

COUNCIL OF EUROPE

EUROPEAN COMMISSION
OF HUMAN RIGHTS

THE GREEK CASE

APPLICATION No. 3321/67 - DENMARK v. GREECE
APPLICATION No. 3322/67 - NORWAY v. GREECE
APPLICATION No. 3323/67 - SWEDEN v. GREECE
APPLICATION No. 3344/67 - NETHERLANDS v. GREECE

REPORT OF THE SUB-COMMISSION

Volume I

Part 1

STRASBOURG

TABLE OF CONTENTS

	<u>Pages</u>
Introduction (paras. 1-5)	1 - 2
<u>PART A - Points at Issue</u> (paras. 6-14)	3 - 11
I. First decision on admissibility (paras. 6-8)	3 - 5
II. Second decision on admissibility (paras. 9-11)	5 - 9
III. Points at issue under the two decisions (para. 12)	9
IV. Submissions before the Sub-Commission (paras. 13-14)	9 - 10
V. Order of presentation (para. 15)	11
<u>PART B - Establishment of the Facts and Opinion of the Sub-Commission</u> (paras. 15-)	12 -
<u>Chapter I - Article 15 of the Convention</u> (paras. 15-)	12 -
A. Issues arising under Article 15 (paras. 16-21)	12 - 14
B. Derogation by a revolutionary government (paras. 22-28)	15 - 17
I. Submissions of the parties (paras. 22-25)	15 - 17
II. Opinion of the Sub-Commission (paras. 26-28)	17
C. Obligation to inform the Secretary-General (paras. 29-47)	18 - 31
I. Requirements of Article 15 (3) - (para. 29)	18
II. Communications addressed by the Government of Greece to the Secretary-General under Article 15 (paras. 30-35)	18 - 25
1) Period from 21st April to 19th September, 1967 (paras. 30-32)	18 - 24
2) Period from 20th September, 1967 to 24th January, 1968 (paras. 33-34)	24 - 25
3) Period from 25th January, 1968 until to-day (para. 35)	25
III. Submissions of the parties (paras. 36-42)	26 - 28
IV. Opinion of the Sub-Commission (paras. 43-46)	28 - 31

./.

	<u>Pages</u>
D. Existence of a "public emergency threatening the life of the nation" on 21st April, 1967 (paras. 47 - 125)	32 - 75
I. Competence to determine the existence of a public emergency (paras. 48 - 50)	32 - 33
II. The elements indicated by the respondent Government as constituting a public emergency on 21st April, 1967 (paras. 51 - 125)	34 - 75
1. The Communist danger (paras. 52-75)	34 - 51
(a) General statements of the parties (paras. 52 - 54)	34 - 38
<u>aa</u> Respondent Government (paras. 52 - 53)	34 - 37
<u>bb</u> Applicant Governments (para. 54)	37 - 38
(b) Evidence before the Sub-Commission (paras. 55-59)	39 - 42
<u>aa</u> Witnesses (paras. 55 - 58)	39 - 42
<u>bb</u> Documents (para. 59)	42
(c) Examination of the evidence by the Sub-Commission (paras. 60 - 75)	43 - 51
2. The crisis of constitutional government (paras. 76 - 92)	52 - 60
(a) General statements of the parties (paras. 76 - 83)	52 - 54
<u>aa</u> Respondent Government (paras. 76 - 79)	52 - 53
<u>bb</u> Applicant Governments (paras. 80 - 83)	53 - 54
(b) Evidence before the Sub-Commission (paras. 84 - 85)	54 - 56
<u>aa</u> Witnesses (para. 84)	54
<u>bb</u> Documents (para. 85)	56
(c) Examination of the evidence by the Sub-Commission (paras. 86 - 92)	56 - 60

	<u>Pages</u>
3. The crisis of public order (paras. 93 - 111)	61 - 68
(a) General statements of the parties (paras. 93 - 97)	61 - 62
<u>aa</u> Respondent Government (paras. 93 - 96)	61 - 62
<u>bb</u> Applicant Governments (paras. 97 - 98)	62
(b) Evidence before the Sub-Commission (paras. 99 - 100)	62 - 64
<u>aa</u> Witnesses (para. 99)	62 - 63
<u>bb</u> Documents (para. 100)	64
(c) Examination of the evidence by the Sub-Commission (paras. 101 - 111)	64 - 68
4. Conclusions of the Sub-Commission (paras. 112 - 125)	69 - 75
(a) The meaning of the term "public emergency threatening the life of the nation" (paras. 112 - 113)	69 - 70
(b) The criteria governing the control of a declaration of public emergency (para. 114)	70
(c) As to the situation on 21st April, 1967 (paras. 115 - 125)	71 - 75
E. The evolution of the situation from 21st April, 1967, to the present time (paras. 126 - 144)	76 - 86
I. General statements of the parties (paras. 126 - 128)	76 - 77
1. Respondent Government (paras. 126 - 127)	76
2. Applicant Governments (para. 128)	77
II. Evidence before the Sub-Commission (paras. 129 - 130)	77 - 78
1. Witnesses (para. 129)	77 - 78
2. Documents (para. 130)	78

	<u>Pages</u>
III. Examination of the evidence by the Sub-Commission (paras. 131-141)	79 - 85
IV. Conclusions of the Sub-Commission (paras. 142-144)	85 - 86
F. Whether the measures taken by the respondent Government were strictly required by the exigencies of the situation (para. 145)	87
G. Whether Articles 17 and 18 of the Convention exclude the present derogations (paras. 146-150)	88 - 89
I. Submissions of the parties (paras. 147-149)	88 - 89
1. Respondent Government (para. 147)	88
2. Applicant Governments (paras. 148-149)	88 - 89
II. Opinion of the Sub-Commission (para. 150)	89
H. Whether the derogations are consistent with other international obligations (paras. 151-154)	90
I. Introduction (paras. 151-153)	90
II. Opinion of the Sub-Commission (para. 154)	90
<u>Chapter II</u> - Articles 5, 6, 8, 9, 10, 11, 13 and 14 of the Convention and Article 3 of the First Protocol	91
A. Introduction (paras. 155-157)	91
B. Article 5 of the Convention (paras. 157-201)	92 - 109
I. Submissions of the parties (paras. 158-168)	92 - 95
1. Applicant Governments (paras. 158-165)	92 - 94
2. Respondent Government (paras. 166-168)	94 - 95
II. Evidence before the Sub-Commission (paras. 169-170)	95 - 96
1. Witnesses (para. 169)	95 - 96
2. Documents (para. 170)	96
III. Examination of the evidence by the Sub-Commission (paras. 171-197)	96 - 107
1. Suspension of constitutional provisions (paras. 171-174)	96 - 99
a) Constitution of 1952 (paras. 171-172).	96 - 97
b) Constitution of 1968 (paras. 173-174).	97 - 99

	<u>Pages</u>
2. Legislation concerning deprivation of liberty (paras. 175-185)	99 - 101
a) Law on the State of Siege (paras. 175-177)	99 - 100
b) Detention under administrative order (paras. 178-182)	100 - 101
3. Practice concerning deprivation of liberty (paras. 183-197)	102 - 107
a) Arrest (paras. 183-188)	102 - 103
b) Detention under administrative order (paras. 189-193)	103 - 106
c) Transfer and confinement to certain localities (paras. 194-196)	106 - 107
d) House arrest (para. 197)	107
IV. Conclusions of the Sub-Commission (paras. 198-201)	108 - 109
C. Article 6 of the Convention (paras. 202-234)	110 - 123
I. Submissions of the parties (paras. 202-203)	110 - 112
1. Applicant Governments (para. 202)	110 - 111
2. Respondent Government (para. 203)	111 - 112
II. Evidence before the Sub-Commission (paras. 204-205)	113
1. Witnesses (para. 204)	113
2. Documents (para. 205)	113
III. Examination of evidence by the Sub-Commission (paras. 206-230)	114 - 121
1. Suspension of constitutional provisions (paras. 206-212)	114 - 115

	<u>Pages</u>
a) Constitution of 1952 (paras. 206-209)	114 - 115
b) Constitution of 1968 (paras. 210-212)	115
2. Courts martial (paras. 213-221) . . .	115 - 117
3. Government action concerning the judiciary (paras. 222-228)	117 - 120
a) Dismissal of 30 judicial officers (paras. 222-225)	111 - 119
b) Council of State (paras. 226-228)	119 - 120
4. Evidence concerning particular trials (paras. 229-230)	120 - 121
IV. Conclusions of the Sub-Commission (paras. 231-234)	121 - 123
D. Article 8 of the Convention (paras. 235-251) .	124 - 128
I. Submissions of the parties (paras. 235-236)	124
1. Applicant Governments (paras. 235-236)	124
2. Respondent Government (para. 237) . .	124
II. Evidence before the Sub-Commission (paras. 238-239)	124 - 125
1. Witnesses (para. 238)	124 - 125
2. Documents (para. 239)	125
III. Examination of evidence by the Sub-Commission (paras. 240-250)	125 - 128
1. Suspension of constitutional provisions (paras. 240-247)	125 - 127
a) Constitution of 1952 (paras. 240-243)	125 - 126
b) Constitution of 1968 (paras. 244-247)	126 - 127

	<u>Pages</u>
2. Further legislation and administrative practice (paras. 248-250)	128
a) Right to respect for one's home (paras. 248-249)	128
b) Family life (para. 250)	128
IV. Conclusions of the Sub-Commission (para. 251).	128
E. Articles 9, 10 and 14 of the Convention (paras. 252-276)	129 - 140
I. Submissions of the parties (paras. 252-253)	129 - 130
1. Applicant Governments (para. 252)	129
2. Respondent Government (para. 253)	130
II. Evidence before the Sub-Commission (paras. 254-257)	130 - 131
1. Witnesses (paras. 254-256)	130 - 131
2. Documents (para. 257)	131
III. Examination of evidence by the Sub-Commission (paras. 258-273)	131 - 140
1. Suspension of constitutional provisions (paras. 258-262)	131 - 135
a) Constitution of 1952 (paras. 258-259)	131 - 133
b) Constitution of 1968 (paras. 260-262)	133 - 135
2. Press censorship (paras. 263-270)	136 - 138
3. Other aspects of Articles 9 and 10 (paras. 271-273)	138 - 140
IV. Conclusions of the Sub-Commission (paras. 274-276)	140
1. Press censorship (para. 274)	140
2. Other aspects of Articles 9 and 10 (paras. 275-276)	140

	<u>Pages</u>
F. Article 11 of the Convention (paras. 277-300)	141 - 148
I. Submissions of the parties	
(paras. 277-278)	141
1. Applicant Governments (para. 277) .	141
2. Respondent Government (para. 278) .	141
II. Evidence before the Sub-Commission	
(paras. 279-280)	142
1. Witnesses (para. 279)	142
2. Documents (para. 280)	142
III. Examination of the evidence by the	
Sub-Commission (paras. 281-295)	142 - 147
1. The suspension of constitutional	
provisions protecting the freedom	
of assembly and association	
(paras. 281-289)	142 - 145
a) Constitution of 1952	
(paras. 281-284)	142 - 143
b) Constitution of 1968	
(paras. 285-289)	143 - 145
2. Further measures affecting the	
freedom of assembly (paras. 290-295)	145 - 147
a) Legislation (paras. 290-292) .	145 - 146
b) Other measures (paras. 293-295)	146 - 147
IV. Conclusions of the Sub-Commission	
(paras. 296-300)	147 - 148

	<u>Pages</u>
G. Article 13 of the Convention (paras. 301-305)	149 - 151
I. Submissions of the parties (paras. 301-302)	149
1. Applicant Governments (para. 301)	149
2. Respondent Government (para. 302)	149
II. Evidence before the Sub-Commission (paras. 303-304)	150
1. Witnesses (para. 303)	150
2. Documents (para. 304)	150
III. Opinion of the Sub-Commission (para. 305)	150 - 151
H. Article 3 of the First Protocol (paras. 306-321)	152 - 158
I. Submissions of the parties (paras. 306-308)	152 - 153
1. Applicant Governments (paras. 306-307)	152
2. Respondent Government (para. 308)	152 - 153
II. Evidence before the Sub-Commission (paras. 309-310)	153
1. Witnesses (para. 309)	153
2. Documents (para. 310)	153
III. Examination of the evidence by the Sub-Commission (paras. 311-318)	154 - 158
1. Provisions of the Constitution of 1968 (paras. 311-316)	154 - 157
2. The present situation (paras. 317-318)	157 - 158
IV. Conclusions of the Sub-Commission (paras. 319-321)	158

	<u>Pages</u>
<u>Chapter III.</u> - Article 7 of the Convention and Article 1 of the First Protocol (paras. 322-329)	159 - 164
A. Submissions of the parties (paras. 322-326)	159 - 162
I. Applicant Governments (paras. 322-324)	159 - 161
1. As to Article 7 of the Convention (paras. 322-323)	159 - 160
2. As to Article 1 of the First Protocol (para. 324)	160 - 161
II. Respondent Government (paras. 325-326)	162 - 163
1. As to Article 7 of the Convention (para. 325)	162
2. As to Article 1 of the First Protocol (para. 326)	163
B. Opinion of the Sub-Commission (paras. 327-330)	163 - 164

- 31 -

List of main documents

<u>Full title</u>	<u>Cited on</u>
Letter of 19th September, 1967, from the respondent Government to the Secretary-General of the Council of Europe (reproduced at Appendix V to this Report).	Letter of 19th September, 1967.
Applications filed on 20th September, 1967, by the Governments of Denmark, Norway and Sweden.	Applications of 20th September, 1967.
Application filed on 27th September, 1967, by the Government of the Netherlands.	Application of 27th September, 1967.
Observations of the respondent Government of 16th December, 1967, on the admissibility of the applications - Appendix to Doc. D 22.004 (English translation by the Council of Europe)	Observations of 16th December, 1967.
Verbatim record of the hearing held before the Commission on 23rd and 24th January, 1968 - Doc. 9205	Hearing of January 1968.
Joint memorial filed by the applicant Governments of Denmark, Norway and Sweden on 25th March, 1968 (Vol. I, unless otherwise quoted)	Memorial of 25th March, 1968.
Memorial filed by the applicant Government of the Netherlands on 25th March, 1968 - Doc. D 23.643 of the Council of Europe.	Netherlands memorial of 25th March, 1968.
Observations of the respondent Government of 27th May, 1968, on the admissibility of the new allegations - Doc. 10.163 (English translation by the Council of Europe)	Observations of 27th May, 1969.
Verbatim record of the hearing held before the Commission on 28th, 29th and 31st May, 1968 - Doc. 10.486	Hearing of May 1968.
Memorial of the respondent Government of 6th July, 1968, on the merits of the case - Doc. 10.683 (English translation by the Council of Europe).	Memorial of 6th July, 1968.
Memorial of the respondent Government of 19th August, 1968, on the merits of the new allegations-Doc. 10954 (English translation by the Council of Europe).	Memorial of 19th August, 1968.

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Full title

Cited as

Verbatim record of the hearing held before the Sub-Commission from 23rd to 27th September, 1968 - Doc. 11.419

Hearing of September 1968.

Memorial of the respondent Government of 15th November, 1968 - Doc. D 27.974 (English translation by the Council of Europe)

Memorial of 15th November, 1968.

Verbatim record of the hearing of witnesses before the Sub-Commission from 25th to 30th November, 1968 - Vol. I (Doc.12.297) and Vol. II (Doc. 12.370).

Hearing of November 1968.

The Undermining of the Greek Nation by Communism (publication filed by the respondent Government on 19th December, 1968).

The Undermining of the Greek Nation.

Verbatim record and minutes of the hearing of witnesses and visits of localities in Athens (10th-20th March, 1969).

Hearing of March 1969.

The Political Situation in Greece from 1944 to the Present - the Communist Danger (reproduced at Appendix V to this Report).

The Political Situation in Greece.

Verbatim record of the hearing held before the Sub-Commission on 9th and 10th June, 1969 - Doc. D 31.344.

Hearing of June 1969.

INTRODUCTION

1. The following is the outline of the present case as submitted by the parties to the European Commission of Human Rights and as later referred to the Sub-Commission set up to deal with this case under Articles 28 and 29 of the Convention on Human Rights.

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

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

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

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

The respondent Government, in its written observations in reply of 16th December, 1967, submitted primarily that the

(1) See paragraphs 30 - 32 of this Report.

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

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

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

5. The present Report, which is submitted to the plenary Commission in accordance with Rule 62 of its Rules of Procedure, was adopted by the Sub-Commission on 4th October, 1969. It contains, with regard to each point at issue:

- a summary of the parties' submissions;
- the facts ascertained by the Sub-Commission, in accordance with Articles 28, paragraph (a), and 29 of the Convention;
- the Sub-Commission's opinion as to whether or not these facts disclose a breach by the respondent Government of its obligations under the Convention.

An account of the Sub-Commission's attempts to reach a friendly settlement is given in Appendix III and a schedule setting out the history of the proceedings before the Commission and Sub-Commission is attached as Appendix IV to this Report.

