any force or effect. No suit, action or other process based on or connected with the deportation or detention or the bringing or sending to the Colony of a political prisoner shall lie or be allowed or entertained in any Court in the Colony."

Thus every possibility of legal control over measures of deportation or detention is excluded.

That Archbishop Makarios has no local remedy against the Deportation Order of the Governor of Cyprus, against the Detention Order of the Governor of the Seychelles or against the enforcement of these orders also implies a violation of Article 13 of the Convention, which lays down that every person shall have an effective remedy before a national authority.

In view of this legal and factual situation we consider that the Commission must recognise that there has been violation of Articles 5, 6, 8 and 13 of the Convention and must proceed to enquire into the question whether the deportation and detention of Archbishop Makarios notified by the British Government constitute measures which, within the meaning of Article 15, paragraph 1, do not exceed the extent strictly required by the exigencies of the situation.

In enquiring into this matter it should first and foremost be determined whether the possession of the diary of Colonel Grivas, the leader of EOKA, might not of itself have sufficed for the British Government to bring against Archbishop Makarios criminal proceedings which, according to the United Kingdom Government's arguments might have led to his conviction, and whether the fact that no proceedings were brought and that in their stead the Archbishop was deported and kept under detention was not accounted for by considerations of pure political expediency.

Having regard to the fact that in the Soviet Union and many of its satellite States recourse is had on a large scale to deportation without trial, one must, political considerations apart, have the gravest misgivings at the opinion that the

./.

European Convention for the Protection of Human Rights and Fundamental Freedoms contains no guarantee against deportation as practised in this case.

339. MM. DOMINEDO and SKARPHEDINSSON stated at the 14th Plenary Session of the Commission that if they had not participated in the vote taken at the preceding session they would have supported the minority's opinion on this point.

./.

Chapter VII - ALLEGED VIOLATIONS OF ARTICLES 8, 9, 10
and 11 OF THE CONVENTION

340. This Chapter covers a number of measures complained of by the Greek Government which, although they are not all related to each other, are grouped together here since both parties, in their written and oral submissions, have dealt with these measures as a whole, particularly in so far as the legal arguments are concerned.

I. THE FACTS ESTABLISHED BY THE COMMISSION

A. WRITTEN SUBMISSIONS

341. In its Application (Doc. A 37.955, page 10) of 7th May, 1956, its Memorial (Doc. A 28.657, pages 36-44) of 24th July, 1956, and point 6 of its Supplementary Conclusions (Doc. A 30.457, appended to Doc. A 30.768) of 16th November, 1956, the Greek Government denounced various legislative measures enacted by the Cyprus authorities and alleged that these were contrary to the provisions of Articles 8, 9, 10 or 11 of the Convention.

The measures in question concerned:

- (a) Entry and search of premises without warrant;
- (b) Control over burials;
- (c) Censorship of correspondence, the press and speeches;
- (d) Causing disaffection;
- (e) Illegal strikes;
- (f) Prohibition of public processions, meetings and assemblies;
- (g) Closing of schools, and
- (h) Jamming of broadcasts.

342. The relevant legislation criticised by the Greek Government was the following:

./.

(a) Entry and search of premises without warrant

Regulation 67 of "The Emergency Powers (Public Safety and Order) Regulations, 1955" enacted on 26th November, 1955, the text of which is as follows:

"(1) Any police officer or any member of Her Majesty's Naval, Military or Air Forces or any person authorised by the Governor to act under this Regulation may without warrant and with or without assistance and using force if necessary -

(a) enter and search any premises: or

(b) stop and search any vessel, vehicle, aircraft or individual whether in a public place or not, if he suspects -

(i) that such premises, vessel, vehicle or aircraft is being used or has recently been used or is about to be used for any purpose prejudicial to the maintenance of law and order; or

(ii) that any evidence of the commission of an offence against these Regulations or any Law in force for the time being is likely to be found on such premises, vessel, vehicle, aircraft, or individual and may seize any evidence so found including such vessel, vehicle or aircraft.

(2) No woman shall be searched except by a woman."

(b) Control over burials

Regulation 37A of "The Emergency Powers (Public Safety and Order) (Amendment No. 2) Regulations, 1956", inserted on 14th January, 1956, the text of which is as follows:

"Notwithstanding anything in these Regulations or in any Law to the contrary contained, the Governor may, if he is satisfied that it would be in the interest of internal security or of the maintenance of public order so to do -

./.

- (a) direct that the body of any person, who has been killed, or has died of wounds received, as a result of operations by Her Majesty's Forces or by the Police Force for the purpose of suppressing disturbances or of maintaining public order, shall be buried, according to the religious rites of the community to which such person belonged, in such manner, at such time and at such place as the Governor may direct;
- (b) impose such restrictions as he may deem fit as to the time of the burial of the body of any person, not being a person referred to in paragraph (a) hereof, and as to the number of persons attending the ceremony connected with such burial."

(c) Censorship of correspondence, the press and speeches

- (i) Regulation 21 of "The Emergency Powers (Public Safety and Order) Regulations, 1955", enacted on 26th November, 1955, the text of which is as follows:

"(1) Any person on board a ship or aircraft which enters or leaves the Colony (which person is hereinafter in this Regulation referred to as "the traveller") shall, if required so to do by the appropriate officer -

- (a) declare whether or not he has with him any postal packet;
- (b) produce such postal packet which he has with him,

and the appropriate officer may search the traveller and examine or search any article which the traveller has with him for the purpose of ascertaining whether he has with him any postal packet and the appropriate officer shall have power to seize and destroy any such packet which, in his opinion, may contain any matter prejudicial to public safety or public order.

./.

(2) The appropriate officer may go on board any ship or aircraft in any port or airport in the Colony and examine any mail or postal packet therein which he has reason to believe that it may contain any matter prejudicial to public safety or public order and any person having the charge or control of such mail or packet shall, when required so to do by the appropriate officer, produce such mail or packet for examination and the appropriate officer shall have power to seize or destroy any such mail or packet which, in his opinion, may contain any matter prejudicial to public safety or public order.

(3) Without prejudice to the provisions of Regulation 20, the Assistant Postal Censor may examine any mail arriving in the Colony in transit for any other country and may seize and destroy any postal packet therein which, in his opinion, may contain any matter prejudicial to the public safety or public order.

(4) Any person who fails to comply with any requirement under this Regulation shall be guilty of an offence against this Regulation and shall be liable, on conviction, to the penalties provided for in Regulation 75 of these Regulations.

(5) For the purposes of this Regulation "appropriate officer" means the Comptroller or any other person duly authorised by him in this behalf and includes the Chief Communications Censor and an Assistant Postal Censor."

This Regulation was revoked on 8th August, 1957, by "The Emergency Powers (Public Safety and Order), (Amendment No. 4) Regulations, 1957".

(ii) Regulation 22 of "The Emergency Powers (Public Safety and Order) Regulations, 1955", enacted on 26th November, 1955, the text of which is as follows:

"(1) Without prejudice to the provisions of Regulation 29 and subject to any special directions by the Governor, an Assistant Telegraph Censor shall have the powers following:

(a) control of the transmission of any telegram by any Telegraph Authority or Company;

./.

- (b) power to examine every telegram sent or received from any place within or without the Colony and all other powers relating to any telegram;
- (c) power to stop, eliminate any portion of, delay or alter any telegram;
- (d) power to destroy any telegram.

(2) For the purposes of this Regulation "telegram" includes any telephonic message or communication.

(3) This Regulation shall not apply to any telegram sent or received by or on behalf of the Governor or of Her Majesty's Naval, Military or Air Forces."

This Regulation was revoked on 8th August, 1957, by "The Emergency Powers (Public Safety and Order) (Amendment No. 4) Regulations, 1957".

(iii) Regulation 23 of "The Emergency Powers (Public Safety and Order) Regulations, 1955" enacted on 26th November, 1955, the text of which is as follows:

"Subject to any special directions by the Governor the Press and Radio Censor shall have the general direction and control of censorship of all newspapers and all public broadcasting services in the Colony and shall have all the powers of an Assistant Press Censor and an Assistant Radio Censor."

On 31st October, 1956, this Regulation was revoked by "The Emergency Powers (Public Safety and Order) (Amendment No. 13) Regulations, 1956", and replaced by the following:

"Subject to any special directions by the Governor a Press Censor and a Radio Censor shall have the general direction and control of censorship of all newspapers and all broadcasting services in the Colony respectively and in the exercise of these functions shall be directly responsible to the Chief Press and Radio Censor and they shall respectively have all the powers of an Assistant Press Censor and an Assistant Radio Censor."

./.

This Regulation was revoked on 8th August, 1957, by "The Emergency Powers (Public Safety and Order) (Amendment No. 4) Regulations, 1957".