Part A

POINTS AT ISSUE

I. First decision on admissibility

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

- a state of siege had been declared and Articles 5, 6, 8, 10, 11, 12, 14, 20, 95 and 97 of the Greek Constitution of 1st January, 1952, had been suspended by Royal Decree No. 280 of 21st April, 1967; (2)
- political parties and ordinary political activities had been prohibited and parliamentary elections scheduled for 28th May, 1967, had been cancelled;
- extraordinary courts martial had been established by Royal Decrees Nos. 280 and 281 (3) of 21st April, 1967;
- thousands of persons had been imprisoned for a long period without being brought before a "competent legal authority";
- the right to freedom of expression had been suppressed as was illustrated by an order of the Army Chief of Staff of 14th June, 1967; (4)
- censorship had been applied to the press and private communications;
- many persons had been sentenced by courts martial for their political opinions;
- the right to assemble freely or to associate freely with others had been abolished as was demonstrated by criminal charges and resultant harsh sentences in certain cases.

(1) In these applications, reference was also made to Resolution 346 (1967) of 23rd June, 1967, in which the Consultative Assembly of the Council of Europe expressed "its grave concern at the present situation in Greece and at the many serious reported violations of human rights and fundamental freedoms" and also expressed the wish that the Governments of the Contracting Parties to the Convention on Human Rights "refer the Greek Case either jointly or separately to the European Commission of Human Rights in accordance with Article 24 of the Convention".

(2) The text of the Decree and of the suspended Articles of the Constitution is reproduced in para. 31 below.

(3) The text of Royal Decree No. 281 is reproduced at Appendix ... to this Report.

(4) Reproduced at Appendix ... to this Report.

With regard to the notice of derogation given by the Greek Government under Article 15 of the Convention, the applicant Governments submitted generally that the requirements of paragraph (1) of this Article were not satisfied. The respondent Government had failed to show that the measures concerned were taken in a "public emergency threatening the life of the nation" and that they were "strictly required by the exigencies of the situation". The applicant Governments also complained that the respondent Government had not fulfilled its obligation under paragraph (3) of Article 15 to keep the Secretary General of the Council of Europe "fully informed of the measures it has taken and the reasons therefor".

7. The respondent Government, in its observations of 16th December, 1967, submitted that the Commission was not competent to examine the applications. The new Greek Government was the product of a revolution and, although a revolutionary Government was bound by the international obligations entered into by its predecessors, the actions by which this revolutionary Government maintained itself in power - and which were also the original objects of the revolution - could not logically be subject to the control of the Commission. Reference was made in this connection to the Turkish revolution of 1960 and to the attitude adopted by the applicant Governments in the Turkish case in comparison with their attitude in the present case.

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

Finally, the respondent Government quoted Resolution 351 (1967) of the Consultative Assembly of the Council of Europe, according to which the Assembly held itself ready "to make a declaration at the appropriate time on the possibility of the suspension of Greece from, or her right to remain a Member of, the Council of Europe".(1) The Government submitted that this Resolution constituted an anticipated condemnation of Greece by the Assembly and considered that this was bound to influence the Commission unfavourably and seriously to affect its independence in the examination of the present case.

(1) This Resolution had been adopted on 26th September, 1967. See also page 3, footnote 1, above.

8. By its decision of 24th January, 1968 (1), the Commission declared the applications admissible.

In particular, it found that it was competent to examine the acts of governments also in political situations of an extraordinary character, such as after a revolution. In connection with the proceedings in the Consultative Assembly, the Commission further observed that, in the exercise of its functions under Article 19 of the Convention, it was limited to a consideration of the substance of the case-file before it and that it thus acted in complete independence from any outside body.

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

The Commission further stated that the provisions of Article 27, paragraph (2), of the Convention did not apply to applications lodged by Governments. It followed that the question whether or not the applications were ill-founded related solely to the merits of the case. Consequently, the effects of derogations made by the Greek Government under Article 15 of the Convention could not be considered at the stage of admissibility. The Commission was bound therefore to reserve for an examination of the merits the question whether the measures and practices complained of were or were not justified under Article 15.

II. Second decision on admissibility

9. By their joint memorial of 25th March, 1968, the first three applicant Governments, referring to a reservation made in their applications of 20th September, 1967, extended their original allegations to Articles 3 and 7 of the Convention and Articles 1 and 3 of the First Protocol. In the memorial, their written observations of 13th May and at the hearing before the Commission on 28th, 29th and 31st May, 1968, they stated in particular that :

- as regards Article 3 of the Convention, political prisoners had in a number of cases been tortured or subjected to inhuman or degrading treatment by police officers acting under the authority of the respondent Government;

(1) See Appendix I to this Report.

- as regards Article 7 of the Convention, Article 1 of Constitutional Act Eta (1) of 11th July, 1967, provided penalties for acts which did not constitute criminal offences at the time when they were committed;
- as regards Article 1 of the First Protocol, there was a violation resulting from the provisions for confiscation of property in Article 2 of Constitutional Act Eta (1);
- as regards Article 3 of the Protocol, there was a violation resulting from the respondent Government's failure to hold free elections.

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

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

- that they constituted an abuse of the procedure provided for by the Convention in that they pursued political ends;
- that the issues before the Commission were at the same time under discussion in the Consultative Assembly of the Council of Europe (2) and this prevented the Commission from considering the case in the proper atmosphere;
- that the new allegations should have been submitted as new applications; that they should have been addressed to the Secretary General of the Council of Europe and not to the Commission's Secretary;
- that, in accordance with Article 15, the respondent Government had validly derogated from certain of its obligations under the Convention.

(1) See Appendix ... to this Report. (Constitutional Acts submitted by the respondent Government). The Act was then cited by the applicant Governments as Act "G".

(2) Cf. paragraphs 6 and 7 above.

As regards the particular Articles invoked by the first three applicant Governments, the respondent Government also submitted that the new allegations under Article 3 of the Convention were manifestly ill-founded. It further argued that they should be rejected on the ground of non-exhaustion of domestic remedies. In this respect the Government stated that no "administrative practice" of torture or ill-treatment of prisoners existed in Greece and, further, that effective remedies which were available under Greek law had not been exhausted.

The respondent Government also submitted, with regard to the new allegation under Article 7 of the Convention, that the penal provision in Article 1 of Constitutional Act Eta had no retroactive effect and, further, that it had not so far been applied.

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

Finally, with regard to the allegation under Article 3 of the Protocol, the respondent Government submitted that the obligation to hold elections "at reasonable intervals" had not been violated. Articles 53 and 57 of the draft Constitution provided for parliamentary elections. In any case, the Government's position was justified under Article 15 of the Convention.

11. By its decision of 31st May, 1968 (1), the Commission declared the new allegations admissible.

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

(1) Appendix II to this Report.

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

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

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

With regard to the same allegations, the Commission further referred to its finding in its decision of 24th January, 1968, that a petition under Article 24 could not be rejected in accordance with Article 27, paragraph (2), as being manifestly ill-founded. The Commission added that neither could the present allegations be rejected on the ground that no prima facie proof had been established by the three applicant Governments.

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

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

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

III. Points at issue under the two decisions on admissibility

12. Consequently, under the Commission's decisions of 24th January, 1968, on the admissibility of the original applications (set out under I. above) and of 31st May, 1968, on the admissibility of the new allegations (set out under II. above), the present Sub-Commission was called upon to ascertain, in accordance with Articles 28, paragraph (a), and 29 of the Convention, the facts with regard to the following issues:

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

IV. Submission before the Sub-Commission

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

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

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

14. During the course of the proceedings before the Commission and Sub-Commission, evidence has also been given which appears to be relevant under Article 2 of the Convention (in particular, alleged shooting of MM. Chalkidis and Ellis) and under Article 2 of the First Protocol (alleged exclusion of political opponents of the Government from academic education by Legislative Decree

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No. 93 of 16th January, 1969). However, no allegations were made expressly under either of these Articles by the applicant Governments and no specific reference was made to them by the Commission in its two decisions on admissibility. Consequently, the above evidence has been dealt with in this Report only under other relevant provisions, namely Article 3 of the Convention (evidence concerning the cases of MM. Bekrodimitris, Chalkidis, Ellis, Mandilaras, Palcologos and Tsarouchas) and Article 10 of the Convention (Legislative Decree No. 93).

V. Order of presentation

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

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

The Sub-Commission has found it convenient to follow in its present Report the procedure adopted in the First Cyprus Case (1) and to deal first with the issues arising under Article 15 of the Convention. The reason for this is that the invocation of Article 15 by the respondent Government has the character of a general defence under the Convention of acts done and measures adopted on and after 21st April, 1967, and may therefore properly be given priority.

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

(1) See, in particular, the Commission's Report on Application No. 176/56 (Greece v. United Kingdom) Vol. I, page 103.

Part B

ESTABLISHMENT OF THE FACTS AND OPINION OF THE SUB-COMMISSION

CHAPTER I - ARTICLE 15 OF THE CONVENTION

A - Issues arising under Article 15

16. Article 15 of the Convention provides:

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

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

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

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

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

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

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

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

(b) whether there was on 21st April, 1967, and is still, a public emergency in Greece threatening the life of the nation;

(c) whether the measures taken by the respondent Government under the notice of derogation were, and are, strictly required by the exigencies of the situation;

(d) whether Article 15, read together with Articles 17 and 18 and the Preamble, excludes the present derogations on the ground that they are

- aimed at the destruction of rights and freedoms set forth in the Convention or at their limitation to a greater extent than is provided for in the Convention; or

- applied for purposes other than those for which the restrictions permitted under Article 15 have been prescribed;

(e) whether the measures taken by the respondent Government under the notice of derogation are consistent with its other obligations under international law;

(f) whether the respondent Government has kept the Secretary-General of the Council of Europe fully informed of the measures it has taken and the reasons therefor.

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

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

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

(1) See paragraphs 22-28 and 29-46 below.
(2) Paragraph 145.
(3) Chapters II and III.

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

I. Submissions of the parties

1. Respondent Government

22. The respondent Government, in its original submissions on the admissibility of the applications (1), had contested the competence of the Commission on the ground that it could not control the actions by which a revolutionary government maintained itself in power. A revolution created such a disturbance in the life of a state that it seemed meaningless to try to assess the actions of the revolutionary government by the criteria which applied in the case of a simple "public emergency threatening the life of the nation" within the meaning of Article 15. At the same time, the respondent Government had also submitted that certain considerations under Article 15, in particular, concerning the government's "margin of appreciation", applied a fortiori to a revolutionary government.

23. In the subsequent proceedings before the Commission (2) and Sub-Commission (3), the respondent Government generally invoked Article 15 as a justification of the measures it had taken. It maintained that the form of the government concerned, in particular whether or not it was democratic, was a domestic question and irrelevant under Article 15. (4)

With regard to its status, both under international and national law, the respondent Government further pointed out that it had been diplomatically recognised by the applicant Governments (5) and that a new Greek Constitution proposed by the revolutionary Government had been adopted by the people at a referendum on 29th September, 1968. (6)

(1) Observations of 16th December, 1967.

(2) Preliminary observations of 15th May, 1968 - Doc. D.10.017 (English translation by the Council of Europe) - page 17 (No.5).

(3) Memorial of 6th July, 1968.

(4) Hearing of September, 1968, pages 270 and 279.

(5) Ibidem, page 270.

(6) Page 20 of the brochure "The Political Situation in Greece from 1944 to the Present" (cf. Appendix V to this Report).

2.- Applicant Governments

24. The applicant Governments first referred to the statement made by the respondent Government at the admissibility stage that it was not a constitutional but a revolutionary Government. They observed in reply that the Convention did not distinguish between legal and illegal governments and that the Commission was not called upon "to state an opinion on the revolution" (1). However, with regard to Article 15, a revolutionary government could not invoke an "emergency situation, which they themselves created, as a justification for derogating from the Articles of the Convention in order to remain in power". (2)

25. Following the Commission's decision by which the applications were declared admissible, the applicant Governments also submitted that Article 15 was designed to protect a "democratically organised state with a constitutional government" and that it was consequently relevant under this Article "whether the measures of derogation have been taken by the legally established authorities in order to protect the democratic institutions". (3)

They further referred to the respondent Government's (4) statement that, following the judgment of the European Court of Human Rights in the Lawless Case, it was now accepted, as regards the definition of "public emergency threatening the life of the nation" within the meaning of Article 15 of the Convention, that the threat must derive from revolution or subversive action against the existing order, or from collective acts of violence. In the opinion of the applicant Governments,

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- (1) Hearing of January, 1968, pages 6 and 7.
 - (2) Hearing of September, 1968, page 155; hearing of June, 1969, page 114.
 - (3) Memorial of 25th March, 1968, pages 77-79; hearing of September, 1968, pages 153 and 256.
 - (4) Memorial of 6th July, 1968, page 48.

it resulted from this statement that the respondent Government, being a revolutionary Government, fell itself under the category "revolution or subservise-action" against which the constitutional Greek Government had the right to protect itself under Article 15.(1) It also followed from the respondent Government's own submissions at the admissibility stage that its acts of revolution were by their very nature alien to the scope and principles laid down in Article 15. (2)

II. Opinion of the Sub-Commission

26. As stated by the Commission in its decision of 24th January, 1968, on the admissibility of the present applications, the Commission is competent to examine the acts of governments also in political situations of an extraordinary character, such as after a revolution. In the same decision, it is noted that, according to the respondent Government's own submissions, the fact of a revolution does not absolve the State concerned from its obligations under the Convention.

27. On the other hand, a revolutionary government established in a High Contracting State, and recognised as representing this State in international relations, is in principle entitled to invoke Article 15 where the conditions laid down in this Article are fulfilled.

28. It remains to be considered whether such derogation is excluded on the ground that it is

- aimed at the destruction of rights and freedoms set forth in the Convention or at their limitation to a greater extent than is provided for in the Convention; or
- applied for purposes other than those for which the restrictions permitted under Article 15 have been prescribed.(3)

This question will be examined in paragraphs 146 - 150 below.

(1) Hearing of September, 1968, page 151.

(2) Memorial of 25th March, 1968, page 44; hearing of September, 1968, pages 141-143; hearing of June, 1969, pages 101-105, 108.

(3) Cf. paragraph 18 (d) above.

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

I. Requirements of Article 15, paragraph (3)

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

II. Communications made by the Government of Greece to the Secretary-General under Article 15

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

30. By letter of 3rd May, 1967, (1) the respondent Government, referring to Article 15, paragraph (3), of the Convention, informed the Secretary-General of the Council of Europe "that, by Royal Decree No. 280 of 21st April last, the application of Articles 5, 6, 8, 10, 11, 12, 14, 20, 95 and 97 of the Greek Constitution has been suspended in view of internal dangers which threaten public order and the security of the State".

The Government pointed out "that the suspension of the application of the aforementioned Articles of the Greek Constitution does not prejudice paragraph (2) of Article 15" and further stated that "Greece will revert to normal political and parliamentary life as soon as circumstances will allow". The Secretary-General would be informed, in accordance with paragraph (3) of Article 15, "of the date when these exceptional measures cease to operate and the provisions of the European Convention on Human Rights are again fully executed".

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(1) Doc. 18.312 (English translation by the Council of Europe). The full text of this letter is reproduced at Appendix V to this Report.

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

The text of Royal Decree No. 280(1) was as follows:

"Article 1

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

Article 2

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

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

Article 3

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

Article 4

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

The provisions of the Constitution of Greece(2) which were suspended by Article 2, paragraph 1, of the above Decree, stated as follows:

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- (1) Doc. 18.804 (English translation by the Council of Europe).
- (2) As reproduced in Annex A of the Netherlands' application of 27th September, 1967. The French text received from the Greek Permanent Representative is reproduced at Appendix I to the present Report (page).

"Article 5

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

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

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

Article 6

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

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

Interpretation Clause

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

Article 8

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

Article 10

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

Article 11

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

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

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

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

Article 12

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

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

Article 14

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

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

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

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

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

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

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

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

Article 20

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

Article 95

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

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

Article 97

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

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

32. By letter of 19th September, 1967⁽¹⁾, the Greek Permanent Representative, referring to his letter of 3rd May,⁽²⁾ provided the Secretary-General, "in so far as considerations of State security permit at this stage, and in the spirit of Article 15 of the Convention, with certain details regarding the public emergency which threatened the life of the nation". In this connection, the letter reviewed the political and social situation in Greece between July, 1965 and April, 1967⁽³⁾.

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

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

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

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(1) Doc. D20.530 (English translation by the Council of Europe). The full text of this letter is reproduced at Appendix V to the present Report.

(2) See paragraph 30 above.

(3) This will be considered in paragraphs 51 - 125 below.

34. It should be noted, however, that, by letter No. 1974 of 20th October, 1967, the respondent Government informed the Secretary-General of a time-table for preparing and bringing into force the new Constitution and, on 24th October, it requested that this information be communicated to the Governments of the member States and to the President of the Consultative Assembly of the Council of Europe.(1) By a further letter of 10th November, 1967, the respondent Government asked the Secretary-General to inform the President of the Commission that the jurisdiction of the ordinary courts had been partially restored in criminal cases.(2)

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

35. In this period the respondent Government has made twenty-one communications to the Secretary-General with regard to measures of derogation taken under Article 15.(3)

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

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

(1) See the Secretary-General's memorandum of 26th October, 1967 - Doc. CM (67) 168.

(2) Doc. D 21.586.

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

III. Submissions of the Parties

1. Respondent Government

36. The respondent Government referred to Article 15, paragraph (3), of the Convention and submitted that, by its above communications and by further information given orally or by depositing documents, (1) it had kept the Secretary-General of the Council of Europe fully informed of the measures taken in derogation from the Convention, of those being taken in order to restore normal political and parliamentary conditions and of the reasons for all such measures. (2)

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

38. Moreover, the provision of Article 15, paragraph (3), was a lex imperfecta. (3)

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- (1) It is not clear whether this statement in the Government's observations of 15th May, 1968, is meant to refer to certain documents deposited during the period from 20th September, 1967 to 24th January, 1968 - cf. above, paragraph 34.
 - (2) Preliminary observations of 15th May, 1968, on the admissibility of the new allegations, page 16; memorial of 6th July, 1968, pages 89-90; hearing of September 1968, pages 250-251.
 - (3) Memorial of 6th July, 1968, pages 90-91; hearing of September 1968, pages 251-252.

2. Applicant Governments

39. The applicant Governments, however, maintained that the respondent Government had violated Article 15, paragraph (5). (1) In particular, it had failed:

- to indicate the Articles of the Convention from which it had derogated;(2)
- to furnish the complete texts of its emergency legislation;(3) and
- to provide full information with regard to the administrative measures taken.(4)

40. As stated by the Commission's President in the Lawless Case, Article 15, paragraph (3), was a vital link in the system of collective guarantee which was the primary aim of the Convention. The Committee of Ministers, by its Resolution (56) 16, had accordingly instructed the Secretary-General of the Council of Europe to communicate to the other Parties and to the Commission any information received from a High Contracting Party under Article 15. (5)

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- (1) Applications of 20th September, 1967, part IV; application of 27th September, 1967, part III; memorial of 25th March, 1968, pages 10-11 and 70-71; hearing of May, 1968, pages 98-99; hearing of September, 1968, pages 139-141; hearing of June, 1969, pages 97-100.
 - (2) Memorial of 25th March, 1968, pages 11, 70; hearing of May, 1968, page 99; hearing of September, 1968, page 139.
 - (3) Applications of 20th September, 1967, part IV; memorial of 25th March, 1968, page 70; hearing of May, 1968, pages 98-99; hearing of September, 1968, pages 139-140; hearing of June, 1969, pages 98-99.
 - (4) Hearing of May, 1968, pages 98-99; hearing of June, 1969, page 97.
 - (5) Applications of 20th September, 1967, part IV; hearing of January, 1968, page 37; memorial of 25th March, 1968, pages 67-68; hearing of September, 1968, pages 133-134.

41. The applicant Governments also quoted the Commission's opinions in the First Cyprus Case and the Lawless Case and the judgment of the European Court in the Lawless Case. As stated by the Commission in that case a government derogating under Article 15 was obliged to "notify the Secretary-General of the measures in question without any avoidable delay" and to "furnish sufficient information concerning them to enable the other High Contracting Parties and the European Commission to appreciate the nature and extent of the derogation from the provisions of the Convention which these measures involve". The Commission was competent to "examine the conformity of a notice of derogation with the requirements set out in paragraph (3) of Article 15." (1)

42. Finally, the applicant Governments raised the question whether the alleged non-observance by the respondent Government of its obligations under paragraph (3) of Article 15 should not "strike with nullity the derogations made" under paragraph (1). (2)

IV. Opinion of the Sub-Commission

43. The European Court of Human Rights has in the Lawless Case confirmed the competence of the Commission to examine the conformity with Article 15, paragraph (3), of a notice of derogation, and supporting information, communicated to the Secretary-General by a Contracting State. (3) It has further found that the communication of legislative texts, with an explanation of their purpose, within twelve days of their introduction, gave the Secretary-General "sufficient information of the measures taken and the reasons therefor". (4) The Court also held that communication without delay is an element in the sufficiency of information (5), though this is not expressly stated in Article 15, paragraph (3).

(1) Applications of 20th September, 1967, part IV; hearing of January, 1968, page 37; memorial of 25th March, 1968, pages 68-70; hearing of September 1968, pages 134-140.

(2) Hearing of January, 1968, page 37; hearing of September, 1968, pages 133-140.

(3) "Lawless" Case (Merits), Judgment of 1st July, 1961, The Law, paragraph 45 (page 61).

(4) Ibidem paragraph 47 (page 62). In the (authentic) French text: "avait suffisamment informé le Secrétaire Général des mesures prises et des motifs qui les ont inspirées".

(5) Ibidem.

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

- (1) that the notice of derogation was communicated by the respondent Government on 3rd May, 1967, that is to say, twelve days after its assumption of power and the proclamation of the state of siege;
- (2) that the texts of Royal Decree No. 280 and of the suspended Articles of the Constitution of 1952 were transmitted on 25th May, 1967;
- (3) that the respondent Government did not communicate the texts of its further legislative measures;(1)
- (4) that, in particular, the text of the new Constitution of 1968 was not notified;
- (5) that the respondent Government did not provide full information with regard to the administrative measures taken (e. g. number of persons arrested and detained without a court order);
- (6) that, however, it notified the Secretary-General of various legislative and administrative actions, repealing or ameliorating earlier measures of derogation;(2)
- (7) that the respondent Government did not indicate expressly the Articles of the Convention from which it derogated;
- (8) that reasons for derogation were not communicated until 19th September, 1967, that is to say, more than four months after the notice of derogation of 3rd May, 1967.

(1) These will be discussed in paragraphs ... below.

(2) Cf. paragraph 35 above.

45. The Sub-Commission considers:

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

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- (1) On this point, Mr. Balta does not agree with the opinion of the Sub-Commission.
 - (2) By letter of 12th March, 1969, the respondent Government was invited "to submit as soon as possible the complete text of the emergency legislation at present in force in Greece, insofar as it affects the rights guaranteed by Articles 5, 6, 8, 9, 10, 11, 13 and 14 of the Convention and Articles 1 and 3 of the Protocol". By letter of 1st May the Government was informed that the Sub-Commission had fixed 17th May, 1969, as time-limit for the submission of these documents. This time-limit was later extended to 31st May, 1969 (letter of 21st May).
 - (3) On this point, Mr. Fawcett does not agree with the opinion of the Sub-Commission.

46. The Sub-Commission concludes that the respondent Government has not fully met the requirements of Article 15, paragraph (3), of the Convention, in that:

- (1) it did not communicate to the Secretary-General of the Council of Europe the texts of a number of legislative measures and in particular that of the new Constitution;
- (2) it did not provide the Secretary-General with full information of the administrative measures, in particular of the number of persons arrested and detained without court order;
- (3) it did not communicate to the Secretary-General the reasons for the measures of derogation until 19th September, 1967, that is to say more than four months after they were first taken.

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

47. The Sub-Commission proposes to answer this question by considering in turn:

- (1) the competence to determine the existence of a "public emergency threatening the life of the nation" within the meaning of Article 15, paragraph (1), of the Convention; and
- (2) the elements indicated by the respondent Government as constituting in its view such a public emergency in Greece on 21st April, 1967.

In connection with the issue mentioned under (2) above, the Sub-Commission will also discuss:

- (3) the meaning of the term in Article 15, paragraph (3) "public emergency threatening the life of the nation"; and
- (4) the criteria governing the control of a declaration of public emergency.

I. The competence to determine the existence of a public emergency

1. Introduction

48. It appears from the submissions of the respondent Government that it considered itself competent:

- (1) to declare that there was in Greece a public emergency threatening the life of the nation when it assumed power on 21st April, 1967;(1)
- (2) to state in this connection that the measures taken were made "absolutely necessary by the situation which prevailed in Greece prior to 21st April, 1967".(2)

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- (1) Cf. the notice of derogation of 3rd May, 1967 (paragraph 30 above).
 - (2) See the Government's letter of 19th September, 1967 (paragraph 32 above).

2. Opinion of the Sub-Commission (1)

49. The Sub-Commission considers:

- (1) that, since it is the High Contracting Party which is authorised by Article 15 to take measures derogating from the Convention, it is only the established Government of that Party which can declare the existence of a public emergency and take the measures required; and
- (2) that, as already stated, a revolutionary government, established in a High Contracting State and recognised as representing this State in international relations, is in principle entitled to invoke Article 15 where the conditions laid down in this Article are fulfilled. (2)

50. It follows in the present case:

- (1) that it was for the present Government of Greece to declare that a public emergency threatening the life of the nation existed in Greece as from the moment when this Government assumed power on 21st April, 1967;
- (2) that, in this connection, the present Government was also entitled to take into account, as an element for appreciating the situation on and after 21st April, 1967, the situation which existed before that date.

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- (1) Mr. Ermacora does not agree with this opinion.
 - (2) See paragraph 27 above.

II. The elements indicated by the respondent Government as constituting in Greece, on 21st April, 1967, a public emergency threatening the life of the nation

51. In its communications made under Article 15, paragraph (3), of the Convention to the Secretary-General of the Council of Europe, (1) and in its submissions in the proceedings before the Commission and Sub-Commission, the respondent Government has indicated a number of elements which, in its view, constituted in Greece, when it assumed power on 21st April, 1967, a public emergency threatening the life of the nation, and which may be grouped under the following headings:

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

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

1. The Communist danger

(a) General statements of the parties

aa Respondent Government

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

53. The respondent Government has drawn the following picture:

- (1) On three occasions between 1943 and 1950 the Greek Communists attempted to seize power by force. Two Communist uprisings in 1943 and 1944 were followed by the Communist rebellion of 1946 which led to the four-year guerilla war. (2)

(1) See paragraphs 30-35 above and Appendix V to this Report.

(2) Memorial of 6th July, 1968, pages 49-52 and Annex 27; hearing of September 1968, pages 185; 216; The Undermining of the Greek Nation, pages 9-11; The Political Situation in Greece, pages 4-9.

The danger of Communism was increased by the part played by the Greek Communist Party (KKE) in the plans of neighbouring States against the territorial integrity of Greece. Already at the Communist Balkan Conference of 1924, the Party had accepted the decision to found "a united and autonomous Macedonia", that is to say, to detach part of Greek territory and unite it with an independent Macedonian State (1).

In its Resolution 193 (III) of 27th November 1948, the General Assembly of the United Nations had approved the conclusions of its Special Committee on the Balkans, which had found that the Communist rebellion in Greece and its support from abroad constituted "a threat to the political independence and territorial integrity of Greece" (2).

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

The "Union of the Democratic Left" (EDA), a political party represented in Parliament, was the cover organisation of the outlawed KKE (3). Between November 1963 and February 1967, EDA's "organised membership" increased from 23.000 to 123.329 (4).

EDA collaborated with democratic parties, in particular the Centre Union, with the object of setting up a "Popular Front" and of seizing power (5). In the elections of 1963 and 1964, it helped the Centre Union to power (6). Later it co-operated closely with the left wing of the Centre Union under Andreas Papandreu (7).

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- (1) Memorial of 6th July, 1968, pages 49-52; hearing of September 1968, pages 185 and 217.
 - (2) Memorial of 6th July, 1968, pages 49, 51-52, and annexes 19 and 22 to this memorial; hearing of September 1968, page 217.
 - (3) Letter of 19th September, 1967; memorial of 6th July 1968, pages 53-54, 66; hearing of September 1968, page 217; The Undermining of the Greek Nation, pages 14 et seq. The Political Situation in Greece, page 10.
 - (4) Memorial of 6th July, 1968, page 53.
 - (5) Letter of 19th September, 1967; memorial of 6th July 1968, pages 49, 53, 57, 67; hearing of September 1968, page 228.
 - (6) Memorial of 6th July, 1968, page 53; hearing of September 1968, page 218; The Political Situation in Greece, page 12.
 - (7) Memorial of 6th July, 1968, page 67; hearing of September 1968, page 228.

With the help of EDA and other Communist-inspired organisations, the Greek Communists infiltrated the State apparatus, including the Army and security forces(1), and penetrated all sectors of public life.(2) The Communist-inspired organisations increased from 3 in 1958 to 29 in 1966.(3) The principal one, "Lambraki Democratic Youth", (4) was the militant avantgarde of Communism in demonstrations(5) and terrorised the country-side.(6)

At EDA's request, the governments in power between 1951 and 1967, in particular the Centre Union Government of Mr. Georgios Papandreu, gradually released most of the Communists detained in Greece following conviction for criminal offences or under administrative order(7) and also repatriated Communist rebels who were in Iron Curtain countries receiving special training for subversive activities.(8) In particular, the number of persons detained under administrative order fell from 2,815 in 1950 to 28 on 21st April, 1967.(9)

- (3) Following the political crisis in Greece in the summer of 1965(10) the Communists began in 1966 to prepare for armed insurrection.(11) Their "clandestine apparatus" included shock brigades and groups which observed officers of the Army and security forces.(12) The Communists were assembling weapons and disposed of hiding places and depots for equipment.(13) A paramilitary organisation had been secretly set up.(14)

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- (1) Memorial of 6th July, 1968, pages 54, 64.
(2) Hearing of September 1968, page 217.
(3) Memorial of 6th July, 1968, page 53.
(4) The Undermining of the Greek Nation, pages 30-33.
(5) Memorial of 6th July, 1968, page 53.
(6) Ibidem pages 56, 61; The Political Situation in Greece, page 5.
(7) Hearing of September 1968, pages 227, 287.
(8) Memorial of 6th July, 1968, page 53; hearing of September 1968, page 287.
(9) Memorial of 6th July, 1968, pages 12-13. See also Chapter II(B) below.
(10) Ibidem pages 61-63.
(11) Ibidem page 66; hearing of September 1968, page 227.
(12) Memorial of 6th July, 1968, pages 57-58, 68, 70.
(13) Ibidem pages 56, 68.
(14) Ibidem page 54.

A plan for the seizure of power by force was also drawn up for the Popular Front, on 15th April, 1967, by a retired General, Archimedes Argyropoulos, together with Professor Phedon Vegleris. (1)

The plan of the Communists and their allies to overthrow the established Government began to be implemented in 1967 by various acts of violence. (2) In particular, during the first half of April 1967, attempts were made to occupy the University of Salonica and the centre of Athens. (3) Despite a Government order prohibiting the "Marathon Peace March", the Communist newspaper "Avgghi" called on its leaders to take part in this March. (4) Shock brigades intended to overthrow the Provincial Government of Northern Greece on the occasion of a visit of Mr. G. Papandreu to Salonica which was scheduled to take place on 23rd April, 1967. (5)

bb. Applicant Governments

54. The respondent Government's claim that Communist activities in Greece constituted a public emergency threatening the life of the nation in April 1967 has been contested by the applicant Governments (6) for the following reasons:

- (1) The existence of such a danger had not been mentioned by the respondent Government in its initial statements to the Greek people and to the Council of Europe (7) and the evidence submitted did not show that such a danger was imminent in 1967. (8)

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- (1) Loc. cit. pages 70-71 and Annexed 117, 118; hearing of September 1968, pages 232-233.
 - (2) Hearing of September, 1968, page 231.
 - (3) Letter of 19th September, 1967; memorial of 6th July, 1968, page 69; hearing of September 1968, pages 231-232.
 - (4) Letter of 19th September, 1967; memorial of 6th July, 1968, page 68; hearing of September 1968, page 229.
 - (5) Letter of 19th September, 1967; memorial of 6th July, 1968, page 70; hearing of September 1968, page 232.
 - (6) Hearing of September 1968, pages 155-156; hearing of June 1969, pages 109 et seq.
 - (7) Hearing of June 1969, pages 109-111.
 - (8) Ibidem pages 109 et seq.

- (2) While it was not to be denied that Greece suffered heavily during the years 1944-1949 (1), the situation twenty years later was entirely different. (2) As in other democratic States, Communist organisations might have carried out subversive activities in Greece prior to 21st April, 1967, (3) but any danger which such activities presented could be met by ordinary constitutional means. (4) The Government in power before 21st April, 1967, did not find it necessary to make use of its extraordinary powers under the Constitution. (5) It also had at its disposal a strong and modern army, which was anti-Communist in spirit and was in control of the situation. (6)

In this connection, the applicant Governments observed that the "Marathon March", which had been scheduled to take place on 16th April, 1967, and was mentioned by the respondent Government as a threat to public order, had in fact been cancelled following a prohibition issued by the Minister of Public Order. (7)

- (3) With regard to the respondent Government's allegations concerning the activities of EDA and the existence of a collaboration between EDA and the Centre Union Party, the applicant Governments further submitted that EDA was not a purely Communist party but that it consisted of Communists and other left-wingers; (8) that its electoral strength in votes obtained and deputies elected had declined since 1958; (9) and that the Centre Union Party had not collaborated with EDA, in particular, that there had been no electoral alliance between the two parties in the campaign of 1967. (10)

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- (1) Hearing of September 1968, page 156.
(2) Ibidem and hearing of June 1969, page 115.
(3) Hearing of September 1969, page 156.
(4) Ibidem and hearing of June 1969, pages 114, 119.
(5) Hearing of September 1968, page 154; hearing of June 1969, page 114.
(6) Hearing of June, 1969, page 114.
(7) Loc. cit. page 119.
(8) Hearing of June 1969, page 123.
(9) Loc. cit. pages 123-124. The applicant Governments quoted the statement of a witness that the percentage of votes cast for EDA fell from 24.4% in 1958 to 11.8% in 1964.
(10) Loc. cit. pages 123 et seq.

b. Evidence before the Sub-Commission

aa Witnesses

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

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

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

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

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

Kanellopoulos Government (3rd April - 21st April, 1967):

Panayotis Kanellopoulos (Prime Minister) (1)
Georgios Rallis (Minister of Public Order) (2)
Panayotis Papaligouras (Minister of Defence) (3)

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- (1) Hearing of March 1969, Vol. I, pages 15-17, 19, 23-24, 26.
(2) Loc. cit. pages 50 et seq.
(3) Loc. cit. pages 37, 39, 41-42.