(iv) Regulation 24 of "The Emergency Powers (Public Safety and Order) Regulations, 1955", enacted on 26th November, 1955, the text of which is as follows:

"(1) Subject to any special directions by the Governor, an Assistant Press Censor shall have the powers following:

(a) to require the proprietor of any newspaper printed in the Colony or the person intending to circulate in the Colony any newspaper printed outside the Colony to produce to him for censorship any issue of such newspaper before its publication or circulation, and to give such directions as to the publication or the circulation thereof as he may deem fit;

(b) to suppress the circulation of any issue of any newspaper or issue thereof.

(2) Any person who refuses or fails without reasonable cause to submit any issue of any newspaper to an Assistant Press Censor or neglects to carry out or disobeys any lawful requirement, direction or order of an Assistant Press Censor shall be guilty of an offence against this Regulation and shall be liable on conviction to the penalties provided for in Regulation 75 of these Regulations."

Sub-paragraph (b) of paragraph (1) of this Regulation was amended, on 12th January, 1956, by "The Emergency Powers (Public Safety and Order) (Amendment No. 1) Regulations, 1956", and replaced by the following:

"(b) to suppress the circulation of any newspaper or of any issue thereof."

On 8th August, 1957, this Regulation was revoked by "The Emergency Powers (Public Safety and Order) (Amendment No. 4) Regulations, 1957", and replaced by the following:

"(1) The Governor may by warrant under his hand appoint one or more Press Censors and subject to any special directions by the Governor a Press Censor shall have the powers following:

- (a) to require any person intending to circulate in the Colony any newspaper printed outside the Colony to produce to him for censorship any issue of such newspaper before its publication or circulation, and to give such directions as to the publication or the circulation thereof as he may deem fit;
- (b) to suppress the circulation of any newspaper printed outside the Colony or of any issue thereof.

(2) Any person who refuses or fails without reasonable cause to submit any issue of any newspaper to a Press Censor or neglects to carry out or disobeys any lawful requirement, direction or order of a Press Censor shall be guilty of an offence against this Regulation and shall be liable on conviction to the penalties provided for in Regulation 75 of these Regulations."

- (v) Regulation 25 of "The Emergency Powers (Public Safety and Order) Regulations, 1955", enacted on 26th November, 1955, the text of which is as follows:

"(1) Subject to any special directions by the Governor, an Assistant Radio Censor shall have power to require the person in charge of any broadcasting station in the Colony to produce to him for censorship any item of any programme to be broadcasted and to give such directions regarding any such items as he may deem fit and to suppress the broadcasting of any item of any programme to be broadcasted or give such directions in relation thereto as he may deem fit.

(2) Any person who refuses or fails without reasonable cause to submit any item of any broadcasting programme to an Assistant Radio Censor or neglects to carry out or disobeys any lawful requirement, direction or order of an Assistant Radio Censor shall be guilty of an offence against this Regulation and shall be liable on conviction to the penalties provided for in Regulation 75 of these Regulations "

./.

This Regulation was revoked on 8th August, 1957, by "The Emergency Powers (Public Safety and Order) (Amendment No. 4) Regulations, 1957".

- (vi) Regulation 41 of "The Emergency Powers (Public Safety and Order) Regulations, 1955", enacted on 26th November, 1955, the text of which is as follows:

"(1) The Governor may make provision by Order for preventing or restricting the publication in the Colony of matters as to which he is satisfied that the publication, or, as the case may be, the unrestricted publication thereof would or might be prejudicial to public safety or public order, and an order under this paragraph may contain such incidental and supplementary provisions as appear to the Governor to be necessary or expedient for the purposes of the Order (including provisions for securing that any such matters as aforesaid shall, before publication, be submitted to such authority or person as may be specified in the Order).

(2) Where any person is convicted of an offence against this Regulation by reason of his having published a newspaper, the Governor may by Order direct that, during such period as may be specified in the Order, that person shall not publish any newspaper in the Colony."

- (vii) Regulation 43 of "The Emergency Powers (Public Safety and Order) Regulations, 1955" enacted on 26th November, 1955, the text of which is as follows:

"Any person who publishes any report or statement which is likely to cause alarm or despondence or be prejudicial to the public safety, or the maintenance of public order, shall be liable on conviction to imprisonment for a term not exceeding one year or to a fine not exceeding one hundred pounds or to both such imprisonment and fine."

(d) Causing disaffection

Regulation 58 of "The Emergency Powers (Public Safety and Order) Regulations, 1955", enacted on 26th November, 1955, the text of which is as follows:

./.

"Any person who -

- (a) endeavours to seduce from their duty persons engaged in the Colony in Her Majesty's Service (civil or military) or in the Cyprus Police Force or as a Special Constable or in the performance of any functions in connection with the preservation of public safety or the maintenance of public order or in the maintenance of supplies or services essential to the life of the community or to induce any person to do or omit to do anything in breach of his duty as a person so engaged; or
- (b) endeavours to incite persons to abstain from enrolling voluntarily in Her Majesty's Forces or in the Cyprus Police Force or as a Special Constable or endeavours to prejudice the training, discipline, or administration of any such forces; or
- (c) with intent to contravene, or to aid, abet, counsel or procure a contravention of sub-paragraph (a) or (b) of this sub-regulation has in his possession or under his control any document of such a nature that the dissemination of copies thereof among such persons as aforesaid would constitute such a contravention,

shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding seven years or to a fine not exceeding five hundred pounds or to both such imprisonment and fine."

(e) Illegal strikes

Regulation 61 of "The Emergency Powers (Public Safety and Order) Regulations, 1955", enacted on 26th November, 1955, the text of which is as follows:

"(1) Any person who -

- (a) declares, commences or acts in furtherance of an illegal strike;
- (b) instigates or incites any other person to take part in, or otherwise act in furtherance of, an illegal strike;

./.

- (c) applies any sum in furtherance or support of an illegal strike,

shall be guilty of an offence and shall be liable on conviction to imprisonment not exceeding six months or to a fine not exceeding one hundred pounds or to both such imprisonment and fine.

No prosecution shall be instituted under this Regulation except by, or at the instance of, or with the consent of, the Attorney-General.

(2) With a view to preventing work being interrupted by trade disputes, the Governor, or any person duly authorised by him in that behalf, may by Order make provision -

- (a) for establishing a tribunal for the settlement of trade disputes, and for regulating the procedure of the tribunal;
- (b) for prohibiting, subject to the provisions of the Order, a strike or lock-out in connection with any trade dispute;
- (c) for requiring employers to observe such terms and conditions of employment as may be determined in accordance with the Order to be, or to be not less favourable than, the recognised terms and conditions;
- (d) for recording departures from any rule, practice or custom in respect of the employment, non-employment, conditions of employment, hours of work or working conditions of any persons;
- (e) for any incidental and supplementary matters for which the Governor, or any person duly authorised by him in that behalf, thinks it expedient for the purpose of the Order to provide.

(3) In this Regulation -

"illegal strike" means any strike which has any object other than, or in addition to, the furtherance of a trade dispute, and which is calculated to, or may entail, hardship to the community;

./.

"strike" means the cessation of work by a body of persons employed in any trade or business acting in combination, or a concerted refusal, or a refusal under a common understanding of any number of persons exercising any profession or doing any business to continue to carry on such profession or business;

"trade dispute" means any dispute between employers and workmen, or between ~~workmen and~~ workmen, which is connected with the employment or non-employment or the terms of the employment, or with the conditions of labour, of any person;

"workmen" means all persons employed in agriculture, trade or business whether or not in the employment of the employer with whom a trade dispute arises."

(f) Prohibition of public processions, meetings and assemblies

- (i) Regulation 37 of "The Emergency Powers (Public Safety and Order) Regulations, 1955" enacted on 26th November, 1955, the text of which is as follows:

"(1) The Commissioner of the District may by order prohibit the procession, meeting or assembly of more than five persons, within any town, village or area specified in the order, without the previous permission in writing issued by the Commissioner of the District who may, in granting such permission, impose such terms and conditions as he may see fit:

Provided that nothing in this Regulation contained shall be deemed to apply to -

- (a) any persons who peacefully proceed, meet or assemble together for performing their ordinary religious duties;
- (b) any persons who are members of the same household or who meet or assemble together in private houses for ordinary social intercourse;

./.

(c) any persons who peacefully meet or are assembled together for the purpose of carrying on their occupation, profession, business or trade, unless the Commissioner of the District otherwise directs.

(2) The person or persons to whom the permission in writing of the Commissioner of the District is issued under paragraph (1) hereof shall be responsible for the due observance of all terms and conditions imposed by such permission, and shall, if so required, furnish such security for their observance as the Commissioner of the District may direct.

(3) Any police officer may take such steps and use force as may be reasonably necessary to ensure compliance with this Regulation.

(4) In any proceedings against any person for an offence against this Regulation the burden of proving that a permission has been granted shall lie on such person."

This Regulation was revoked on 8th August, 1957, by the Emergency Powers (Public Safety and Order) (Amendment No. 4) Regulations, 1957.