Evangelos Averoff (Minister of Agriculture, former Minister of Foreign Affairs) (1)

Paraskevopoulos Government (21st December, 1966 - 3rd April 1967)

Sophokles Tzanetis (Minister of Public Order) (2)

Panayotis Christou (Minister of Northern Greece) (3)

Stephanopoulos Government (17th September, 1965 - 21st December 1966)

Stephanos Stephanopoulos (Prime Minister) (4)

Constantinos Mitsotakis (Minister of Coordination) (5)

Other personalities holding government posts before 21st April, 1967

Constantinos Georgakopoulos (Prime Minister of care-taker Government in 1958) (6)

Nicolaos Bakopoulos (Minister of Justice 1964-1965) (7)

Andreas Papandreou (Minister of Coordination 1964-1965) (8)

Officers of the respondent Government

Georgios Kekkos, Director General of the Ministry of the Interior(9)

Constantinos Papaspyropoulos, Director, General Security Service, Athens (10)

(1) Loc. cit. pages 73-75, 89-92

(2) Loc. cit. pages 62-65, 68-70

(3) Hearing of November, 1968, Vol. II, pages 308-309, 313, 315-319, 322-324, 330-340

(4) Hearing of March, 1969, Vol. II, page 701.

(5) Hearing of November, 1968, Vol. II, pages 482-486, 490, 492 494-497, 499-503, 509.

(6) Hearing of March, 1969, Vol. I, pages 117-119.

(7) Loc. cit., Vol. II, pages 656-657, 663-664.

(8) Hearing of November, 1968, Vol. II, pages 431-434, 437-439, 445-446, 459-462, 467-472.

(9) Hearing of March, 1969, Vol. I, pages 326-327.

(10) Hearing of March, 1969, Vol. II, pages 628 et seq.

Officers (former and present)
of the Armed Forces

- Odysseus Anghelis, General, Chief of the Armed Forces (1)
Georgios Engolfopoulos, Rear Admiral, former Chief of Naval Staff (2)
Alexandros Natsinas, Lieutenant General, former Chief of
Central Intelligence Service (K.Y.P.) (3)
Kyriakos Papageorgopoulos, General, former Chief of K.Y.P. (4)
Constantinos Tsolakas, General, former Chief of General Staff (5)

Economic life

- Georgios Anastassopoulos, President, Coordinating Council of
Greek Chambers of Commerce (6)
Constantinos Hadjitheodorou, Secretary General, Panhellenic
Sailors' Confederation (7)
Fotios Makris, Secretary General, General Confederation of
Greek Labour (8)

Legal profession

- Philippos Anghelis, President, Athens Bar Association (9)
Constantinos Georgopoulos, Professor of Constitutional Law,
Athens University (10)
Phedon Vegleris, former Professor of Administrative Law,
Athens University (now Strasbourg
University) (11)

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- (1) Loc. cit., Vol. I, pages 314-320.
(2) Loc. cit., pages 95-99.
(3) Hearing of December, 1968, Vol. II, pages 179, 182-185,
187-189, 191-193, 195-196, 200-201, 206-209.
(4) Hearing of March, 1969, Vol. I, pages 124-126, 130.
(5) Loc. cit., pages 109-113, 115-116.
(6) Hearing of December, 1968, Vol. II, pages 139-140, 145.
(7) Loc. cit., pages 226-230.
(8) Hearing of November, 1968, Vol. II, pages 519, 521, 523-534.
(9) Hearing of March, 1969, Vol. II, page 781.
(10) Hearing of December, 1968, Vol. II, page 243.
(11) Loc. cit., pages 265, 268-270.

Press

Athanasios Paraschos, publisher and journalist (1)

Alexander Sedgwick, retired American journalist resident
in Greece (2)

Panayotis Troubounis, Vice-President, Union of Athens
Newspaper Writers (3)

Helen Vlachou, Publisher (4)

Others

André Lambert, former delegate of the International Committee
of the Red Cross (Swiss citizen resident in
Greece) (5)

Nicolaos Tomadakis, Professor of Byzantine Literature,
Athens University. (6)

bb Documents

59. In support of its assertion about Communist activities on and before 21st April, 1967, the respondent Government has submitted a number of documents. These are listed at Appendix VIII to the present Report.

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- (1) Loc. cit. pages 100, 104, 108, 113, 115-116.
 - (2) Hearing of November, 1968, Vol.II, pages 346-347, 351, 358.
 - (3) Loc. cit. pages 396-397, 400-401, 419-423.
 - (4) Hearing of December 1968, Vol.II, pages 154, 158, 160.
 - (5) Hearing of November 1968, Vol.II, pages 376, 384.
 - (6) Loc. cit. pages 361, 363-364, 396-397, 400-401, 419-423.

c) Examination of the evidence by the Sub-Commission

60. Certain elements of the Communist danger will have to be considered in the sections "Crisis of constitutional government" (1) and "Crisis of public order" (2). In the present section the Sub-Commission will examine the evidence for the assertion that there was on 21st April, 1967, a public emergency threatening the life of the Greek nation in the form of an imminent threat of a Communist displacement of the lawful Government by force of arms.

61. It is here essential to distinguish between the known plans of the Communists and their allies on the one hand and the evidence produced to the Sub-Commission of their ability to execute those plans on the other hand.

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

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

- (1) a document described as "Tracé pour l'analyse de la 10ème Assemblée du Conseil Administratif de l'EDA". (3)
The source or use of this document is not indicated but, according to the respondent Government, it concerns an EDA meeting held on 10th and 11th September, 1965 ; (4)

(1) Paragraphs 76 - 92 below.

(2) Paragraphs 93 - 111 below.

(3) Memorial of 6th July, 1968, Annex 54.

(4) Memorial of 6th July, 1968, page 58.

- (2) a typescript extract from a speech by Manelis Glezos at the tenth session of the Executive Committee (1) of EDA in May 1966; (2)
- (3) a newspaper article by Costa Filini published in July 1966; (3)
- (4) a secret dispatch to certain commands from the General Staff of the Army dated 23rd July, 1966; (4)
- (5) an unsigned document, headed "Conclusions" and addressed to the King (5). According to the respondent Government, this document is taken from the quarterly report of the Chief of General Staff for the period October-December, 1966 (6). Its author has not been identified;
- (6) a document entitled "General Plan of Action" and dated 15th April, 1967 (7).

64. The "General Plan of Action" has been identified by the respondent Government as prepared by Archimedes Argyropoulos, a retired General, and Professor Phedon Vegleris. Copies are said to have been found in the offices of EDA and of Andreas Papandreu (8). General Argyropoulos was later convicted and the "General Plan of Action" is said to show the contribution by the Centre Union Party to the attempted seizure of power by the Greek Communists (9).

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- (1) It is not clear whether this body is the same as that referred to under point (1) above.
 - (2) Memorial of 6th July, 1968, Annex 59.
 - (3) Ibidem Annex 103.
 - (4) Ibidem Annex 56.
 - (5) Ibidem Annex 100.
 - (6) See the Government's list of the Annexes submitted with its Memorial of 6th July, 1968.
 - (7) Memorial of 6th July, 1968, Annex 118.
 - (8) Hearing of September 1968, page 232.
 - (9) Witness Kekkos, hearing of March 1969, Vol. I, page 325.

When giving evidence before the Sub-Commission, the witness, Professor Vegleris, stated with regard to this document: "(J)é le vois pour la première fois. J'ai vu des extraits dans le journal qui m'a été envoyé d'Athènes, le journal qui contenait mon propre texte, mais ce texte je le vois en entier pour la première fois." (1)

The witness, Professor Andreas Papandreou, when shown the "General Plan of Action" and asked whether he knew it, replied: "No, Sir, ... My offices were closed within 10 days after the coup and everything removed from them. Andreas Papandreou had no offices. So it was with great surprise that I discovered that I was in Sweden when I read first that a document was found in my offices but my office had been cleaned out, taken care of in 10 days of the coup in the knowledge of the army ... I would say that by 5th May, 1967, there existed no office of Andreas Papandreou. I do not know when they claim they found it." (2)

65. In only two of the documents mentioned in paragraph 63 above is there a reference to arms, namely:

- (1) the collection of small automatic arms and revolvers said to have been recommended by the Greek Communist Party (KKE) after January 1965; (3) and
- (2) the statement in the "General Plan of Action" that "the organisation of special shock groups must be provided for from now. They must be equipped with proper means and armaments through which the neutralisation or destruction of the mechanical armoured machines, as well as the chemical means, of the opponent shall be possible." According to its

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- (1) Hearing of December 1968, Vol. II, page 263. The other text referred to by the witness as "mon propre text" is apparently the document entitled "Text of Professor Phédon Vegleris" (memorial of 18th August, 1968, Annex 10), cf. his statement ibidem pages 258-259: "(J)e sais que dans les journaux d'Athènes de juin dernier, un texte qui m'a été attribué et que j'ai lu dans les colonnes du journal grec qui m'a été envoyé d'Athènes. Eh bien, je connais ce texte. C'était effectivement, avec quelques altérations pas très sérieuses qui rendent le texte un peu illisible, de temps en temps, c'est un texte qui m'appartient dans son ensemble. C'était des réflexions que j'ai remises au Général Argyropoulos et qui contenaient mes pensées sur ce qu'il fallait faire, sur la manière de défendre la République et la Démocratie qui étaient en danger au mois de mars."
 - (2) Hearing of November 1968, Vol. II, page 445.
 - (3) Dispatch from the General Staff of the Army of 23rd July, 1966, paragraph 5 (c).

text, the "General Plan" was drafted "to face every type of violence and fraud or even camouflaged or undisguised dictatorship" and the above statement was made with regard to "Case C: Completion of the elections with unfavourable results for the Right - not turning over of the authority to the majority party under various excuses (i.e. vague danger for the maintenance of internal order and security, by the staged provocation of serious incidents and disturbances)".

66. There is no indication in the documents mentioned in paragraph 63 above of an anticipated attempt to take over the Government by force of arms. On the contrary:

- (1) Filini, in his newspaper article of July 1966, maintains the possibility of a "peaceful way";
- (2) the communication to the King ("Conclusions") expressly says of "the Communism" that it has for the time abandoned any attempt to impose itself by force;
- (3) force of arms is contemplated in the "General Plan of Action" only as a counter - measure ("struggle of legality") against the abolition by the Right of "legal democratic government and the freedoms of the people".

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

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

68. As to the first, estimates given in the documents submitted and by witnesses of the number of supporters of the Communists and their allies in the army vary from 15% to 20% (1). However, it was denied by Rear Admiral Engolfopoulos that there was any infiltration in the navy (2) and General Tsanetis, Minister of Public Order between December 1966 and April 1967, maintained that all officers of the armed forces were anti-Communist (3). Further, there is a notable decline after 1960 in the number of prosecutions for Communist or subversive activities in the armed forces (4).

69. Plans are described for "neutralisation" of the armed forces by observing their movements and then creating road blocks and other obstacles, and by marking the doors of the houses of officers and then, upon orders in certain circumstances, "neutralising" them (5).

General Papageorgopoulos "repeatedly confirmed the watch which they kept on me and the notes which they had about me. I even knew people who had my address, wrote down my movements, at what time I left my house and went to Headquarters, and what time I returned, and what timetable governed my movements." (6)

With regard to the marking of doors, General Anghelis expressed doubts as to whether the marks observed were those of the Communists and their allies or of a commercial company selling detergents. He stated, however, that plans to murder officers were known. (7)

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- (1) General Anghelis stated that it was 16% in 1966 - hearing of March, 1969, Vol. I, page 316.
 - (2) Ibidem pages 98-99.
 - (3) Ibidem page 63. Former Minister Christou considered that "more than 20% of the soldiers...not the officers... were influenced by Communism" - hearing of November 1968, Vol. II, page 325.
 - (4) Memorial of 6th July, 1968, Annexes 42-47. Brigadier General Kritselis, Chief of the Judicial Services of the Army, speaking of the crisis of public order said nothing to contradict this impression - hearing of March 1969, Vol. II, pages 751 et seq.
 - (5) Ibidem Annexes 39, 40, 55, 109.
 - (6) Hearing of March 1969, Vol I, page 135.
 - (7) Memorial of 6th July, 1968, Annex 37; hearing of March 1969, Vol. I, page 314.

General Tsolakas said: "We once had information that the Communists marked the houses of the officers and that, at a given moment, they were going to put them out of action. We had this information. We did not attach any particular importance to this, because the idea that Communists could neutralise officers was a joke. The defence plans provide all the necessary measures. Plans exist because the Communists were planning to neutralise the officers. But do not forget that we also, as guardians of the national security, have studied them and we know how to deal with them and how to react against this activity of the Communists. And I say, with complete certainty, that our plans were such that we could neutralise them in a few hours. The fact that even the present Revolutionary Government used the same plan and arrested in one night all the Communists who were considered as dangerous, is a proof of this." (1)

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

General Anghelis referred to the importation from abroad of hunting guns, to arms caches being found, and to thefts of small arms from the services in 1965 and 1966, but stated that it was not possible to know in what quantities arms were being secreted by the Communists and their allies (2).

71. Four documents have been produced to the Sub-Commission by the respondent Government, which are reports of the following findings of arms caches: (3)

- (1) on 7th October, 1966, (4) in the region of Ormas - Aradaia - Edessa. The find reported was 128 rifles, 271 bayonets, 4 Bren gun barrels, 196 hand grenades probably of Bulgarian manufacture, 25000 cartridges, a number of bazooka and mortar grenades and detonators, and various explosives;

(1) Hearing of March 1969, Vol. I, page 115.

(2) Ibidem page 315. See also Memorial of 6th July, 1968, Annex 56, paragraph 5 (c).

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

(4) This date had been inserted on the photocopy submitted by the respondent Government.

- (2) on 29th December, 1966, at a place defined solely by a numerical map reference. The document records the finding of 6 rifles, 1 Bren gun, 2 sub-machine-guns, 11 anti-tank grenades, 2 anti-tank mines and 10 bottles of inflammable fluid;
- (3) on 2nd November, 1967, near the village Trivounon (1238 bullets and 14 hand grenades); and
- (4) on 6th November, 1967, in the region of Florina (1 sub-machine-gun, 1 rifle, 729 cartridges, 5 pieces of dynamite and 2 detonators).

72. The above documents were produced to the Sub-Commission in Greek, in the form of photocopies, together with an explanatory note by the Ministry of Foreign Affairs (1). This note, which appears to be a summary of the documents submitted, is in fact incomplete. For it does not mention:

- (1) that, according to the original text of the report of 7th October, 1966, the 126 rifles found were "in a state of semi-destruction";
- (2) that all the arms found on 29th December, 1966, were "in a state of destruction" (so the original text of the second report);
- (3) that the two persons arrested after the find of 2nd November, 1967, were described in the third report as "nationalists" and the son of one of them as group leader of TEA (2); and
- (4) that this find was connected with that mentioned in the fourth report (3).

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- (1) Memorial of 6th July, Annex 57.
 - (2) It appears from the memorial of 19th August, 1968, (Annex 9) that TEA was an anti-Communist organisation.
 - (3) The original text of the fourth report refers to the third report and states that the material mentioned was found on the basis of indications made by one of the two arrested persons.

73. Speaking of these documents and of a newspaper report of the discovery of an arms cache on 31st March, 1967, former Prime Minister Kanellopoulos told the Sub-Commission that the newspaper report was false (1), that no substantial arms deposits had been found or reported to his Government (2), and that in any case "it is impossible to organise an armed revolt with 100, 200 or even 2000 arms." (3)

74. General Papageorgopoulos, former Chief of the Central Intelligence Service (K.Y.P.), spoke in similar terms of the known importation of hunting guns, that it was "not in quantities which would have given scope to an uprising of great force" (4). Later he added: "(T)hese numbers which were given to me at that time give me the impression that they would not have permitted a popular insurrection to confront an Army formation, under one pre-supposition, namely that the Army would not have been called out to confront a large uprising in Athens, I mean of the order of 100,000 men, even unarmed, or with five-hundred weapons. Because the Greek Army is not a professional Army, the soldiers are conscripts and it is doubtful whether they would have obeyed orders to fire on the crowd to kill large numbers of people." (5)

75. With regard to the rally planned in Salonica for Georgios Papandreou on 23rd April, 1967, Andreas Papandreou denied before the Sub-Commission that any conflict with the authorities was envisaged (6).

Former Minister Rallis said his Government was informed "que le parti de l'E.D.A., qui était le parti communiste sous le masque, allait profiter de cette réunion du parti du centre pour provoquer des troubles à Salonique, mais ces troubles étaient quelque chose de normal, j'ose dire en Grèce ... Comme nous avons des informations qu'à Salonique peut-être on allait insulter des officiers ou on allait manifester devant le 3ème corps d'armée, j'ai téléphoné à mon collègue, le ministre de la Défense, M. Papaligouras ... Je lui ai fait part de ces informations et je lui ai dit que la police avait

(1) Hearing of March 1969, Vol. I, page 19. The newspaper report was in "Kathimerini" of 1st April, 1967.

(2) Loc. cit. page 24.

(3) Ibidem.

(4) Loc. cit. page 124.

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

(6) Hearing of November 1968, Vol. II, page 457.

reçu l'ordre de faire très attention ce jour-là et le samedi avant la réunion et qu'il doit donner l'ordre à l'armée d'être en état d'alerte. Il l'a fait et nous étions sûrs que s'il y avait des troubles on aurait pu les envisager de la même façon comme on avait envisagé les troubles des étudiants et des ouvriers." (1)

Former Minister Papaligouras, expressing himself in similar terms, rejected categorically the suggestion that the above rally would have led to even a local seizure of power (2).

(1) Hearing of March 1969, Vol.I, page 53.
(2) Ibidem pages 41-42.

2. The crisis of constitutional government

(a) General statements of the parties

aa Respondent Government

76. The respondent Government maintained that the political life of the country had been in decline since 1944. Between 24th May, 1944 and 21st April, 1967, there had been forty-one successive governments.(1) From July 1965 a situation had been brought about, in part by the Communist factor,(2) in which the abolition of established political institutions was plainly threatened.(3) The Parliamentary system had virtually broken down,(4) with party corruption (5) and violent incidents in the Chamber.(6) The machinery of State was paralysed.(7) There were daily strikes (8) and warnings that the economy was on the verge of bankruptcy.(9)

77. Andreas Papandreou had in the "Aspida" conspiracy collaborated with a group of officers to depose the King and to replace the constitutional monarchy by a dictatorship with socialist tendencies.(10) His father, Prime Minister Georgios Papandreou, intervened in 1965 to influence the investigation and, for this purpose, insisted on taking over the Ministry of Defence.(11)

78. On 22nd February, 1967, Andreas Papandreou had declared in a speech that the constitutional form of taking the oath would be ignored by the new Government after the May elections, and the Centre Left majority would assume power without

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- (1) The Political Situation in Greece, pages 17-19 (the Governments which held office during that period are listed on pages 18-19).
 - (2) Memorial of 6th July, 1968, page 65.
 - (3) Letter of 19th September, 1967.
 - (4) The Political Situation in Greece, page 15.
 - (5) Memorial of 6th July, 1968, page 65.
 - (6) The Political Situation in Greece, page 15.
 - (7) Memorial of 6th July, 1968, page 65.
 - (8) Letter of 19th September, 1967.
 - (9) The Political Situation in Greece, page 13.
 - (10) Letter of 19th September, 1967; memorial of 6th July, 1968, pages 58-60 and Annex 60; hearing of September 1968, pages 221-222; The Political Situation in Greece, page 13.
 - (11) Memorial of 6th July, 1968, page 59; The Political Situation in Greece, page 14.

presentation of the new Government to the King.(1) He is quoted as saying:

"After the next elections, the Centre Union will have sufficient power. But a political party may cease to dispose of independent power. It will then form a Government, which will present itself to Parliament and ask approval of a minimum programme. If Parliament gives a vote of confidence, the Government will remain in office; if not it will proceed to a dissolution of Parliament and call new elections."(2)

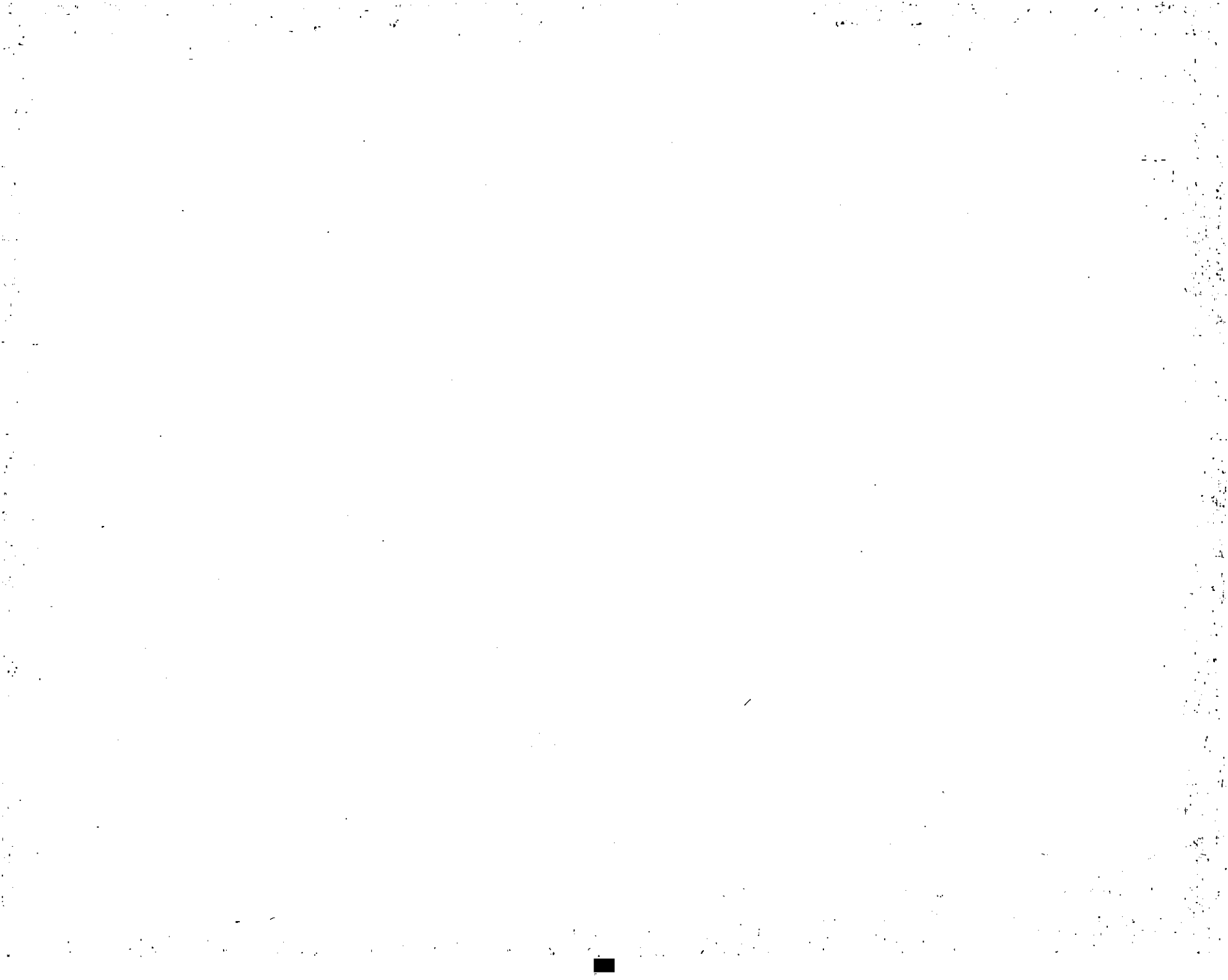
A different version of this quoted statement has also been given to the Sub-Commission, in which "EDA" is substituted for "Centre Union".(3) The respondent Government argues that this statement implies an intention "to abolish the Constitution and the King" since the dissolution of Parliament and calling of elections are functions only of the King.(4)

79. It also claimed that Georgios Papandreou, leader of the Centre Union and former Prime Minister, planned a visit to Salonika on 23rd April, 1967, to foment disorder and bloodshed with the help of his EDA supporters, in order to bring down the lawful Government.(5)

bb Applicant Governments

80. The applicant Governments observed that the respondent Government had relied in part on facts which were alleged to have occurred in 1965, and that such facts could not justify the respondent Government's derogation from the Convention in 1967.(6)

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- (1) Memorial of 6th July, 1968, page 67; hearing of September 1968, page 228. See also letter of 19th September, 1967, and The Political Situation in Greece, page 16. (alleged intention to swear in a Government "in Constitution Square").
 - (2) Memorial of 6th July, 1968, page 67 (revised translation); hearing of September 1968, page 228. The source of this quotation is not indicated.
 - (3) The Undermining of the Greek Nation, page 75.
 - (4) Memorial of 6th July, 1968, page 67; hearing of September 1968, page 228.
 - (5) Letter of 19th September, 1967; memorial of 6th July, 1968, page 70; hearing of September 1968, page 232.
 - (6) Memorial of 25th March, 1968, page 85.



- Panayotis Christou (1)
- Stephanos Stephanopoulos (2)
- Constantinos Mitsotakis (3)
- Constantinos Georgakopoulos (4)
- Nicolaos Bakopoulos (5)
- Andreas Papandreou (6)
- Alexandros Natsinas (7)
- Kyriakos Papageorgopoulos (8)
- Georgios Anastassopoulos (9)
- Constantinos Hadjitheodorou (10)
- Constantinos Georgopoulos (11)
- Phedon Vegleris (12)
- Athanasios Paraschos (13)
- Alexander Sedgwick (14)
- Panayotis Trouboumis (15)
- Helen Vlachou (16)

The Sub-Commission also heard the evidence of Mr. Demetrios Galanis, Governor of the Bank of Greece, (17) and Dr. Demetrios Kapsaskis, Director of the Athens Forensic Medicine Service. (18)

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- (1) Hearing of November 1968, Vol. II, pages 331-332.
 - (2) Hearing of March 1969, Vol. II, pages 697, 705-706.
 - (3) Hearing of November 1968, Vol. II, pages 482, 487-488, 494-495, 508-509.
 - (4) Hearing of March 1969, Vol. I, pages 117-120.
 - (5) Ibidem Vol. II, pages 662-663.
 - (6) Hearing of November 1968, Vol. II, pages 430, 439-440, 442-444, 446-447, 450-453, 464-465, 475.
 - (7) Hearing of December 1968, Vol. II, pages 203, 206-207.
 - (8) Hearing of March 1969, Vol. I, pages 126-127, 130-131.
 - (9) Hearing of December 1968, Vol. II, pages 139-143.
 - (10) Ibidem pages 226-230.
 - (11) Ibidem pages 239.
 - (12) Ibidem pages 258-264.
 - (13) Ibidem pages 104, 116-118, 124.
 - (14) Hearing of November 1968, Vol. II, pages 349-350.
 - (15) Ibidem pages 402-403, 406-408.
 - (16) Hearing of December 1968, Vol. II, pages 163, 173.
 - (17) Hearing of March 1969, Vol. I, pages 352-359.
 - (18) Hearing of November 1968, Vol. I, pages 251-252, 255.

bb Documents

85. In support of its allegation that the crisis of constitutional government constituted a public emergency threatening the life of the nation in April 1967, the respondent Government has submitted a number of documents. These are listed at Appendix IX to the present Report.

(c) Examination of the evidence by the Sub-Commission

86. There is general agreement to be found in the evidence presented to the Sub-Commission that there was in April 1967 widespread anxiety about the future of political institutions in Greece and the ability of governments to maintain public order and social progress.(1) Nevertheless, as regards the factors indicated by the respondent Government - a decline in the standing and influence of Parliament, an increase in numbers and organisation of the Communists and their allies, and a possibility of the creation of a "Popular Front" after the May elections -, the Sub-Commission does not find the evidence presented conclusive, for the following reasons:

- (1) the preparation for the May elections was going forward on the basis, clearly accepted by all parties, that a new Parliament was to be elected by the normal constitutional process. There is no evidence that any party or group in the electoral campaign proposed the abolition of Parliament or substantial limitation of its powers. Further, the trial of the officers charged in the "Aspida" affair had been completed in March 1967 with a number of convictions;(2)
- (2) as regards the Communists and their allies, Prime Minister Papadopoulos insisted in March 1969 that the number of Communists in Greece had always been small.(3) Further, there was before 21st April, 1967, a steady decline in

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- (1) See, for example, the witnesses Averoff (hearing of March 1969, Vol. I, pages 74-75, and Vol. IV, page 1181); Papageorgopoulos (*ibidem* pages 126-127); Andreas Papandreou (hearing of November 1968, Vol. II, pages 442-447).
 - (2) See the respondent Government's letter of 19th September, 1967, to the Secretary-General of the Council of Europe, paragraph I(e) (reproduced at Appendix V to this Report).
 - (3) "We had but a few Communists in our country" - see hearing of March 1969, Vol. IV, page 1184.

successive elections both of electoral votes for EDA and in the number of its deputies in Parliament. According to General Tsanotis, the percentage of votes cast for EDA was 24.4 in 1958, 14.6 in 1961, 14.3 in 1963 and 11.8 in 1964; (1)

- (3) as regards the activities of Gergios and Andreas Papandreou, some of the evidence relates to the earlier period of 1964-1965 and has little bearing on the question whether there was a public emergency, actual or imminent, on 21st April, 1967. Among this evidence, the Sub-Commission notes that a letter, produced by the respondent Government to the Sub-Commission, supposedly showing involvement by the Papandreous in the "Aspida" conspiracy, (2) is a forgery (3) and had been so found by an Athens tribunal before it was produced. (4)

87. As to the statements attributed to Andreas Papandreou in February 1967, (5) the Sub-Commission has heard a number of witnesses. Andreas Papandreou when giving evidence before the Sub-Commission, described his speech as follows: "I was speaking about procedures in Western European countries, ... especially ... Denmark. I had just received a letter from a deputy ... from Denmark in which he described what happened at the last elections in Denmark. He stated (that) his party, when it won the election, not for the first but for the second or third time..., according to Danish tradition merely informed the King that it had won the elections and stayed on to do its business. I brought this out as a contrast with what happens

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- (1) Hearing of March 1969, Vol. I, page 63. See also Vol. II, page 659 (witness Bakopoulos). EDA's electoral strength in 1958 and its decline thereafter was explained by the facts that, in 1958, there was "no well-organised socialist party in Greece" while in 1961 "the Centre Union Party had become organised, and had concentrated in its ranks all the elements that belonged neither to the extreme right nor to the extreme left" - ibidem pages 64-65.
- (2) Memorial of 6th July, 1968, Annexes 65 (Greek original) and 66 (French translation).
- (3) The document was identified as a forgery by the witness, Dr. Kapsaskis, Director of the Athens Forensic Medicine Service and expert in graphology (hearing of November 1968, Vol. I, pages 251-252, 255).
- (4) Ibidem page 252 (witness Kapsaskis) and Vol. II, pages 441-442 (witness Andreas Papandreou).
- (5) See paragraph 78 above.

in Greece." I was speaking about a contrast ... how their Constitution(1) was put into practice, applied, because actually the Danish Constitution and the Greek Constitution are very close in wording but not in application. What I pointed out is that: 'Look at the contrast', I said, 'there you see, when the Prime Minister wins an election, he informs the King of the fact, as actually Mr. Krag did, while in Greece, we have to ask the question even if one has the majority of Parliament, whether he will rule or not.' This is a question I put and this is the contrast that I made. But it would be the farthest thing from my thoughts ... to raise a question about the Greek Constitution. We were truly religious about that in our party and I myself too." (2)

The witness further stated: "A question had been put to me of principle from the audience at that time as to whether, if this party of ours were not to have an absolute win in the elections, it would accept a collaboration with some party in Parliament. I stated that the question did not really exist politically because we would win the elections absolutely, but I added that the legitimate procedure in general, the framework within which a party operates in a parliamentary democracy, is the following. You have your minimum programme - which you present, if you have no absolute majority, in Parliament. If that programme is adopted by Parliament, you may stay on, if not, you recommend to the King that the Parliament be dissolved and elections be held. I think this is absolutely proper constitutional procedure, and I was in a way giving a lesson on constitutional procedure at that time ...". (3)

When asked whether he requested a rectification of the newspaper reports concerning his speech, the witness replied: "Were I to answer all the mud that has been thrown at me over a year and a half through preparations of this quality, I would have no time to do anything else. This is not the only item, in fact it was not the most serious item. I have been charged with everything you can think of, and my answer is specifically: no, I have not been answering any of the charges made in the Yellow Press of Greece, I have not answered any of them." (4)

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- (1) According to the respondent Government, Andreas Papandreu relied on "a non-existent article of the Danish Constitution" - The Undermining of the Greek Nation, page 75.
 - (2) Hearing of November 1968, Vol. II, pages 439-440;447.
 - (3) Ibidem page 440.
 - (4) Ibidem page 472.

88. According to the witness Bakopoulos, a former Minister and leader of the Centre Union Party, "Andreas Papandreu did not say ... that he would form a government in Constitution Square. The newspapers wrote at that time that he had said it. But Andreas Papandreu immediately denied this and wrote two articles in the Athens newspaper 'Ethnos'..."(1)

89. According to former Minister Averoff, Andreas Papandreu did in fact make the declaration that he would form a Government in Constitution Square "et cela a été publié dans tous les journaux. Après, cela a fait une telle boule de neige que tout le monde en a parlé comme pour le moins étant très important et fondamental et qui aurait dû être tellement commenté et tellement dans la bouche de tout le monde que même plusieurs d'entre nous avons discuté pour savoir ce que l'on allait faire si Andreas Papandréou faisait cela..."(2).

Similarly, the witnesses, MM. Anastossopoulos (3) and Paraschos (4), had "no doubt" that the above-quoted statement had been made by Andreas Papandreu. According to Anastassopoulos, Andreas Papandreu had "stressed that - on the example of some other country - his Government would take oath by itself on Constitution Square, and he would in this manner abolish the Constitution and our Constitutional Sovereign. He added that he would do so even if his Party did not obtain an absolute majority, maintaining that if he obtained a relative majority of the votes he would still form a Government and appear before the Parliament with a minimum programme. And if Parliament did not vote in favour of that programme, he would then proclaim new elections, ignoring the Constitutional Sovereign and Constitutional order." (5)

90. None of the witnesses mentioned in paragraphs 88 and 89 said that he was himself present when Andreas Papandreu allegedly made the above statements.