(ii) The Assemblies, Meetings and Processions Law, Cap. 44 (Proclamation under Section 8 of 26th November, 1955), the text of which is as follows:

"Whereas by section 8 of the Assemblies, Meetings and Processions Law it is provided that the Governor may by Proclamation prohibit generally the holding of any assembly as defined in section 2 of the aforesaid Law) or may prohibit the holding of any assembly at any specified place or on any specified date or during any specified period, or within any specified hours;

And whereas I deem it desirable to prohibit generally the holding of any assembly (other than theatrical or cinematograph performances) within the Colony until further notice;

./.

Now, therefore, in exercise of the powers vested in me by the said section 8 of the Assemblies, Meetings and Processions Law, I, the Governor, do by this Proclamation prohibit generally the holding of any assembly (other than theatrical or cinematograph performances) within the Colony as from 27th November, 1955, until further notice."

(g) Closing of schools

Section 15 of "The Secondary Education Law" (Chapter 205, as amended) of March, 1954, the text of which is as follows:

"If it is shown to the satisfaction of the Governor that -

- (a) the governing body of a secondary school has failed or neglected to comply with the requirements of the Director under the provisions of section 13 of this Law, and that the school is being conducted in conditions detrimental to the health of the teachers or pupils;
- (b) a secondary school is being or has recently been conducted in an inefficient manner or in a manner subversive to good government or social order in Cyprus;
- (c) seditious or disloyal teaching or teaching otherwise of a harmful character morally or socially is being or has recently been imparted in a secondary school;
- (d) the school premises of a secondary school are being or have recently been used for any seditious purpose or any purpose subversive to good government or social order in Cyprus;
- (e) the information supplied by the governing body to the Director under the provisions of sections 6, 7, or 9 of this Law was false or misleading in any material particular,

the Governor may order the Director to strike such secondary school off the Register of Secondary Schools and such school shall thereupon cease to be registered and the certificate of registration issued in respect of such school shall be deemed to be cancelled.

./.

Provided that the Governor may, instead of ordering the Director to strike such secondary school off the Register of Secondary Schools, impose such terms and conditions as to its control, management and conduct as the circumstances of the case may require and any person who acts in contravention of, or fails to comply with any such terms and conditions shall be guilty of an offence and shall be liable to a fine not exceeding fifty pounds."

343. As regards the jamming of Greek broadcasts, the Greek Government alleged that the Cyprus authorities had practised the systematic jamming of Radio Athens (Memorial, page 42). Two annexes, both extracts from "The Times", on jamming were appended to the Application of 7th May, 1956, (Doc. A 28.780, Appendices 104 and 105).

344. The Greek Government quoted numerous instances of the application of the above measures (Memorial, pages 28-43) but added that:

"these aggravations were irrelevant to the literal application of the above-mentioned provisions and that it seemed preferable not to include such documents in the present memorial, but to reserve them for the further application which the Greek Government intended to submit in connection with certain tortures originally mentioned in the preliminary application to these proceedings and with other similar incidents" (ibidem, pages 38-39).

345. In its Counter Memorial of 17th October, 1956, the United Kingdom Government replied as follows:

(a) Entry and search of premises without warrant

While it was admitted that this power existed, it was denied that entry and search had ever been carried out by unauthorised persons or that there had been any cases of violence (paras. 113-115).

(b) Control over burials

It was submitted that this power was necessary as the burial of persons who had been implicated in terrorist activities had been found to be a cause of riotous assemblies. Reference was made to the incident cited in the Greek Memorial of 24th July, 1956 (page 39) when there had been a disturbance at the burial of a certain Mouskos (paragraph 116);

./.

(c) Censorship of correspondence, the press and speeches

The existence of the powers in question was confirmed but it was submitted that they had been exercised on very few occasions. The Counter Memorial stated that telephone communications had been restricted to a limited extent during the four days immediately following the deportation of Archbishop Makarios; that these temporary restrictions extended to trunk telephone calls within Cyprus and that telegrams from Cyprus to Greece were subject to censorship (paras. 119 and 120);

(d) Causing disaffection

It was admitted that this power existed (paragraph 122);

(e) Illegal strikes

It was admitted that the powers conferred by Regulation 61 existed but that there had been very few prosecutions on this count (paragraph 122);

(f) Prohibition of public processions, meetings and assemblies

It was admitted that the powers conferred by Regulation 37 and Cap. 44 of the Assemblies, Meetings and Processions Law existed. The Counter Memorial insisted on the necessity of this measure and cited as example the incident which had occurred on the night of 17th September, 1955, in Nicosia when a crowd of youths had begun to demonstrate and in a matter of minutes the demonstration had developed into a major riot in which the British Institute had been burned down.

Reference was made to the state of tension between the Greek and Turkish Cypriot communities. It was pointed out that care had been taken not to interfere with the freedom of religious worship. As regards the use of firearms, as to which the Greek Government in its Memorial of 24th July, 1956 (page 41) had made a complaint, the United Kingdom Government submitted that firearms were used only in the last resort in the control of riotous assemblies and then only after fair warning (paras. 123-126);

./.

(g) Closing of schools

It was admitted that a number of secondary schools had been struck off the Register by the Governor in the exercise of powers under Section 15 of "The Secondary Education Law" (Chapter 205) as amended by "The Secondary Education (Amendment) Law, 1954", enacted in March of that year. The United Kingdom Government noted that the Governing Bodies of a large number of secondary schools had found it necessary to close these schools on their own initiative not only because of the complete collapse of discipline, but also because of the organisation of the pupils for purposes connected with the EOKA terrorist movement and of their participation in illegal acts. The example was given of the incident on 14th December, 1955, when a grenade thrown from Limassol Gymnasium at a Security patrol had wounded two marines, one of whom had subsequently died.

It was added that schools were now being re-opened (paras. 117 and 118);

(h) The jamming of broadcasts

The facts alleged by the Greek Government were admitted. It was submitted that Athens Radio had continuously conducted a campaign of propaganda and abuse designed to encourage terrorist activities in support of the union of Cyprus with Greece; it had incited the population to acts of disorder and violence and had also broadcasted the contents of EOKA proclamations and other unlawful documents. The United Kingdom Government pointed out that since August, 1954, it had protested on more than twenty occasions to the Greek Government regarding the programmes of Athens Radio which it alleged was under effective control of that Government. The failure of these protests had left the Cyprus Government no alternative but to resort with regret to the practice of jamming broadcasts (paras. 127-131). Specimens of passages from the programmes in question were appended to the Counter Memorial (Annex XIX).

B. ORAL HEARINGS FROM 14th TO 18th NOVEMBER, 1956

346. Counsel for the Greek Government, at the hearing of 16th November, 1956, (afternoon) stated that the facts complained of were a series of emergency legislative measures and in addition the abuse by the Governor of his powers in connection with the closing of schools under the normal legislation. The Greek Government did not complain of that legislation (Doc A 30.768, page 136).

./.

347. The Chief Counsel for the United Kingdom Government, at the hearing of 17th November, 1956 (morning), did not dispute the facts in so far as they concerned the legislation but stated that there were otherwise questions of fact which were of importance in that they brought "what had been done by the Cyprus Government within the grade of necessity contemplated by the second paragraphs of Articles 8, 9, 10 and 11." (Doc. A 30.768, page 159). He referred to the documents submitted in this respect by the United Kingdom Government and to various incidents which had taken place in Cyprus. (Doc. A 30.768, pages 162-163 and 166-167).

Closing of schools

348. As regards the closing of schools, Counsel for the Greek Government did not criticise the law in question but complained of the abuse of powers by the Governor in that respect.

In this connection, the Greek Government alleged that the following incidents had taken place:

- On 15th November, 1955, the commercial college known as the Samuel School, had been closed on the grounds that the staff were no longer able to maintain proper discipline (Memorial, page 39);
- In December, 1955, four secondary schools had their subsidies withdrawn, namely the Pancyprian Lyceum of Larnaca, the Gymnasium of Famagusta, the Lefkoniko High School and the Commercial Lyceum of Pedoulas (ibidem, page 40);
- The Gymnasiums of Limassol, Nicosia and Famagusta had been closed, as well as a number of elementary schools, amounting by the end of February, 1956, to 150 schools with a normal complement of more than 20,000 boys and girls (ibidem, page 40);
- Other schools had been affected, for instance, in May, 1955, the Pancyprian People's Academy for Girls, known as the "Greek School" (ibidem, page 40).

349. Chief Counsel for the United Kingdom Government, in his pleading on 17th November, 1956 (morning), referred to cases where pupils had attacked Security Forces and thrown bombs from a school building, etc. (Doc. A 30.768, pages 162-163 and 166-167). He submitted that these facts justified the measures enacted.

Jamming of broadcasts

350. As the question of jamming was not brought up again by Counsel for the Greek Government and did not reappear in the Supplementary Conclusions of the Greek Government of 16th November, 1956, the Agent for the United Kingdom Government, at the hearing of 17th November, 1956 (morning), stated that he presumed that the Greek Government did not wish to press it (Doc. A 30.768, page 143).

351. The Sub-Commission, at the hearing of 17th November, 1957, put the following question to the Agent of the Greek Government:

"Jamming: Has the Greek Government abandoned the Chapter of its Memorial which refers to the jamming of the Athens Radio?" (Doc. A 30.768, page 180).

352. Counsel for the Greek Government, at the hearing of 18th November, 1956, replied that with regard to the jamming of broadcasts, the Greek Government adhered to the complaints it had made in its Memorial (Doc. A 30.768, page 186).

353. Chief Counsel for the United Kingdom Government, at the hearing of 17th November, 1956 (morning), referred to the Grivas diaries which showed that terrorism was at times being actively supported by outside radio broadcasts (Doc. A 30.768, pages 161 and 162).

354. Counsel for the Greek Government, at the hearing of 18th November, 1956 (morning) stated that the Agent for the Greek Government was not prepared to say whether the quotations from Athens Radio broadcasts given in Appendix XIX of the United Kingdom Counter Memorial were correct or not. He submitted, however, that:

"although it was admitted that the Athens Radio had often commented on events in Cyprus in terms favourable to the Greek population of the island, the Greek Government had always declared that the broadcasting service was in the hands of an independent company, and that the Government was no more responsible for its broadcasts than was the British Government for the Cyprus broadcasts." (Doc. A 30.768, page 183).

II. THE LEGAL ARGUMENTS OF THE PARTIES

The relevant Articles of the Convention

355. At the hearing before the Sub-Commission on 15th-18th November, 1956, the Agent for the United Kingdom Government referred to the Greek Memorial of 24th July, 1956 (page 43 onwards) and to the oral pleading of Counsel for the Greek Government on 16th November, 1956 (afternoon) in which the latter indicated the Articles of the Convention which the measures concerned were alleged to have violated. The Agent for the United Kingdom Government then restated the Greek Government's case as understood by him. This was confirmed by Counsel for the Greek Government.

356. The following list sets out the regulations and other legislation as well as the relevant Articles of the Convention:

- (a) Regulation 67 - Article 8;
- (b) Regulation 37 (A) - Articles 8 and 10;
- (c) Regulations 21 to 25, 41 and 43 - Article 10;
- (d) Regulation 58 - Article 10;
- (e) Regulation 61 - Article 11;
- (f) Regulations 37 and the Assemblies, Meetings and Processions Law - Article 11;
- (g) Section 15 of Secondary Education Law - Article 9.

It should be noted that, as regards the closing of schools, the Greek Government had originally alleged the violation of Article 2 of the Protocol which related to the right of education. Since the United Kingdom Government had not made a declaration in accordance with Article 4 of the Protocol, making Article 2 applicable in Cyprus, Counsel for the Greek Government stated that he was entitled to rely on Article 9 of the Convention which included the right for everyone to manifest his religion or belief by teaching (Doc. A 30.768, page 137).

./.

357. The Greek Government, in its Memorial of 24th July, 1956, admitted that Articles 8, 9, 10 and 11 contained reservations authorising restrictions upon the exercise of the rights guaranteed therein, but it claimed that the measures taken by the Cyprus authorities went beyond those restrictions and that the United Kingdom should therefore have appropriately notified the Secretary-General of the Council of Europe in accordance with Article 15 of the Convention. This had not been done and the illegality of the measures was accordingly established (Memorial, page 44).

358. The United Kingdom Government, in its Counter Memorial of 17th October, 1956, replied, first, that if there had been derogation absence of notice would not render the measures themselves illegal, and, secondly, reliance was placed on the provision of exception contained in each of the four Articles. With regard to these clauses, the Counter Memorial stated that the measures in question were:

"amply covered by necessity in the interests of national security or public safety, for the prevention of disorder or crime, or for the protection of the rights and freedoms of others, which are among the grounds of exception mentioned in the four Articles The measures would have been necessary would have been justified by the exceptions even if there had not been an emergency within the meaning of Article 15 of the Convention. There was, therefore, no derogation from any of the four Articles and the fact that there was an emergency did not convert the measures into derogations and thereby give rise to an obligation to inform the Secretary-General."

359. Counsel for the Greek Government, at the hearing of 16th November, 1956 (afternoon), pleaded that, unlike Article 15 of the Convention, the provisions of exception set forth in Articles 8-11 only covered such limitations on the exercise of these rights as were generally accepted in the normal course of events in a democratic society (Doc. A 30.768, pages 138 and 139).

360. The Agent for the United Kingdom Government, at the same hearing challenged this interpretation and submitted that it would be quite unreasonable to expect a State to wait until the life of the nation was threatened before taking measures to maintain public safety in abnormal times. He referred to the preparatory work on the Convention from

./.

which he deduced that the provisions of exception set forth in Articles 8-11 were not only intended to apply in normal times, since there was mention of "revolutionary intrigues, calls to insurrection and violence" (Doc. A 30.768, pages 150-153).

361. Counsel for the Greek Government, at the same hearing, repeated his argument that the restrictions in Articles 8-11 were "restrictions of a normal character", and challenged the relevance of the passages quoted by the Agent for the United Kingdom Government from the preparatory work.

362. At the end of the hearing of 16th November, 1956, the Greek Government submitted its supplementary Conclusions. With respect to the measures to which this Chapter refers, it requested the Commission:

- ... "6. to declare that Regulations (...) No. 67 concerning powers to enter and search premises, No. 37 A on control of burials, Nos. 21-25 and 41-43 setting up censorship, No. 58 introducing the offence of causing disaffection, No. 61, forbidding political strikes, No. 37 authorising the prohibition of meetings, together with the use made of these provisions by the Cyprus administrative authorities and the closing of secondary and primary schools imposed under ordinary legislation, contravene Articles (...) 8-11 of the Convention."

As to the United Kingdom Government, it requested the Commission, at the hearing of 17th November, 1956:

- ... "2. to refuse to make any of the declarations requested in paragraphs 3, 4, 5 and 6 of those conclusions."

(pages 139 and 142-143 of Doc. A 30.768, and page 2 of the Appendix to the same Document).

III. OPINION OF THE COMMISSION

363. The Commission examined the legislative measures referred to in the complaint of the Greek Government and took into consideration the opinion which it had previously adopted, by 10 votes against 1 vote, that a public emergency threatening the life of the nation existed in Cyprus.

./.

It adopted the opinion, by 10 votes against 1 vote, that the measures taken by the United Kingdom Government were justified for reasons of national security or public safety as set out in paragraph 2 of each of Articles 8, 9, 10 and 11.

364. MM. DOMINEDO and SKARPHEDINSSON stated at the 14th Session of the Commission that if they had participated in the vote taken at the previous Session, they would have supported the Commission's opinion on this point.

365. DISSENTING OPINION BY M. EUSTATHIADES

I would refer to the opinion, which I have already expounded at length that an emergency threatening "the life of the nation" within the meaning of Article 15 of the Convention cannot be shown to exist in Cyprus. But this opinion is without prejudice to the existence or otherwise of circumstances provided for in the second paragraphs of Articles 8, 9, 10 and 11, which cover situations clearly distinct from a public emergency threatening the life of the nation within the meaning of Article 15 and which ipso facto authorise only restrictions to the rights protected by these Articles and not derogations, such as are prescribed by Article 15. Thus if the British Government had introduced only "restrictions" or "conditions" affecting the full enjoyment of the rights protected by Articles 8, 9, 10 and 11, the measures taken would be justified by the requirements of "security", "safety" and "public order". It does not appear, however, that the measures concerned can all be justified by the second paragraphs of Articles 8 to 11, because they are not simply restrictions or conditions affecting the enjoyment of the rights protected by Articles 8 to 11 such as are customarily encountered "in a democratic society" - the criterion adopted by the second paragraphs of those Articles, placing a limit on the restrictions authorised. The measures in question comply with neither that criterion nor that limit.

Thus, if we accept the interpretation placed on Article 9 of the Convention by the Greek Government, we are bound to consider closures of schools, in view of their extent, frequency and duration, as measures exceeding the limits of paragraph 2 (e.g. the closing for about two years of the Paphos Commercial School, for which, cf. the statement by M. Emilianides to the Investigation Party in Cyprus). And above all I consider that the right of search without warrant, conferred on all members of the Army, Navy and Air Force amounts to the suppression, not just the "restriction", of everyone's right to "respect for his private and family life and his home" in accordance with Article 8.

./.

Chapter VIII. DESTRUCTION OF BUILDINGS AND PLANTATIONS
CONSIDERED AS A COLLECTIVE PUNISHMENT

I. THE FACTS ESTABLISHED BY THE COMMISSION

366. Under the heading "occupation or destruction of buildings or plantations", the Greek Government's memorial of 24th July, 1956, complained that the destruction of buildings or plantations appeared to have been ordered as a collective punishment, although Order No. 732 makes no provision for such measures (Greek Memorial, Doc. A 28.657, p. 21).