(1) Hearing of March 1969, Vol. II, pages 662-663.

(2) Ibidem Vol. I, page 81

(3) Hearing of December 1968, Vol. II, pages 144-145.

(4) Ibidem page 124.

(5) Ibidem page 144.

91. The Sub-Commission observes with regard to the evidence set out in paragraphs 87 to 89 above that it is disputed and confused both as to what Andreas Papandreou actually said on 22nd February, 1967, and as to how it is to be interpreted. Against the affirmations of three witnesses (Anastassopoulos, Averoff and Paraschos) as to what he said, there are the denials of Bakopoulos and of Papandreou himself. Further, the submissions made by the respondent Government before the Sub-Commission differ from each other in one important respect, in that one makes his quoted statement refer to the Centre Union, the other to EDA (1). Nevertheless, it is plain that the newspaper reports, whether true or false, had a marked effect, particularly on the issue of the taking of the governmental oath, in creating public anxiety about the political intentions of the Centre Union party.

92. With regard to the rally planned in Salonica for Georgios Papandreou on 23rd April, 1967, the Sub-Commission refers to its analysis of the evidence in paragraph 75 above.

(1) See paragraph 78 above.

3. Crisis of public order

(a) General statements of the parties

aa Respondent Government

93. The respondent Government submitted that, beginning in 1965, a situation had been created in Greece which was bringing the country to the brink of anarchy.(1)

94. Violent demonstrations began in July 1965, when vehicles and houses under construction were set on fire and barricades were erected in the centre of Athens,(2) and the demonstrations continued until 21st April, 1967.(3) Hundreds of policemen and civilians were killed or injured.(4)

In July 1965, 299 civilians and 250 policemen were injured.(5) In July 1966, during a violent clash between farmers and the police at Salonica, 90 policemen and 67 civilians were injured.(6)

On 6th and 11th April, 1967, students and building workers attacked the University of Salonica. They seized the Rector, threatened his life and subjected professors to brutality.(7)

On 12th April, 1967, nearly 3,000 building workers tried to occupy the centre of Athens, causing injury to 85 persons, including 51 members of the security forces.(8)

95. In 1964 and 1965, during the Government of Georgios Papandreu, the Centre Union Party carried out an unprecedented attack on the security forces. At the instigation in many cases of EDA, 5,731 members of these forces were "transferred" for party reasons, ostensibly as part of a campaign against a "police State". The result was the de facto dissolution of the security forces and their inability to cope with anarchic demonstrations at a time when disturbances of public order were assuming frightening dimensions.(9)

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- (1) Letter of 19th September, 1967.
(2) Ibidem; memorial of 6th July, 1968, page 61.
(3) Memorial of 6th July, 1968, page 61.
(4) Ibidem; hearing of September 1968, page 224. The number of persons killed has not been indicated by the respondent Government.
(5) Memorial of 6th July, 1968, page 62.
(6) Ibidem page 63.
(7) Letter of 19th September, 1967; memorial of 6th July, 1968, page 69; hearing of September 1968, page 231.
(8) Letter of 19th September, 1967; memorial of 6th July, 1968, page 69; hearing of September 1968, page 232.
(9) Memorial of 6th July, 1968, page 62.

96. Political strikes formed the majority of the almost daily strikes in the first quarter of 1967; they increased disturbingly in the days immediately preceding 21st April. (1)

bb Applicant Governments

97. The applicant Governments denied that the demonstrations mentioned by the respondent Government constituted, on 21st April, 1967, a public emergency in Greece threatening the life of the nation.(2) They submitted that public order had been sufficiently maintained by constitutional means and, as regards the incidents of 6th, 11th and 12th April, 1967, invoked the evidence given before the Sub-Commission by Mr. Rallis, who had been Minister of Public Order at that time.(3)

98. The applicant Governments also contested that the strikes mentioned by the respondent Government had threatened the life of the nation.(4) They observed that, in democratic states, strikes were normal occurrences.(5)

(b) Evidence before the Sub-Commission

aa Witnesses

99. Of the witnesses mentioned in paragraph 58 above, the following have also given evidence with regard to the respondent Government's allegation that the crisis of public order constituted a public emergency threatening the life of the nation in April 1967:

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- (1) Letter of 19th September, 1967; memorial of 6th July, 1968, page 69; hearing of September 1968, page 232.
 - (2) Hearing of June 1969, page 127.
 - (3) Ibidem page 119; hearing of March 1969, Vol. I, page 52.
 - (4) Hearing of June 1969, page 127.
 - (5) Memorial of 25th March, 1968, page 86.

- Panayotis Kanellopoulos (1)
- Georgios Ballis (2)
- Panayotis Papaligouras (3)
- Evangelos Averoff (4)
- Panayotis Christou (5)
- Constantinos Mitsotakis (6)
- Andreas Papandreou (7)
- Alexandros Matsinas (8)
- Georgios Anastassopoulos (9)
- Constantinos Hadjitheodorou (10)
- Fotios Makris (11)
- Constantinos Georgopoulos (12)
- Phedon Vegleris (13)
- Athanassios Paraschos (14)
- Alexander Sedgwick (15)
- Panayotis Troubounis (16)
- Helen Vlachou (17)
- André Lambert (18)
- Nicolaos Tomadakis (19)

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- (1) Hearing of March 1969, Vol. I, pages 20, 25-26.
 - (2) Ibidem pages 51-53.
 - (3) Ibidem pages 36-37, 41.
 - (4) Ibidem page 74.
 - (5) Hearing of November 1968, Vol. II, pages 299-307, 319, 322.
 - (6) Ibidem pages 495-496, 498.
 - (7) Ibidem pages 434-436, 453-457.
 - (8) Hearing of December 1968, Vol. II, page 187.
 - (9) Ibidem pages 142-143, 145.
 - (10) Ibidem pages 220-221.
 - (11) Hearing of November 1968, Vol. II, pages 535-538.
 - (12) Hearing of December 1968, Vol. II, pages 239, 242.
 - (13) Ibidem pages 257-258, 266-267.
 - (14) Ibidem pages 100-102, 104, 108, 129.
 - (15) Hearing of November 1968, Vol. II, page 346.
 - (16) Ibidem pages 395-396, 406-408, 411-415, 420-421.
 - (17) Hearing of December 1968, Vol. II, pages 154-155, 161, 167, 174-175.
 - (18) Hearing of November 1968, Vol. II, pages 379-383.
 - (19) Ibidem pages 361-363.

bb Documents

100. In support of its allegation that the crisis of public order constituted a public emergency threatening the life of the nation on 21st April, 1967, the respondent Government has submitted a number of documents including reports and photographs of earlier street demonstrations in August 1965 and July 1966. These are listed at Appendix X to the present Report.

(c) Examination of the evidence by the Sub-Commission

aa Public demonstrations

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

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

102. The Sub-Commission has also heard several witnesses on these demonstrations, in particular, Mr. Rallis, (3) who was then Minister of Public Order, and Professor Christou, who was then Rector of Salonica University and previously Minister of Northern Greece.

103. The official reports on the Athens demonstrations in April 1967 (5) bring out the following points:

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- (1) Memorial of 6th July, 1968, Annex 113.
 - (2) Ibidem, Annexes 111 and 112.
 - (3) Hearing of March 1969, Vol. I, pages 52-54.
 - (4) Hearing of November 1968, Vol. II, pages 299-307, and witnesses' notes deposited at that hearing, document No. 5 (photos of demonstrations).
 - (5) Memorial of 6th July, 1968, Annex 113.

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

104. Former Minister Rallis gave the following description of the demonstration of building workers in Athens on 12th April, 1967: "(L)es ouvriers-maçons avaient une réunion le matin dans un théâtre central dans la ville d'Athènes. Je les avais informés par le chef de la police d'Athènes qu'ils sont libres de participer à cette réunion, mais que, d'après la loi, dès que cette séance aura pris fin, ils doivent partir tranquillement et aller chez eux sans manifester dans la rue. Dès que la séance a pris fin, vers midi, une centaine de ces ouvriers est sortie là dans les rues d'Athènes. Ils ont attaqué les forces de la police. Ils ont jeté des pierres. Ils ont cassé des vitres des magasins. Ils ont blessé cinquante policiers et la police a été obligée de contre-attaquer et il y a eu, parmi les manifestants et d'autres communistes accourus à leur secours, 130 ou 135 blessés. La police avait 50 blessés. Cette bagarre a duré jusqu'à 3 ou 4 heures de l'après-midi et l'ordre a été rétabli."(3).

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- (1) A press report quoted by the respondent Government mentions a student demonstration in Athens on 8th April, 1967, in which 18 students and 1 policeman were hurt - memorial of 6th July, 1968, Annexe 114, page 561.
 - (2) The (conservative) National Radical Union.
 - (3) Hearing of March 1969, Vol. I, page 52. According to the witness Anastassopoulos, there were "from seventy to eighty policemen wounded and from seventy to eighty building workers" - hearing of December 1968, Vol. II, page 145.

105. The newspaper reports submitted by the respondent Government with regard to the demonstrations in the University of Salonica (1) state that:

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

106. Professor Christou, apparently referring to the clashes between left-wing and right-wing demonstrators in the University on 6th April, 1967, said that, "for a period of three hours ... a real battle was joined by these two groups of students, forty of them were wounded ... I observed the action of the battle from the highest building of the University. Later, when I was informed that the injured had reached a total of forty, I called the police and asked them to intervene to disperse these groups. The police came and intervened in the beginning with fire extinguishers using water, with fire hoses. As these brought forth no results, smoke-producing bombs were used." (2)

107. Former Minister Rallis, apparently referring to the demonstrations in Salonica University on 11th April, 1967, stated: "Quelques étudiants sympathisants communistes sont entrés dans l'université. Ils y sont resté pendant une journée entière et une nuit. Ils ont refusé de sortir. On a envoyé la police. Il y a eu 2 ou 3 gifles; aucun blessé, ou peut-être 1 ou 3 blessés. Et les étudiants sont revenus chez eux. L'ordre a été rétabli." (3)

108. The "Marathon March", planned for 16th April, 1967, was cancelled following an order prohibiting it by the Minister of Public Order. According to former Minister Rallis, "le parti de l'extrême-gauche (4) ... avait annoncé que le 16 avril aurait lieu la marche pacifique de Marathon.

(1) Memorial of July, 1968, Annexes 111 and 112.
(2) Hearing of November 1968, Vol. II, page 300.
(3) Hearing of March 1969, Vol. I, page 52.
(4) EDA.

On avait adressé des invitations aux communistes de l'Europe entière et même on avait invité certains communistes de l'Amérique du Sud. Le Gouvernement de M. Paraskevopoulos ... n'avait pris aucune mesure pour défendre cette marche communiste. J'ai prêté serment le 3 avril. Le 5 avril, je me suis entendu avec le Président du Conseil, M. Kannellopoulos, et j'ai fait une déclaration le lendemain en défendant la marche du Marathon du 16 avril et en ajoutant que ceux qui voulaient prendre part à cette marche seraient arrêtés par la police et que c'était égal si c'étaient des Grecs ou des étrangers venus pour cette raison. Le journal de l'extrême-gauche (1) et les députés sympathisants du parti communiste ont poussé des cris et ils ont dit que je suis d'une mentalité fasciste, que je ne permets pas cette marche tout à fait pacifiste et ils ont menacé de prendre part à la manifestation malgré la défense du Gouvernement. Le 15 avril, me téléphonait le Président de la Commission de la marche Marathon, un certain M. Pyromaglou, qui n'était pas membre du parti communiste, mais qui collaborait avec les communistes, et il me priait de faire une déclaration d'après laquelle je demandais à la commission de la marche de remettre la marche après les élections, parce que nous étions dans une période pré-électorale et qu'il ne fallait pas manifester. Je lui ai répondu que je refuse nettement. Je ne demande au parti communiste et à la commission de la marche aucune faveur. La marche est défendue et quiconque prendra part à cette marche sera arrêté et sera conduit devant les jugés pour être condamné. Il m'a dit que par mon intransigeance je mets en danger la situation en Grèce, qu'il y aura une effusion de sang. J'ai dit que cela ne me regarde pas, que je suis ici pour garder l'ordre et que je ne veux pas faire des pourparlers avec les communistes ou les sympathisants des communistes, avec l'extrême-gauche. Alors, il a dit: 'Bien, nous ferons la marche.' J'ai dit: 'Comme vous voulez. Vous serez arrêté.' Il a téléphoné tout de suite au Président du Conseil de qui il a reçu la même réponse. Cela se passait dans la matinée du jeudi 12 avril. Dans la soirée, il y avait un communiqué de la commission de la marche d'après lequel la marche était remise sine die." (2).

(1) "Avghi" - cf. paragraph 53, No. 3 above.

(2) Hearing of March 1969, Vol. I, page 51.

109. The record clearly shows a state of tension (1) in Athens and Salonica, particularly among the students and building workers, and at least one demonstration led to serious violence. Nevertheless, there is no evidence that the police were not in both cities fully able to cope with the situation; there is no indication that firearms were used or their use planned and still less was there any suggestion that the army should be called in to assist the police. (2) In fact, General Anghelis, when asked by the Sub-Commission's delegates whether "there were ever situations where the armed forces had to give help to the civil power", stated that the armed forces were always "ready to give (such help) but the need did not arise". (3)

bb Strikes

110. The respondent Government has given the Sub-Commission a list, extracted from newspaper reports, of strikes and work-stoppages in Greece from the beginning of 1967 up to mid-April. (4) Scrutiny of this list reveals that:

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

111. It was stressed before the Sub-Commission that these strikes were politically motivated and were in great part unofficial, (5) but that, at least in the case of school teachers and civil servants strike conditions were from a trade union point of view present. (6)

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- (1) See also the evidence given before the Sub-Commission by MM. Lambert (hearing of November 1968, Vol. II, pages 380-383) and Sedgwick (ibidem pages 345-346).
 - (2) It may be observed that this is not suggested, even contingently, in the report of the Lieutenant-General Panayotakopoulos, Chief of the Gendarmerie, on the Salonica disturbance of 10th July, 1966 - see Memorial of 6th July, 1968, Annex 38.
 - (3) Hearing of March 1969, Vol. I, pages 318-319.
 - (4) Memorial of 6th July, 1968, Annex 114.
 - (5) Witness Makris, hearing of November 1968, Vol. II, pages 535
 - (6) Ibidem page 537 et seq.

4. Conclusions of the Sub-Commission on the question whether there was on 21st April, 1967, a public emergency in Greece threatening the life of the nation

- a) As to the meaning of the term "public emergency threatening the life of the nation" in Article 15, paragraph (1), of the Convention (1)

112. A "public emergency threatening the life of the nation" (2) has been described by the European Court of Human Rights in the Lawless Case as:

"Une situation de crise ou de danger exceptionnel et imminent qui affecte l'ensemble de la population et constitue une menace pour la vie organisée de la communauté composant l'Etat". (in the English text: "an exceptional situation of crisis or emergency which affects the whole population and constitutes a threat to the organised life of the community of which the State is composed").(3)

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

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- (1) This question has been discussed by the parties before the Sub-Commission. See memorial of 6th July, 1968, pages 47-48, and hearing of September 1968, pages 212, 236-237 (respondent Government); memorial of 25th March, 1968, pages 49-60; hearing of September 1968, pages 145-148 (applicant Governments).
- (2) In the French text of Article 15: "danger public menaçant la vie de la nation". The English and French texts of the Convention are, as stated in its final clause, equally authentic.
- (3) Lawless Case (Merits), Judgment of 1st July, 1961, The Law, paragraph 28 (page 56). The French text of the judgment is authentic.

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

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

b) As to the criteria governing the control of a declaration of public emergency (1)

114. The Sub-Commission considers that in the present case the burden lies upon the respondent Government to show that the conditions justifying measures of derogation under Article 15 have been and continue to be met, due regard being had to the "margin of appreciation" which, according to the constant jurisprudence of the Commission, (2) the Government has in judging the situation in Greece as from the moment it assumed power on 21st April, 1967. (3)

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- (1) This question has been discussed by the parties before the Commission and the Sub-Commission. See, for the respondent Government: observations of 16th December, 1967, page 5; observations of 15th May, 1968, page 16; hearing of September 1968, pages 213-214, 238; for the applicant Governments: applications of 20th September, 1967, part III; memorial of 25th March, 1968, pages 54, 75-76, 82; hearing of September 1968, pages 145, 149-150, 206; hearing of June 1969, page 102.
- (2) See its reports in the First Cyprus Case (para. 136: "discretion in appreciating the threat to the life of the nation") and in the Lawless Case (para. 90: "a certain discretion - a certain margin of appreciation - must be left to the Government in determining whether there exists a public emergency which threatens the life of the nation", see also para. 91). The Court, in its judgment in the Lawless Case, did not use the term "margin of appreciation", but with regard to the question of the existence of a public emergency the Court stated inter alia that such emergency "was reasonably deduced by the Irish Government from a combination of several factors" ("a pu être raisonnablement déduite") - The Law, para. 28 (page 56).
- (3) Mr. Balta does not accept the doctrine of the margin of appreciation.

c) As to the situation on 21st April, 1967 (1)

115. In its notice of derogation of 3rd May, 1967, the respondent Government referred to "internal dangers which threaten public order and the security of the State".(2) According to the Government, there was on 21st April, 1967, "no question of an external danger, that is of war".(3)

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

117. The task of the Sub-Commission is to examine whether, on the evidence before it, the three factors described were together of such scope and intensity as to create a public emergency threatening the life of the Greek nation. This examination is itself limited by the criteria of what constitutes a public emergency for the purpose of Article 15, set out in paragraph 113 above. In particular, the criterion of actuality or imminence imposes a limitation in time. Thus the justification under Article 15 of the measures of derogation adopted by the respondent Government on 21st April, 1967, depends upon there being a public emergency, actual or imminent, at that date.