The following cases were cited:

(a) At Kalopsida, in April, 1956, three properties were seized and demolished. Appendix 21 of the memorial contains an article from the "Cyprus Mail" of 14th April, 1956, where it is stated: ... "in addition to the fine, three properties abutting on the road were ordered to be seized and demolished to prevent them being used again for similar action ...".

(b) At Pedoulas 142 cherry trees in blossom were cut down. A copy of a letter dated 1st May, 1956, from André Loizos to the Greek Consul-General in Cyprus, appears in Appendix 40 of the Greek Memorial. The letter states that the British Authorities "cut down 142 cherry trees in bloom belonging to poor peasants ... and worth more than £10,000. The reason given for cutting down the trees was that bombs had been thrown at English military cars on 19th April last by unknown persons in a district some distance from our village".

(c) In the Famagusta area, 10,000 orange trees were cut down and a number of groves were levelled to the ground with bulldozers. Appendices 41 to 45 of the Memorial refer to this case: the "Cyprus Mail" of 27th May, 1956, reports that a committee of five representatives of the Orange Growers at Famagusta protested to the Assistant Commissioner against the cutting of the orange trees and demolishing of walls surrounding the orange groves, and that the Assistant Commissioner had said that he would try, as far as possible to minimise the damage caused to orange groves. He had told the Committee that what had been done was for the protection of the lives of members of the Security Forces.

./.

He asked them to submit their claims for any damage caused, so that they might be considered by the Commissioner. "The Times" newspaper of 2nd June, 1956, announced that "Army bulldozers levelled sectors of an orange grove lining one of the major military roads near the scene of Wednesday's bomb attack, and there are plans to level all orange groves adjoining the road". Photographs of the orange groves were produced (Appendices 43 to 45).

(d) During a search carried out in Nicosia cemetery, 79 crosses are alleged to have been broken and the tomb of the Patriot Mouskos (1) to have been damaged. Appendix 46 contains a protest from Bishop Anthimos of Kitium which appeared in the newspaper "Ethnos" on 29th June, 1956. Appendix 47 reproduces the official communiqué published on 28th June, 1956, setting forth the reasons why the Greek cemetery was raided. The communiqué states that the cross on Mouskos' tomb was accidentally broken and that damage was also caused by negligence to three other tombstones. A British priest and an Orthodox priest were present during the search, which resulted in the discovery of 51 cartridges. The Government of Cyprus, stated the communiqué, would repair the damage done to the tombstones. Photographs of the site were produced (Appendices 48 to 50).

367. In its Counter-Memorial of 17th October, 1956, (Doc. A 30.235) the United Kingdom Government claimed that the authority for the occupation, requisition and destruction of property is contained in Regulations 44 and 45 of the "Emergency Powers (Public Safety and Order) Regulations, 1955 - No. 731". Such measures may be taken "in the interest of public safety and order" and "for maintaining supplies and services essential to the life of the community".

Furthermore, Regulation 46 provided for payment of compensation. In fact, compensation to the total value of the property was offered to the injured parties and was in most cases accepted.

Although, according to the British Government, it was superfluous to examine the facts, it was stated in the Counter-Memorial that in the three cases at Kalopsida, Pedoulas and Famagusta, mentioned in the Greek Memorial, "the action was taken in order to neutralise sites which had been used persistently as ambush positions from which attacks had been launched on the Security Forces".

./.

(1) The United Kingdom Government calls Mouskos a "terrorist".

Finally, with regard to the search carried out in the Nicosia cemetery, the British Government stated that the Cypriot authorities had long suspected that arms and ammunition were being hidden there. The search, which took place in the presence of the Orthodox priest in charge, led to the discovery of ammunition in graves, including that of Mouskos.

The British Government further asserted that only three crosses were broken, and not 79, as alleged by the Greek Government, and that the Cyprus authorities had undertaken to repair them.

368. At the sitting of the Sub-Commission on 15th November, 1956, one of the Greek Government's Counsel maintained that, apart from cases under Regulation No. 732, "collective penalties - measures to punish a whole community - had been applied: we refer to the curfew and to the description of buildings and plantations". (Doc. A 30.768, p. 71). With regard to the latter measure, the Counsel for the Greek Government stated that he had nothing to add to what had been said in the Greek Memorial. He asked the Sub-Commission to examine the photographs produced, which showed that "these are fruit trees with quite slender trunks; their foliage does not reach to the ground and they cannot for one moment be supposed to have afforded concealment to an attacker". According to Counsel for the Greek Government, "the destruction of these orchards was intended as a collective persecution". (Doc. A 30.768, p. 77).

369. One of the United Kingdom Government's Counsel, at the hearing on 16th November, 1956, stated as follows: (Doc. A 30.768, p. 94)

"My learned opponent asked you to look at certain photographs they have: they are of some destroyed plantations near Famagusta in the Greek annexes 43, 44 and 45 and he was saying, in effect, this cannot have been a destruction of plantations bona fide for the maintenance of order purposes. "Just look at these little trees! They would not conceal a terrorist". That is the form of the factual argument. Well, I daresay the Sub-Commission have personal experience of how men can hide themselves in the circumstances of war, and I daresay if they have knowledge of Cyprus, they would expect an orange grove to have a wind-shield hedge around it, so

./.

that the fact that the leaves do not come low to the ground is neither here nor there. But the short answer to that point is, Sir, that those particular orange groves were used as ambushes for repeated attacks and by the time they had been destroyed, they had been used for attacks which had involved the death of nine people and the wounding of fifty-three people, and I am only taking illustrations, Sir, to indicate how I would submit that a serious enquiry into facts would have to be entered upon before you could reach a conclusion."

II. LEGAL ARGUMENTS OF THE PARTIES

370. The Greek Government's Application contains no complaints of the "occupation and destruction of buildings or plantations". This complaint was first raised in the Greek Memorial, after the Commission had declared the application admissible. The United Kingdom Government, however, raised no objection as to the admissibility of the complaint.

It should also be emphasized that discussion of this matter is outside the scope of Regulation No. 732, 1955, on collective punishment, which was revoked on 19th December, 1956, (cf. chapter IV above).

Lastly, it should be noted that this question is quite distinct from that raised by the Greek Government with regard to the amendment of 4th February, 1957, which will be dealt with in the chapter on legislation introduced since the Greek application was lodged (cf. chapter IX below).

371. As stated above, the Greek Government has claimed that the measures which it criticises were, in fact, collective punishments, although there was no provision for them under Order No. 732.

According to the Greek Memorial, "there has been a growing tendency on the part of the British authorities to destroy, under a pretext of security, buildings and plantations in the neighbourhood of places where attacks have taken place ..." (pages 19-20). This general practice, it was claimed, constituted an abuse. The Greek Government, therefore, dealt with the question together with that relating to another abuse, the curfew (cf. chapter V above).

./.

372. The British Government, for its part, stated in its Counter-Memorial (paras. 76 and 79) that this was a matter relating to rights of property, which fell entirely outside the scope of the Convention. Although the Greek Government had attempted to bring it within the Convention by alleging that the measures taken were a collective punishment, the British Government claimed that none of the measures taken by virtue of the above-mentioned Regulations were in any sense collective punishments and that the examples given were irrelevant to any possible breach of the Convention.

373. In its conclusions of 16th November, 1956, the Greek Government requested the Commission:

- ..."5. to declare contrary to the said provisions the imposition of a curfew and the destruction of buildings or plantations, measures which, although taken under powers conferred by other regulations, are in effect forms of collective punishment, means of pressure, etc.;" (Doc. A 30.768, p. 139 and p. 2 of Appendix).

In its turn, the United Kingdom Government, at the hearing on 17th November, 1956, requested the Commission:

- ..."2. To refuse to make any of the declarations requested in paragraphs 3, 4, 5 and 6 of those conclusions" (Doc. A. 30.768, p. 143).

III. SITUATION AS AT 15th MARCH, 1958

374. Regulations 44/46 of the "Emergency Powers (Public Safety and Order) Regulations - 1955 - No. 731" are still in force.

IV. OPINION OF THE COMMISSION

375. The Commission, by ten votes to one, adopted the following opinion:

The Commission does not regard the incidents mentioned by the Greek Government as constituting collective punishment. It accepts the British Government's submission that the plantations were destroyed for purposes of security. While agreeing that this destruction inflicted considerable losses on the population, the Commission notes that the injured parties received, or could apply for, compensation.

./.

With regard to destruction at the Nicosia cemetery, the Commission's view is that the discovery of munitions in the graves was of itself sufficient justification for opening them. There is some dispute over the number of graves actually damaged, but again the authorities have repaired the broken crosses and the damaged gravestones.

In conclusion, the Commission considers that, quite apart from the question whether some isolated abuses might have been committed - which has not been proved and which in any event does not form part of the Greek Government's case - there could be no question of widespread abusive practice, also in view of the limited number of the facts complained of.

The Commission finds, moreover, that since the Protocol to the Convention has not been extended to Cyprus the British Government cannot be accused of any violation of the right of property which is laid down in Article 1 of that Protocol.

376. MM. DOMINEDO and SKARPHEDINSSON stated at the 14th Session of the Commission that if they had participated in the vote taken at the previous Session, they would have supported the Commission's opinion on this point.

DISSENTING OPINION BY M. EUSTATHIADES

377. The finding of the majority that the Protocol to the Convention has not been extended to the Island of Cyprus, while correct in itself, is not decisive in the present instance. The implied conclusion that the Commission cannot accuse the British Government of any violation of the right to property recognised by Article 1 of that Protocol, does not affect the Greek Government's request, which, in the last analysis, is based not on the Protocol but on the Convention itself. Pursuant to the latter it is the Commission's duty to give its opinion whether the destruction in question, while outside the scope of Order No. 732 of 1955, on collective punishment (revoked on 19th December, 1956), is nonetheless a collective punishment prohibited by the Convention, both under Article 3 and under the reservation concerning respect for "other obligations under international law" in Article 15.

Having said this, I do not think that it would be relevant in the present instance to find that, because no general practice constituting an abuse exists, therefore

./.

there have been no individual cases of abuse. The question at issue is whether, in cases of the destruction of buildings and plantations near the scene of attacks - the cases complained of by the Greek Government - the British authorities have not gone beyond the requirements of security, thus showing that they have been using such measures for purposes of collective persecution. In this connection, in view of the circumstances mentioned by both sides, I hesitate to say that security reasons had no connection with the action taken by the British authorities. On the other hand, in view of the same circumstances, it does not seem to me to be established that the destruction in question was exclusively in the interests of security.

./.

Chapter IX. LEGISLATIVE MEASURES REFERRED TO BY THE GREEK GOVERNMENT AND ENACTED IN CYPRUS AFTER THE LODGING OF THE APPLICATION

I. THE FACTS ESTABLISHED BY THE COMMISSION

378. The new legislation concerned is as follows:

The Emergency Powers (Public Safety and Order) Regulations of 26th November, 1955:

Regulation No. 39 (A) as enacted by Amendment No. 1 of 4th February, 1957 (see Doc. DH/Misc (58) 4, page 39);

Regulation No. 52 (as amended by Amendment No. 16 of 22nd November, 1956, Amendment No. 2 of 28th February, 1957, Amendment No. 3 of 4th April, 1957, Amendment No. 5 of 11th September, 1957, and Amendment No. 1 of 4th May, 1958) (ibidem, page 51);

Regulation No. 52 (A) (as amended by Amendment No. 3 of 4th April, 1957, Amendment No. 5 of 11th September, 1957, and Amendment No. 1 of 4th May, 1958) (ibidem, page 54);

Regulation No. 53 (as amended by Amendment No. 16 of 22nd November, 1956, Amendment No. 3 of 4th April, 1957) (ibidem, page 55);

Regulation No. 53 (A) (as amended by Amendment No. 16 of 22nd November, 1956, Amendment No. 2 of 28th February, 1957, Amendment No. 3 of 4th April, 1957; revoked by Amendment No. 4 of 8th August, 1957) (ibidem, page 57);

Regulation No. 53 (B) (as amended by Amendment No. 16 of 22nd November, 1956, and Amendment No. 3 of 4th April, 1957) (ibidem, page 61);

The Emergency Powers (Amendment of the Criminal Code) Regulations, 1956, of 21st November, 1956 (ibidem, page 103);

The Emergency Powers (Public Officers' Protection) Regulations, 1956, of 24th November, 1956, (as amended by an Amendment of 1st March, 1957) (ibidem, page 109);

The Emergency Powers (Control of Sale and Circulation Publications) Regulations, 1956, of 23rd November, 1956, as amended by an Amendment of 21st December 1956 and revoked by an Order of 4th April, 1957) (ibidem, page 104).

./.

These texts of the laws concerned are not in dispute between the parties.

II. THE LEGAL ARGUMENT OF THE PARTIES

379. Two questions have occurred in respect of such legislative measures:

- (i) whether representations by the Greek Government concerning such measures should be included in the present Application and, if so,
- (ii) whether these measures constituted a violation of the Convention.

380. As regards (i), the Agent of the United Kingdom Government, in a letter of 20th March, 1957, stated that, without prejudice to the application of the Rules of Procedure in future cases and to the due presentation of relevant legal arguments, his Government did not wish to object to the consideration of new regulations by the Sub-Commission. This declaration of waiver by the United Kingdom Government was noted in the Decision of the Sub-Commission of 29th March, 1957, which laid down the time-limits for the Parties to submit pleadings concerning (ii).

The United Kingdom Agent also agreed to keep the Secretary-General informed of any new legislation which was brought into force by the Government in Cyprus or of any modifications to the existing legislation.

The United Kingdom Government was not, however, prepared to give an undertaking, as proposed by the Sub-Commission, not to introduce in the future legislation of a more repressive nature than the existing legislation. The United Kingdom Agent explained that such an undertaking was not possible in practice as the question of its repressive nature must always be a subjective one and, secondly, his Government would not be prepared to give any undertaking which might tie its hands as to the measures necessary to deal with the terrorist activities in Cyprus.

381. As to (ii) the submissions by the Parties and the opinion of the Commission were as follows:

The Emergency Powers (Public Safety and Order) Regulations of 26th November, 1955

III. Regulation No. 39 (A)

382. (a) At the oral hearing on 2nd/3rd July, 1957, the Greek Agent submitted that this Regulation, which provided for the forfeiture and even destruction of a building,

constituted a penalty and was therefore contrary to Article 6 of the Convention which provided that a penalty can only be imposed after a proper trial. The demolition of a building and its contents was more than a security measure. (See also Greek Memorial of 27th May, 1957, Doc. A 34.455, at paragraphs 11 and 12).

Further, the Order made for the application of this Regulation was enacted on 5th February, 1957, to justify one particular measure which was taken on 25th February in respect of acts of terrorism committed before 4th February, 1957. This constituted therefore a breach of Article 7, paragraph 1, of the Convention.

(b) The United Kingdom Agent submitted a Counter-Memorial on 24th June, 1957, to the effect that the Greek submission was not only ill-founded but also formally inadmissible. It was inadmissible because the only relevant provision was Article 1 of the Protocol to the Convention which did not apply to Cyprus. Moreover, the mere existence of a power to order forfeiture or destruction of property could not in itself be a violation of the Convention. This Regulation was a security measure required for the protection of public safety and order and had in fact been applied in only one case, namely by Order of 5th February, 1957.

(c) At the oral hearing on 2nd/3rd July, 1957, the United Kingdom Agent further submitted that there was no question of the provision of a retroactive penalty which might be, as alleged, a violation of Article 7, paragraph 1. Regulation No. 39 (A) did not provide for a penalty and the question of retroactivity could not therefore arise.

OPINION OF THE COMMISSION

(d) The Commission considered the question whether this Regulation constituted a punitive measure and was thereby a violation of Article 6 of the Convention or whether it was solely to be regarded as a possible violation of the Protocol (Article 1) to the Convention.

The Commission was of the unanimous opinion that this Regulation was a security measure and not a punitive measure and did not therefore constitute a violation of the Convention. The Commission noted that the Protocol had not been extended to Cyprus.

./.

383. MM. DOMINEDO and SKARPHEDINSSON stated at the 14th Session of the Commission that if they had participated in the vote taken at the previous Session, they would have supported the Commission's opinion on this point.

IV. Regulations Nos. 52, 52 (A), 53, 53 (A) and 53 (B)

384. The Greek Agent submitted a Memorial on 27th May, 1957, (Doc. A 34.455, at paragraphs 7 to 10 and 13 to 16) to the effect that:

- (i) Amendment No. 16 was intended first to make the death penalty obligatory in all cases where a person was found to be carrying arms without lawful excuse (Regulation 52 (c)) or even where the accused was found to be in the company of another person who was carrying or had in his possession prohibited arms, provided the circumstances gave reasonable grounds for the presumption that the accused intended to, or was about to commit, or had recently committed an offence (Regulation 53 (A) (1)).
- (ii) The Regulations laid down as a crime punishable with imprisonment for life or for a lesser term the mere fact of being found in the company of another person carrying prohibited arms, even if there was no indication as to the participation of the accused in past, present or future punishable acts, as the mere fact of accompanying such person gave grounds for the presumption until the contrary was proved (Regulation 53 (A) (2) and (3)).
- (iii) The above provisions were a violation of Article 6, paragraph 2, according to which "everyone charged with a criminal offence shall be found innocent until proved guilty according to law". It was submitted that the terms of this Article were clearly incompatible with the convictions based upon mere probability of criminal intention; and, even more so, with the placing upon the accused of the burden of proving his good faith, that is to say, that he did not know that his companion was carrying arms as alleged.

./.

(iv) If the United Kingdom Agent should submit that such a violation of Article 6 of the Convention was covered by a notification of derogation which the United Kingdom Government made or could have made under Article 15, the Greek Government would submit that this option of derogation was limited by the condition that it should not be at variance with other obligations arising under international law. The principle that everyone charged with a criminal offence should be presumed innocent was part of the general principles of law recognised by civilised States.