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

119. The Sub-Commission has not found that the evidence adduced by the respondent Government shows that a displacement of the lawful Government by force of arms by the Communists and their allies was imminent on 21st April, 1967; indeed,

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- (1) MM. Süsterhenn and Busuttill reserved their opinion on this issue.
 - (2) See paragraph 30 above.
 - (3) Hearing of September 1968, page 212.

there is evidence indicating that it was neither planned at that time, nor seriously anticipated by either the military or police authorities. In particular:

- (1) the arms caches found and described to the Sub-Commission (1) were negligible in size and quality; former Prime Minister Kannellopoulos stated that no substantial arms deposits had been found or reported to his Government; General Papageorgopoulos did not consider the importation of hunting guns to have been sufficient for an "uprising of great force"; and no evidence was produced of the use or attempted use of fire arms or explosives either in street demonstrations or elsewhere;
- (2) the authors of the "General Plan of Action" attributed to General Argyropoulos (2), state in it that they envisage force in three possible situations only:
 - carrying out of the May elections with use of force or fraud by the conservative ERE Party of Prime Minister Kanellopoulos;
 - the indefinite postponement of elections by this Party, based on a "camouflaged Royal dictatorship"; and
 - unfavourable election results for the Right and the refusal to surrender authority to the majority party.

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

(1) Paragraphs 70-74 above.
(2) Paragraphs 63-66 above.

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

120. The Sub-Commission further does not accept the suggestion of the respondent Government that the street demonstrations, strikes and work stoppages in the first months of 1967 (1) attained the magnitude of a public emergency. Though the street demonstrations, as anywhere, created anxiety for person and property in Athens and Salonica, the record does not show the police forces to have been at or even near the limit of their capacity to cope with demonstrations and disorder, and they acted without need of assistance from the armed services. In particular, they cleared the University buildings in Salonica of its illegal occupants "in a few minutes" on 11th April, 1967. The order prohibiting the "Marathon March", to be held on 16th April, 1967, and the obedience to it, is further indication that the Government was in effective control of the situation.

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

122. The Sub-Commission here notes with regard to the Government in office between 3rd and 21st April, 1967, that Prime Minister Kanellopoulos (2), and the two Ministers especially responsible for public safety and order, Rallis (3) and Papaligouras (4) expressed the firm opinion that there was on 21st April, 1967, no public emergency in Greece, actual or imminent.

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- (1) See paragraphs 101-111 above.
(2) Hearing of March 1969, Vol. I, pages 2 et sqq.
(3) Minister of Public Order, ibidem pages 50 et sqq.
(4) Minister of National Defence, ibidem pages 36 et sqq.

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

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

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

- (1) if it is said that the possibility of the formation of a "Popular Front" government, with its probable consequence of a Communist take-over of government, constituted in itself a public emergency threatening the life of the nation, the Sub-Commission does not consider that it has been shown, from the state of the parties or the political situation generally, that the formation of a "Popular Front" government after the May elections was certain or even likely;

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

(2) On the other hand, there was no indication on 21st April, 1967, that, either before or after the May elections, public disorder would be fomented and organised to a point beyond the powers of the police to control: on the contrary, the speed with which a large number of Communists and their allies were themselves "neutralised" on 21st April, 1967, suggests that, for all their supposed plans, they were incapable of any organised action in a crisis.

125. In sum, the respondent Government has not satisfied the Sub-Commission by the evidence it has adduced that there was on 21st April, 1967, a public emergency threatening the life of the Greek nation.

E. The evolution of the situation from 21st April, 1967
to the present time

1. General statements of the parties

a) Respondent Government

126. The respondent Government submitted that, notwithstanding its success in restoring order throughout the country since 21st April, 1967, the danger of subversive acts within Greece had not been completely eliminated. This made it necessary to continue to apply exceptional measures.(1)

127. The respondent Government also referred(2) to certain statements made by Prime Minister Papadopoulos at a press conference on 15th March following a speech of 6th March, 1969. On 6th March, Mr. Papadopoulos had said inter alia:(3)

"We do not face any danger, coming from whatever side. The country's armed forces and security forces, exploiting the vast support which our people provides to their organs, have succeeded so that the situation today (is) to be described as completely secure ... We had but a few Communists in our country"

At the press conference on 15th March, 1969, Mr. Papadopoulos "affirmed that Greeks, by upbringing and tradition, do not reconcile themselves to Communist world theory". The Communist danger which existed on 21st April, 1967, "did not lie in the number of Communists"; it was the "social conditions prevailing at the time, which allowed a handful of Communists to find ready response to their propaganda."(4)

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- (1) Letter No. 1683 of 22nd July, 1969 - reproduced at Appendix V to this Report.
(2) Letter of 19th March, 1969, see hearing of March 1969, Vol. IV, page 1182.
(3) Hearing of March 1969, Vol. IV, page 1184.
(4) Ibidem page 1183.

2. Applicant Governments

128. The applicant Governments submitted generally that a public emergency within the meaning of Article 15 of the Convention does not exist, and has not existed, in Greece at any time since 21st April, 1967. (1)

II. Evidence before the Sub-Commission

1. Witnesses

129. The Sub-Commission has heard the following witnesses with regard to the evolution of the situation from 21st April, 1967, to the present time:

Officers of the respondent Government

Georgis Kekkos, Director General of the Ministry of the Interior (2)

Constantinos Papaspyropoulos, Director, General Security Service, Athens (3)

Armed Forces

Odysseus Anghelis, General, Chief of the Armed Forces (4)

Georgios Engolfopoulos, Rear Admiral, former Chief of Naval Staff (5)

Ioannis Kritselis, Brigadier General, Director of the Judicial Services of the Army (6)

Alexandros Natsinas, General, former Chief of KYP (7)

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- (1) Hearing of June 1969, page 130.
 - (2) Hearing of March 1969, Vol. I, pages 327-328, 336-339.
 - (3) Ibidem Vol. II, pages 627-631, 635-636, 645-647.
 - (4) Hearing of March 1969, Vol. I, pages 319, 321.
 - (5) Ibidem page 99.
 - (6) Ibidem, Vol. II, page 756.
 - (7) Hearing of December 1968, Vol. II, page 208.

Members of former Governments

- Panayotis Kanellopoulos, former Prime Minister (1)
Stephanos Stephanopoulos, former Prime Minister (2)
Evangelos Averoff, former Minister (3)
Panayotis Papaligouras, former Minister (4)
Andreas Papandreou, former Minister (5)

Economic life

- Demetrios Galanis, Governor of the Bank of Greece (6)

Legal profession

- Phillipos Anghelis, President, Athens Bar Association (7)

Press

- Athanasios Paraschos, Publisher and Journalist (8)
Alexander Sedgwick, retired American Journalist
resident in Greece (9)
Panayotis Troubounis, Vice-President, Union of Athens
Newspaper Writers (10)

2. Documents

130. The respondent Government has submitted a number of documents concerning the evolution of the situation from 21st April, 1967, to date. These are listed at Appendix XI. to the present Report.

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- (1) Hearing of March 1969, Vol. I, page 21.
(2) Ibidem Vol. II, pages 705-707.
(3) Ibidem Vol. I, pages 79-80.
(4) Ibidem pages 47-48.
(5) Hearing of November 1968, Vol. II, page 466.
(6) Hearing of March 1969, Vol. I, pages 352 et seq.
(7) Ibidem Vol. II, pages 781-782, 786-787.
(8) Hearing of December 1968, Vol. II, page 123.
(9) Hearing of November 1968, Vol. II, pages 355-356.
(10) Ibidem pages 403-406.

3. Examination of the evidence by the Sub-Commission

131. The Sub-Commission finds, in the evolution of the situation from April 1967 to the present time, three factors which must be considered for the determination of whether the continuance of measures of derogation is justified by a public emergency, actual or imminent:

- (1) manifestations of public disorder,
- (2) declared policies of the Greek authorities, and
- (3) the relaxation of certain measures of derogation under Article 15 of the Convention.

132. A list was given to the Sub-Commission by the witness Papaspyropoulos, Director of the Government Security Service in Athens, of thirty-six "illegal anarchic organisations in existence after April 1967". (1) The witness observed:

"It is reasonable that the political forces which have temporarily been excluded from active participation in public affairs should develop an intensive activity. This is the reason why I am in a position to deposit with you a list of 36 organisations which were created after the revolution, (2) which are aimed against it in every possible way and which try, either by dynamic means or through propaganda, to excite the Greek people against the revolution." (3)

133. He also provided the Sub-Commission with a list of a number of acts of violence or attempted violence, and of sabotage, from September 1967 to March 1969. (4) These comprised:

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- (1) Hearing of March 1969, Vol. II, page 631 and Vol. IV, page 991.
 - (2) The Communist Party of Greece (KKE) is however included in the list.
 - (3) Ibidem Vol. II, page 627.
 - (4) Ibidem page 631 and Vol. IV, page 991.

- 19 placings of bombs in the Athens area found before explosion;
- 29 bomb explosions in Athens, one woman being killed in one case; two bomb explosions in Salonica, one in Herakleion, one in Chania and one in Patras;
- cutting of telephone cables, once in Kastellio in Crete and once in Patras;
- one case of arson in the Public Power Co-operative in Patras; and
- an incident in Herakleion where several people were wounded by machine gun fire.

134. In connection with eleven of the incidents mentioned above, the list names those responsible for placing bombs:

- on 4th September, 1967, members of D.E.A. (Democratic Resistance Commission) were arrested for placing four bombs at central points in Athens; and
- on 13th August, 1968, "the group of Panagoulis" placed bombs at eight points in the Athens area. In seven cases, the bombs were found before their explosion. The eighth bomb, placed on the Prime Minister's route, exploded.

135. According to a recent statement of the respondent Government, (1) an explosion took place at a private house near Athens on 14th July, 1969, causing injury to one of the persons living there. In the house, the police found "twelve time-bombs and twelve devices liable to cause an explosion". One of the rooms in the basement had been "transformed into an explosives dump and home-made bomb laboratory. The bombs ... were ready for use ..."

136. Speaking generally of these illegal activities, Papaspyropoulos stated: "as long as the present surveillance exists, no danger exists and if it does it can be faced squarely. However, I did maintain that if the surveillance in force today is suspended, all the organisations I mentioned will have the chance of activating themselves to the highest degree, and they will be helped by all those persons who are affected by the Government's political, social and administrative measures in general. I mentioned those things indicatively in order to show the mania and aggressive attitude of these groups, these organisations." (2)

(1) Letter No. 1683 of 22nd July, 1969, from the respondent Government to the Secretary-General of the Council of Europe, reproduced at Appendix V to this Report.

(2) Hearing of March 1969, Vol. II, page 645.

137. Questioned as to the scale and effect of the bomb incidents, the same witness replied that:

"Before 1967, bomb explosions did not exist as a form of activity. There were other forms of activity. Today this form of action is one of those which are more suitable to those organisations (1) ... such symptoms did not exist before the Revolution ... The purpose of the bomb explosions was not merely to cause a certain amount of destruction. They also aimed at giving a clear indication of the dynamism of a certain organisation which can break the morale of lawful citizens and boost the morale of illegally acting members of the organisations. Because if one places a bomb inside the 'Palace' cinema, a cinema with a seating capacity of 2,000, as a bomb was placed and in fact did explode, if you place bombs in the Ministries, in important public institutions, in cities and in squares, the fear caused to the citizen is intense, the dynamism of the organisation becomes felt, thus the preparation of the ground for the phase you referred to becomes easier." (2)

138. The declared policies of the Greek authorities in regard to public order and security was explained to the Sub-Commission by witnesses proposed by the respondent Government in terms designed to show that, while the measures of derogation under Article 15 had reduced the dangers threatening the Greek nation, they could not yet be completely relaxed.

(1) Thus Brigadier General Ionnais Kritselis, Director of the Judicial Services of the Army, said:

"Naturally, there is no danger today to the extent which existed at the time of the Revolution. This means that, in my opinion, the danger exists today to a lesser extent. This is why these extraordinary measures are being maintained though on a smaller scale. I repeat, therefore, the danger in my opinion still exists but is no longer so great as it was

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- (1) The organisations mentioned in paragraph 132 above.
(2) Hearing of March 1969, Vol. II, pages 645-646.

before the Revolution. ... I think that the maintenance of these measures, on a reduced scale, is what has actually reduced the danger. That is my answer. We cannot know whether the present reduced danger would not become aggravated if the measures ceased to exist. These extraordinary measures, taken by the Government and still maintained on a reduced scale, are the reason why the danger has been reduced. I think, too, that the maintenance of these measures is justified until the danger has been completely eliminated." (1)

- (2) Papaspyropoulos, whose statement on illegal activities since April 1967 has already been quoted, commenting on the public speech by Prime Minister Papadopoulos at Kavala on 6th March, 1969, (2) said:

"And the Prime Minister very correctly mentioned this subject which is in no way contradictory to what I said. Because, as long as the Security Forces and the National Armed Forces exist and continue to watch out, no danger exists for the Nation. A danger exists for the Nation when the Security Forces no longer have the possibility which they have today to exercise this surveillance in the way they exercise it. The Prime Minister referred to the assistance of the Greek people. I referred to those groups and to those persons who, because their interests are affected, turn against the whole Nation and who, even if they are limited in number, enjoy a special social prominence because of their special position in society." (3)

However, this witness also said that the danger which exists in Greece today is greater than that which existed prior to 21st April, 1967 (4).

- (3) General Anghelis, stressing the character of Greece's Northern frontiers, stated:

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- (1) Hearing of March 1969, Vol. II, page 756.
(2) See paragraph 127 above.
(3) Hearing of March 1969, Vol. II, page 633.
(4) Ibidem page 627.

"The communist danger will always be there. So long as communism remains as a conspiratorial, treasonable and subversive movement, the communist danger will always be there and it will always be greater in Greece for special reasons.

However, this does not mean that the present regime should be preserved. When the statutory changes provided for in the Constitution take place, when the Government machine is purged and becomes more effective, and when certain social measures already announced by the Government are taken, then it will be possible to deal with communism with the usual constitutional and democratic methods. If it were possible at this moment to transplant Greece to France or Belgium or Great Britain, then the regime could be changed now. But not with Greece where it is. Because they are ready on our frontiers." (1)

- (4) Finally Kekkos, Director General of the Ministry of the Interior, also commenting on the speech of the Prime Minister, gave a similar account of the policies of the respondent Government:

"I believe that the Prime Minister's speech does not mean what you have indicated, namely, that the communist danger in this country has been completely eliminated. Naturally, the Army and the Security Forces try to prevent the communists from expressing themselves and from obtaining what they believe in. But I think that, in addition to this, I mean the disruption of communism in which the Government has succeeded but which is not sufficient, certain other measures must be taken subsequently, measures which are provided for in the Constitution and will prepare the ground for a normal political life. I think that the extraordinary measures must be maintained until those measures, which the Government intends to take, have been completed. Besides, as time goes by, the Government tries to abolish certain measures which had been taken in the beginning. For example, the citizens are now free to assemble and an amnesty has been granted to those who had acted against the Government. Similarly, certain measures were taken in regard to the press so that the strict supervision of censorship which had been imposed initially has now been eased so much that there are today certain papers and magazines that are not subjected to any censorship or supervision.

(1) Ibidem Vol. I, page 321.

Therefore, the Government is trying, little by little, to take all those measures that will ensure normal conditions which will permit us to achieve a sound parliamentary system. Also, certain other measures have been taken aiming at the establishment of the institutions provided for by the Constitution. The Government has already started preliminary work on this. I believe that there is reason to maintain the extraordinary measures until all those conditions have been fulfilled."(1)

It is noted that these witnesses stressed, as did Prime Minister Papadopoulos(2), that the influence of the Greek Communists lay not in their numerical strength, which was and always has been small, but in their role in particular social and economic situations.

139. Other witnesses, not active members of the Government Service or Armed Services, considered that the present situation was less secure than it appeared(3) and that it was aggravated by the maintenance of measures of derogation. According to former Prime Minister Kanellopoulos, "la prolongation de ce régime est dangereuse pour la Grèce, car ... sous le silence du cimetière ce sont seulement les communistes qui peuvent agir".(4) Similarly former Prime Minister Stephanopoulos found "that any further prolongation of this situation is pregnant with great dangers for the country" because, following the dissolution of the political parties, the underground movement of the Communists "keeps spreading and becoming better organized".(5) Former Minister Papaligouras pointed out: "Ceux qui sont mécontents, ceux qui s'opposent au régime, et je crois que la grande majorité de pays s'oppose, n'ont pas en ce moment le moyen de réagir. Si un beau jour le parti communiste réagit c'est de la manière dont lui seul sait réagir et peut réagir".(6)

(1) Ibidem pages 531-532.

(2) See paragraph 127 above.