(v) Amendment No. 3 relaxed in some respects the principal regulations but maintained the death penalty for any person convicted of carrying firearms. It also permitted the sentencing to imprisonment for 10 years of any person who consorted with or was found in the company of another person who was carrying a firearm on the sole presumption that he was aware of the circumstances alleged (Regulation 53 (A) (2)). Furthermore, even the imposition of milder sentences was affected by a provision which denied the accused the benefit of such leniency where any information for the offence with which he was charged had been signed before 4th April, 1957.

It was submitted that this option given to the judges of imposing upon an accused a heavier penalty than that which was applicable at the time of the judgment was a violation of Article 7, paragraph 1, of the Convention. This Article, which expressly provided that no heavier penalty may be imposed than that provided for at the time when the offence concerned was committed, implicitly confirmed the rule followed in civilised countries of granting immediately to all accused the benefit of milder sentences laid down in subsequent legislation. (See also record of oral hearing of 2nd/3rd July, 1957, Doc. A 35.254, pages 16 to 18).

./.

- (vi) The carrying of arms and, a fortiori, the possession of arms were regarded as major crimes punishable by death because of the presumption of participation in criminal attempts or crimes against persons or of a breach of the peace. Such presumption of criminal intent was against the principle of presumed innocence. The "reasonable presumption" mentioned in Amendment No. 3 had the effect that a court would require something less than proof. Amendment No. 3 should in this respect be censured as being a violation of Article 6, paragraph 2, of the Convention (see Doc. A 35.254 at page 20).

385. At the oral hearing of the Parties before the Commission on 2nd/3rd July, 1957, the Greek Agent referred to the submission by the United Kingdom Government that Amendment No. 3 which set out a consolidated text of Regulations 52, 53 (A) and 53 (B) was the text in force and accordingly the only text which the Commission or Sub-Commission should consider; that further, the 1956 Amendments could not be considered either in their original form or in the version adopted in February 1957. The Greek Agent submitted that his Government was justified in asking the Sub-Commission to rule whether certain Orders were proper both as they existed at a given time and as subsequently amended. He further submitted that it was the Regulations as such that should be considered and not the question of their application (Doc. A 35.254 at pages 11 and 12).

386. The United Kingdom Agent submitted a Counter-Memorial on 24th June, 1957, (at paragraphs 7 to 15) to the effect that:

- (i) Amendment No. 3 contained certain relaxations in the penalties of the crimes concerned and set out a consolidated text of Regulations 52, 53, 53 (A) and 53 (B) of the principal Regulations. This was the text which was now in force in Cyprus and was therefore the only text with which the Commission of Human Rights should be concerned.
- (ii) The allegations made by the Greek Government in respect of the previous Amendments should not, therefore, be considered by the Commission. Alternatively, they did not constitute violations of Article 6, paragraph 2, as alleged ("Everyone

./.

charged with a criminal offence shall be presumed innocent until proved guilty according to law"). There was no question in these Regulations of the accused being presumed guilty of the offence with which he was charged. The prosecution would, for example, in cases under Regulation 53 (A) (1) have to prove that the accused was consorting with, or was found in the company of another person and that such other person had in his possession, or under his control, firearms, etc. The prosecution would further have to prove the circumstances which raised a reasonable presumption that the accused intended, or was about to act, or had recently acted with another person in a manner prejudicial to public safety or the maintenance of public order.

- (iii) The burden of proof of offences under Regulation 53 (A) (1), (2) and (3) in each case rested on the prosecution. A certain knowledge on the part of the accused could be proved by evidence of "circumstances which raise a reasonable presumption" of knowledge, but the burden of proving such circumstances was on the prosecution and not on the accused.
- (iv) There had been no prosecutions under Regulations 53 (A) (2) or (3) as enacted by Amendment No. 3, 1957, and only two prosecutions under Regulation 53 (A) (1). The mere existence of a measure without any instance of its application could not interfere with the rights of the individual.

387. At the oral hearing of the Parties before the Commission on 2nd/3rd July, 1957, the United Kingdom Agent further submitted that, as to the allegation that Amendment No. 3 constituted a breach of Article 7, paragraph 2, of the Convention, there was no general principle that relaxations in penalties should be applied retroactively. On the contrary, it was common practice, e.g. the Homicide Act of 1957, that reduced penalties should only be applied to offences committed after the passing of the law concerned. Article 7, paragraph 1, of the Convention stated "nor shall a heavier penalty be imposed than the one which was applicable at the time the criminal offence was committed".

./.

OFF. 21

The essential date was the date of the commission of the offence and the provision was concerned with stopping the imposition of heavier penalties and not with the provision of lighter penalties. In any event where an information had been laid before 4th April, 1957, it had in every case been withdrawn and a new information laid subsequently. The Regulation could not therefore be a breach of Article 7, paragraph 1. (See also the United Kingdom Counter-Memorial of 24th June, 1957, at paragraph 15).

OPINION OF THE COMMISSION

388. The Commission's opinion in regard to these Regulations was as follows:

- (i) As regards Regulations 52 and 52 (A), the death penalty was imposed for the offences of discharge of firearms, etc. (Regulation No. 52) and possession of firearms, etc. (Regulation No. 52 (A)). The question was discussed whether the effect of the existing text was to shift the burden of proof from the prosecution to the accused so that it was primarily for the accused to prove his "lawful authority" or "lawful excuse" rather than for the prosecution to prove the intention to commit the crime concerned.

The Commission adopted the opinion by ten votes against one vote (M. Eustathiades) that the burden of proof still remained on the prosecution to establish either the discharge or carrying of arms under the particular Regulation concerned. It was therefore the opinion of the Commission by the same majority, that these Regulations did not constitute a violation of the Convention, in particular of Article 6, paragraph 2.

- (ii) As regards Regulation 53 (A), the question was discussed whether the Commission should give an opinion in respect of this Regulation which had been revoked. The Commission decided by ten votes against one vote not to state an opinion in respect of this Regulation.

./.

389. MM. DOMINEDO and SKARPHEDINSSON stated at the 14th Session of the Commission that if they had participated in the vote taken at the previous Session, they would have supported the Commission's opinion on this point.

390. DISSENTING OPINION BY M. EUSTATHIADES

I consider that the Regulations in question are not in conformity with Article 6, paragraph 2, of the Convention, which embodies the general legal principle that everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. I further consider that the Regulations do not comply with the proviso in Article 15 of the Convention, whereby respect for obligations under international law must in all circumstances be preserved, since the principle of the presumption of innocence is one of those general legal tenets recognised by civilised nations and constitutes one of the bases of international law, both within the meaning of the Statute of the International Court of Justice, Article 38, and in accordance with international case law.

The right to be presumed innocent, enshrined in Article 6, paragraph 2, of the Convention, appears to me to be flouted by the Regulations concerned, whereby guilt is established on the basis of a presumption. Regulation 52 prescribes that anyone charged with carrying arms must himself prove that he did not intend to commit any unlawful act. The law does not say that such person is liable to the death sentence for carriage of arms, but it assumes that his intention was to commit punishable acts, thereby establishing the presumption of criminal intent. Proof of guilt thus becomes more or less automatic, since if the accused cannot prove that he had some "lawful excuse" for carrying arms, he is automatically saddled with criminal intent. This seems to me to run counter to the fundamental rule established by Article 6 of the Convention, which is also one of those general legal principles recognised by civilised nations and a source of obligations under international law.

Lastly, I consider it an extremely serious matter that Regulation 53 (A) should characterise as a crime punishable by imprisonment for life or some lesser term the mere fact of being in the company of a person carrying, or having in his possession, prohibited weapons, even without any evidence of participation by the accused in any

./.

past, present or future offence. A very heavy legal presumption is here involved, and the burden of proof to the contrary lies with the accused, who must show that he was unaware that the person in his company was carrying arms.

V. The Emergency Powers (Amendment of the Criminal Code) Regulations, 1956

391. The Greek Agent submitted a Memorial on 27th May 1957 (Doc. A 34.455 at paragraphs 17 to 21) to the effect that these Regulations provided for a new offence punishable with 3 years' imprisonment, namely that of making any false statement, oral or in writing, or of withholding information which a person may reasonably be required to give to a public official. Such provision made it impossible for an accused to defend himself effectively and violated the protection given by Article 5 of the Convention to the right of liberty and security of a person.

392. The United Kingdom Agent submitted a Counter-Memorial on 24th June 1957 (at paragraphs 18 to 19) to the effect that the Regulations could not be regarded as constituting a breach of Article 5 of the Convention. The allegation that they were so lacking in precision as to constitute a threat to the freedom of individuals was so far-fetched that it did not require further consideration. The requirement that the Attorney-General should give his consent for a prosecution was a normal one designed to ensure that prosecutions were only brought in proper cases. The same requirement appeared, for example, in the United Kingdom Official Secrets Act, 1911, Section 8 of which provided that "a prosecution for an offence under this Act shall not be instituted except by, or with the consent of, the Attorney-General". This requirement in no way operated to the disadvantage of members of the public and did not deprive them of any remedy which they would otherwise have against public officials. The normal civil remedies, such as actions for false imprisonment and malicious prosecution, remained available and were in no way impaired by the above requirement.

393. At the oral hearing of the Parties before the Commission on 2nd/3rd July, 1957, the Greek Agent further submitted that the Regulations were a breach of Article 8 of the Convention regarding the respect for private family life, as the offence of withholding evidence was not subject to any exceptions, e.g. when committed by a close relative of the accused (Doc. A 35.254 at page 6).

./.

394. At the same oral hearing the United Kingdom Agent submitted that the Regulations were not a violation either of Article 5, as originally alleged, or of Article 8 of the Convention. A regulation providing punishment for misleading or obstructing police officers could not be regarded as an interference with private or family life under Article 8. There had in fact only been two prosecutions under this Regulation. In the first, the charge was based on the fact that the accused had falsely informed the police that he had been subjected to threats, and in the second, which was still sub judice, the charge related to the giving of false evidence that another person had written EOKA slogans (Doc. A 35.254 at page 44).

OPINION OF THE COMMISSION

395. The Commission considered the question whether these Regulations violated the Convention on the ground, as alleged by the Greek Government, that their provisions were vague and thereby made it impossible for an accused effectively to defend himself. The Commission noted that the prosecution would still have to establish the possession of information by an accused and that a guarantee against arbitrary prosecutions was given by the requirements for the previous consent of the Attorney-General or the Solicitor-General.

The Commission adopted the opinion, by ten votes, and one abstention (of M. Eustathiades) that these Regulations did not violate the Convention.

396. MM. DOMINEDO and SKARPHEDINSSON stated at the 14th Session of the Commission that if they had participated in the vote taken at the previous Session, they would have supported the Commission's opinion on this point.

VI. The Emergency Powers (Public Officers' Protection) Regulations, 1956

397. The Greek Agent submitted a Memorial on 27th May, 1957, (Doc. A 34.455, at paragraphs 22 to 27) to the effect that the Regulations required that the Attorney-General's leave should be obtained before any prosecution might be instituted against any police officer or against any member of Her Majesty's Forces or against any public official in respect of any offence committed by such persons in the exercise of their duties. These Regulations were a violation

./.

of Article 13 of the Convention according to which "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity". A remedy could not be effective when the instituting of legal redress was subject to discretionary leave by the person who was superior to the public official against whom information was laid.

398. The United Kingdom Agent submitted a Counter-Memorial on 24th June, 1957 (at paragraphs 20 to 21) to the effect that the Regulations did not deprive the individual of his remedies against police officers or against members of Her Majesty's Forces. Further, they did not in any way affect the individual's right to bring civil proceedings, such as acts of false imprisonment, assault, libel or slander. The requirement of the Attorney-General's consent could not therefore be regarded as a breach of Article 13 of the Convention.

In any case, before a violation of Article 13 could be established, it would have to be shown: first, that there had been violations of the Convention; secondly, that individuals had no effective remedy against the offenders because of the refusal by the Attorney-General of his consent to prosecution. Such a case would depend fundamentally on proof of breach of some provision of the Convention other than Article 13. (See Doc. A 35.254 at page 46).

399. At the oral hearing of the Parties before the Commission on 2nd/3rd July, 1957, the Greek Agent pointed out that the period for which a person could be kept in custody after arrest had been extended from 48 hours to a total of 16 days (Doc. A 35.254, pages 27 to 31). He further alleged that the Regulations violated Article 13 of the Convention because they rendered ineffective the several remedies provided for in Cyprus legislation. They impeded the bringing of criminal proceedings which were necessary in order to identify offenders against whom civil proceedings could be taken. (Doc. A 35.254, page 48).

400. At the same oral hearing the United Kingdom Agent submitted that the Regulations did not violate Article 13 of the Convention as alleged. The purpose of this Article was to secure a redress for the injured individual and not to secure the punishment of a criminal. Article 13 provided that a remedy and not a whole series of remedies should be available and it was submitted that civil remedies were fully

./.

available in Cyprus. (Doc. A 35.254, pages 44 to 45). The United Kingdom Agent did not accept the last Greek submission. He said that it was equally necessary to identify a criminal before a prosecution could be brought against him. (Doc. A 35.254, page 56).

OPINION OF THE COMMISSION

401. The Commission considered the question whether these Regulations violated Article 13 of the Convention; in particular, whether Article 13 should be interpreted as to give to an accused all possible criminal and civil remedies against the public officer concerned or whether a civil remedy constituted "an effective remedy". The Commission agreed that Article 13 did not require a State to give individuals the right of criminal prosecution against public officers and that, therefore, these Regulations did not violate this Article of the Convention. At the same time the Commission stated that in giving this opinion it should not be taken as having in any way prejudged the matter raised in Application No. 299/57.

402. MM. DOMINEDO and SKARPHEDINSSON stated at the 14th Session of the Commission that if they had participated in the vote taken at the previous Session, they would have supported the Commission's opinion on this point.

403. M. EUSTATHIADES was of the opinion that the question whether the Regulations were consistent with Article 13 of the Convention should be examined in connection with Application 299/57, in regard to which the arguments of both Parties were more complete, particularly as concerned the notion of "effective remedy" within the meaning of Article 13.

VII. The Emergency Powers (Control of Sale and Circulation of Publications) Regulations, 1956

404. OPINION OF THE COMMISSION

The Commission unanimously decided not to state an opinion regarding these Regulations as the Parties had not submitted pleadings in their respect.

405. MM. DOMINEDO and SKARPHEDINSSON stated at the 14th Session of the Commission that if they had participated in the vote taken at the previous Session, they would have supported the Commission's opinion on this point.

./.

VIII. Derogation under Article 15 of the Convention

406. The Parties also made submissions as to the effect on the above-mentioned measures of the United Kingdom derogation under Article 15 of the Convention.

407. Opinion of the Commission

The Commission, being of the opinion that the measures concerned did not violate the Convention, did not consider it necessary to state any opinion as to the effect of Article 15 of the Convention on such measures.

408. MM. DOMINEDO and SKARPHEDINSSON stated at the 14th Session of the Commission that if they had participated in the vote taken at the previous Session, they would have supported the Commission's opinion on this point.

./.

CONCLUSION

409. As regards the proposals which the Commission, under the terms of Article 31, paragraph 3, of the Convention, may make, the Commission, unanimously, adopted the following statement:

As it follows from the various decisions recorded in the preceding chapters; the question of formulating specific proposals with a view to redressing any breach of the Convention does not arise in the present case.

It has been found, however, that a number of the measures complained of by the Greek Government are only justifiable under the terms of the Convention by the exceptional state of affairs in Cyprus. The Commission is fully aware of the gravity of the situation, also as it has developed since the date when the establishment of the facts by the Sub-Commission was concluded, and the ensuing difficulties with which the British Authorities in Cyprus are confronted. It wishes, nevertheless, to reaffirm that respect of the obligations laid down by the Convention requires that such measures, and in particular detention without trial, are not maintained any longer than necessitated by the exceptional conditions. In this connection the Commission recalls that in deciding not to express an opinion on the legislation concerning corporal punishment and collective punishments the Commission has assumed that this legislation remains revoked.

Furthermore, the Commission wishes to reiterate what has already been stated by the Sub-Commission on several occasions in the course of its attempts to reach a friendly settlement, namely that the full enjoyment of human rights in Cyprus is closely connected with the solution of the wider political problems relating to the constitutional status of the island. Once these political problems have been solved, no reason is likely to subsist for not giving full effect to the human rights and freedoms in Cyprus. On the other hand, as long as these problems remain, it may be feared that a situation will continue to exist in which the rights and freedoms protected by the Convention can only be enjoyed to a partial measure.

In truth, some of the factors which the Commission has found to constitute a public emergency threatening the life of the nation under the terms of Article 15 of the Convention, also seem to be at the root of the wider political difficulties.

./.

It is a matter for consideration whether the introduction of some intermediate and independent element might not hold out some hope of making progress towards overcoming these difficulties. At any rate, the Commission cannot remain indifferent to a situation which for some considerable time already has involved the curtailment of essential human rights and freedoms and has inflicted great sufferings on individual human beings. It therefore wishes to conclude this report by expressing its firm conviction that the Committee of Ministers of the Council of Europe could make no greater contribution to restoring the full and unfettered enjoyment of human rights in Cyprus than by lending its aid in promoting a settlement of the Cyprus problem in all its aspects in accordance with the spirit of true democracy.

Done at Strasbourg, 26th September, 1958. . .

The Director of Human Rights,
Head of the Secretariat of
the Commission:

The President of
the Commission:

(P. Modinos)

(Paal Berg)