(3) Witness Philippos Anghelis (hearing of March 1969, Vol. II, pages 781, 786) and witness Matsinas (hearing of December 1968, Vol. II, page 206).

(4) Hearing of March 1969, Vol. I, page 21.

(5) Ibidem, Vol. II, pages 705-706.

(6) Ibidem, Vol. I, page 47.

According to former Minister Averoff, the fact that there is no freedom of thought or expression "ne fait que provoquer des réactions dangereuses".(1) Kanellopoulos(2), Averoff(3) and Papaligouras stressed the danger that "un grand nombre de la jeunesse --- sera trompé par des communistes".(4)

140. Kekkos and the witness Galanis, Governor of the Bank of Greece, both testified to economic progress since April 1967.(5)

- (1) The former spoke of social and economic measures to improve living standards:

"The application of some of these economic measures has already been started, especially for farmers and workers. Farmers owed the Agricultural Bank an amount of approximately seven billion drs. These debts were cancelled and the farmers were freed from them. They also receive economic assistance through the Agricultural Bank to enable them to improve their economic situation. They are given special housing loans. We, at the Ministry of the Interior, acting in co-operation with the Ministry of Co-ordination and the Ministry to the Prime Minister, have now drafted a bill on regional economic development which will be a unit, a new unit; naturally not a department with decisive powers but with a power to co-ordinate all the programmes implemented by the Provinces."(6)

- (2) Galanis referred in the period 1965-67 to the withholding of capital from new investment, a rise of 10% in the price index, the economic insecurity caused by strikes and then to the "complete restoration of the public's psychology". This was "reflected in the increase of deposits by 15,377 million drachmas during 1968, that is, by an amount approximately twice that of the highest increase in deposits ever achieved up till now.

(1) Ibidem page 80.

(2) Loc. cit.

(3) Loc. cit.

(4) Papaligouras loc. cit.

(5) A different opinion as to the economic situation was expressed by Averoff (loc. cit.) and Stephanopoulos (loc. cit.).

(6) Hearing of March 1969, Vol I, pages 344-345.

Secondly, in the course of 1968, two major loans of a 20 year term were floated on the Greek capital market, one by the Public Power Corporation (P.P.C.) and another of three billion drachmas by the State, a fact which constitutes an achievement for the small Greek market. These facts are indicative of the situation; of the public's confidence in the political stability on the one hand and the country's economic future on the other hand, whereas such phenomena did not exist prior to 1967."(1)

141. Certain of the measures of derogation under Article 15 have been cancelled or relaxed since April 1967, and the Sub-Commission will examine the consequences under particular articles of the Convention in Chapter II below.

IV. Conclusions of the Sub-Commission on the situation since 21st April, 1967(2)

142. Although the respondent Government has found itself able to annul or relax certain measures of derogation since 21st April, 1967, the state of siege continues and the Government has pointed out two new factors of which the Sub-Commission has taken account:

- (1) the bomb incidents and acts of sabotage, which have been often repeated since the summer of 1967; and
- (2) the formation and activities of a number of illegal organisations also formed since April 1967.

143. The Sub-Commission does not find, on the evidence before it, that either factor is beyond the control of the public authorities using normal measures, or that they are on a scale threatening the organised life of the community.

144. To sum up, the respondent Government has not satisfied the Sub-Commission by the evidence it has adduced that there is or has been since 21st April, 1967, a public emergency threatening the life of the Greek nation.

(1) Ibidem page 354.

(2) Mr. Ermacora reserved his opinion on this issue.

F. Whether the measures taken by the respondent Government were strictly required by the exigencies of the situation

145. The Sub-Commission has stated as its opinion that the evidence adduced by the respondent Government does not show the existence of a public emergency threatening the life of the Greek nation on 21st April, 1967(1), or at any later date(2) and that, consequently, the main condition of Article 15 of the Convention is not satisfied in the present case.

The Sub-Commission is not therefore called upon to express a view on the further question under Article 15 whether the measures taken by the respondent Government in derogation from its obligations under the Convention were or are "strictly required by the exigencies of the situation".

However, an account of such measures, and of the relevant submissions of the parties, will be given under particular Articles of the Convention in Chapters II and III below. In that connection, the Sub-Commission will also consider whether or not these measures could be regarded as strictly required by the exigencies of the situation, if it were to be said that there has been a public emergency threatening the life of the Greek nation on 21st April, 1967, or at any later date.

(1) Paragraph 125, above.
(2) Paragraph 144, above.

G. Whether Articles 17 and 18, read together with the Preamble, exclude the present derogations under Article 15 of the Convention

146. As stated above, (1) the question was raised in this case whether the present derogations under Article 15 were excluded by Articles 17 and 18, read together with the Preamble, on the ground that they were:

- (1) aimed at the destruction of rights and freedoms set forth in the Convention or at their limitation to a greater extent than provided for in the Convention (Article 17); or
- (2) applied for purposes other than those for which the restrictions permitted under Article 15 have been prescribed (Article 18).

I. Submissions of the parties.

1. Respondent Government

147. The respondent Government observed that Articles 15 and 17 of the Convention were designed to protect democratic regimes against totalitarian conspiracies (2). The Government maintained that the measures which it had itself taken under Article 15 were intended to save democracy from the danger that threatened it (3) and it declared that Greece would return to parliamentary life when "a normal state of affairs has been restored and appropriate conditions created" (4).

2. Applicant Governments

148. The applicant Governments referred to the Preamble and to Articles 17 and 18 of the Convention (5). They submitted that, as stated in Article 18, the right to take derogatory measures under Article 15 was linked with the purpose of such measures (6). To derogate from "democratic rights and human rights and freedoms" was permitted in exceptional cases "for the specific purpose only of protecting these very institutions, rights and freedoms" (7). Article 17 excluded derogations which were aimed at the destruction of the rights and freedoms set forth in the Convention (8).

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- (1) Paragraph 18.
 - (2) Memorial of 6th July, 1968, page 46.
 - (3) Ibidem pages 74-76.
 - (4) Ibidem page 76.
 - (5) Hearing of January 1968, page 33; memorial of 25th March, 1968, pages 47, 76-80; hearing of September 1968, pages 150-153; hearing of June 1969, pages 136-139.
 - (6) Memorial of 25th March, 1968, page 47.
 - (7) Hearing of June 1969, page 138.
 - (8) Ibidem page 137.

149. The applicant Governments, while agreeing with the respondent Government that Article 15 and 17 were designed to protect democratic regimes against totalitarian conspiracies, (1) maintained that the respondent Government had itself introduced a totalitarian regime in Greece and destroyed human rights and fundamental freedoms (2); it was therefore prevented from invoking Article 15 as a justification of its measures of derogation (3).

II. Opinion of the Sub-Commission (4)

150. The Sub-Commission has already stated as its opinion that the main condition of Article 15 - the existence of a public emergency threatening the life of the nation - is not satisfied in the present case. It is therefore not called upon to express a view on the further question whether the respondent Government's derogations under Article 15 were also excluded by Articles 17 and 18 of the Convention.

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- (1) Hearing of September 1968, page 150; hearing of June 1969, page 136.
 - (2) Hearing of June 1969, page 137.
 - (3) Ibidem page 138.
 - (4) Mr. Ermacora reserved his opinion on this issue.

H. Whether the measures taken by the respondent Government are consistent with other obligations of Greece under international law

I. Introduction

151. Article 15, paragraph (1), excludes derogations from the Convention by a High Contracting Party which are "inconsistent with its other obligations under international law".

152. The respondent Government maintained that its measures of derogation "related to a matter in which Greece is not bound by any contrary obligation under international, contractual or customary, law" (1). Due care had been taken "that the international obligations of Greece should be completely observed" (2).

153. No submissions were made on this issue by the applicant Governments.

II. Opinion of the Sub-Commission

154. The Sub-Commission has already stated as its opinion that the main condition of Article 15 - the existence of a public emergency threatening the life of the nation - is not satisfied in the present case. It is not therefore called upon to express a view on the further question whether the respondent Government's derogations under Article 15 were consistent with its other obligations under international law.

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- (1) Memorial of 6th July, 1968, page 86. See also ibidem page 44.
- (2) Hearing of September 1968, page 279.
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CHAPTER II - ARTICLES 5, 6, 8, 9, 10, 11, 13 AND 14 OF THE
CONVENTION AND ARTICLE 3 OF THE FIRST PROTOCOL

A. Introduction

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

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

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

157. With regard to its establishment of the facts under Articles 5, 6, 8, 9, 10, 11, 13 and 14 of the Convention and Articles 1 and 3 of the Protocol, the Sub-Commission recalls (3) that, by letters of 12th March, 1st May and 21st May, 1969, the respondent Government was invited to submit the complete text of the emergency legislation in force in Greece, insofar as it affects the rights guaranteed in the above Articles. However, it will be seen below (4) that, with regard to most of these Articles, the information received from the respondent Government is incomplete.

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- (1) Paragraphs 6, 9 and 15.
(2) Paragraphs 10, 13 (Nos. 5 and 6) and 15 above.
(3) Cf. paragraph 45 above (footnote 2).
(4) See paragraphs 178, 227 (footnote 2), 262 (footnote), 267 (footnote 1), 268 (footnote), ...

B. Deprivation of liberty in relation to Article 5 of the Convention

I. Submissions of the parties

1. Applicant Governments

158. The applicant Governments stated generally that, by certain legislative measures and administrative practices, the respondent Government had in various respects violated Article 5 of the Convention which guaranteed to everyone the right to liberty and security of person.(1)

159. They submitted in particular that the respondent Government had, on 21st April, 1967, suspended Article 5 of the Greek Constitution of 1952 which corresponded in substance to Article 5 of the Convention.(2) With regard to the new Constitution of 1968, they stated that its Article 10 concerning the right to liberty and security of person had not yet entered into force.(3)

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

- (1) detention under administrative order;(4)
- (2) transfer and confinement to certain localities;(5)
and
- (3) house arrest.(6)

They also stated that the freedom of many persons was restricted by close police supervision.(7)

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- (1) Hearing of June 1969, page 28.
 - (2) Applications of 20th and 27th September, 1967, part II; memorial of 25th March, 1968, pages 15-17; hearing of September 1968, page 62; hearing of June 1969, pages 12-13, See also paragraphs 30-31 above.
 - (3) Hearing of June 1969, page 15.
 - (4) (Scandinavian) Memorial of 25th March, 1968, pages 18-20; Netherlands memorial of 25th March, 1968, pages 3-4; hearing of September 1968, pages 62 et sqq.; hearing of June 1969, pages 14 et sqq.
 - (5) Hearing of June 1969, pages 20-21, 29.
 - (6) Ibidem pages 21-22, 29.
 - (7) Ibidem pages 22-23.

161. The applicant Governments further considered that the Greek authorities violated Article 5, paragraph (1), by applying unnecessarily harsh methods when effecting arrests or taking other measures affecting the right to liberty and security of person.(1)

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

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

- (1) persons detained under administrative order, in that such persons were never brought before a judge or judicial officer nor brought to trial;(3)
- (2) persons arrested on suspicion of having committed offences against national security, in that such persons were not brought before a judge in connection with their arrest.(4)

With regard to the latter group, the applicant Governments observed that, under the Law on the State of Siege, the length of detention pending trial was "not restricted by any law".(5) This was illustrated by a document indicating the length of such detention in 144 cases.(6)

(1) Hearing of June 1969, pages 24-26, 29.

(2) Ibidem pages 26-27, 29-30.

(3) Netherlands memorial of 25th March, 1968, page 4; hearing of September 1968, page 70; hearing of June 1969, page 30.

(4) Hearing of June 1969, page 30.

(5) Ibidem page 13.

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

164. The applicant Governments further submitted, both with regard to persons arrested under the Law on the State of Siege and detained pending trial, and in respect of persons detained under administrative order, that there was a violation of Article 5, paragraph (4), of the Convention, in that such persons were deprived of the right to take proceedings by which the lawfulness of their detention could be decided speedily by a court and their release ordered if their detention was not lawful (1).

165. Finally, the applicant Governments referred to the right to compensation mentioned in Article 5, paragraph 5, of the Convention and observed that, while the corresponding provisions of the 1952 Constitution had been suspended on 21st April, 1967, the corresponding provision of the 1968 Constitution was not yet in force (2).

2. Respondent Government

166. The respondent Government denied that there had been any violation of the right to liberty and security of person laid down in Article 5 of the Convention (3). Alternatively, it stated that it had validly derogated from Article 5 in accordance with Article 15 of the Convention (4).

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

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- (1) Hearing of September 1968, page 70; hearing of June 1969, pages 27-28, 30-31.
 - (2) Hearing of September 1968, page 70; hearing of June 1969, page 31.
 - (3) Memorial of 6th July, 1968, page 15.
 - (4) Ibidem page 14.
 - (5) Ibidem page 10.

168. With regard to persons detained under administrative orders, the respondent Government stated that the system of administrative detention, which was substantially based on legislation enacted before 21st April, 1967, was designed to protect the democratic order against Communism (1). It had been found to be in conformity with the Constitution of 1952 (2) and never been contested before by the Commission (3).

The Government pointed out that the persons at present detained were Communists, who presented a danger to public order and security. Most of them had been convicted before 21st April, 1967, on such charges as murder or espionage and been sentenced to death or long terms of imprisonment (4).

II. Evidence before the Sub-Commission

1. Witnesses

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

Philippos Anghelis (5)
Catherine Arseni (6)
Nikolaos Bakopoulos (7)
Panayotis Kanellopoulos (8)
Sotirios Kouvas (9)
André Lambert (10)
Vasilios Lambrou (11)

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- ./.
- (1) Memorial of 6th July, 1968, pages 10-11; hearing of September 1968, page 185.
 - (2) Memorial of 6th July, 1968, page 12; hearing of September 1968, pages 185-186.
 - (3) Memorial of 6th July, 1968, page 13.
 - (4) Ibidem page 10. According to the respondent Government's letter of 29th April, 1968 (paragraph 2 b - see Appendix V to this Report), 697 of the 2.437 persons detained at that date had previously been sentenced for committing murder, espionage or sabotage.
 - (5) Hearing of March 1969, Vol. I, page 788.
 - (6) Hearing of November, 1968, Vol. I, pages 137 et seq.
 - (7) Hearing of March, 1969 Vol. II, page 665.
 - (8) Ibidem Vol. I, pages 8-11, 13-14, 55.
 - (9) Ibidem Vol. II, pages 528 et seq.
 - (10) Hearing of November 1968, Vol. II, pages 383-385.
 - (11) Hearing of March 1969, Vol. I, page 140.

Andreas Lendakis (1)
Dionysios Livanos (2)
Constantinos Meletis (3)
Constantinos Mitsotakis (4)
Christos Papangiannakis (5)
Andreas Papandreu (6)
Constantinos Papaspyropoulos (7)
Georgios Rallis (8)
Eleftherios Veryvakis (9)
Christos Yotopoulos (10)

Some of the above witnesses had originally been called under Article 3 of the Convention and a number of further witnesses heard under Article 3 have also given evidence concerning Article 5 (11).

2. Documents

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

III. Examination of the evidence by the Sub-Commission

1. The suspension of constitutional provisions concerning the right to liberty and security of person

(a) Constitution of 1952

174. Article 5 of the Greek Constitution of 1952 provided (12):

"With the exception of persons taken in the act of committing an offence, no one shall be arrested or imprisoned without a judicial warrant stating the reasons which must be served at the moment of arrest or imprisonment pending trial.

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- (1) Hearing of March 1969, Vol. I, page 256, and Vol. IV, page 987.
 - (2) Ibidem Vol. II, pages 586, 594-595, 600-602.
 - (3) Hearing of November 1968, Vol. I, pages 175 et seq.
 - (4) Ibidem Vol. II, page 510, and hearing of December, 1968, Vol. I, pages 60, 62-63.
 - (5) Hearing of March 1969, Vol. II, pages 436-439, 444.
 - (6) Hearing of November 1968, Vol. I, pages 9, 24, 28.
 - (7) Hearing of March 1969, Vol. II, pages 626 et seq., 639, 640.
 - (8) Ibidem Vol. I, pages 55, 56.
 - (9) Ibidem Vol. II, pages 708 et seq., 722-723.
 - (10) Ibidem Vol. II, pages 503-504.
 - (11) See Chapter IV of this Report.
 - (12) As reproduced in Annex A of the Netherlands application of 27th September, 1967. The French text received from the respondent Government is reproduced at Appendix I to the present Report (page...).

Any person taken in the act or arrested on the basis of a warrant of arrest shall without delay be brought before the competent examining magistrate within twenty-four hours of his arrest at the latest, or, if the arrest was made beyond the seat of the examining magistrate, within the time absolutely necessary for his conveyance. Within at the most three days from such appearance, the examining magistrate must either release the person arrested or deliver a warrant for his imprisonment. This time-limit shall be extended for up to five days at the request of the person arrested or in the event of force majeure, which shall be certified forthwith by a decision of the competent judicial council.

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

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

172. The above constitutional provisions were suspended by, Royal Decree No. 280 of 21st April, 1967.(1)

b) Constitution of 1968.

173. Article 10 of the new Greek Constitution of 1968 provides:(2)

"1. With the exception of persons caught in the act of committing an offence, no one shall be arrested or imprisoned without a judicial warrant stating the reasons, which must be served at the time of arrest or remand in custody pending trial.

(1) See paragraph 30 above.

(2) English translation submitted by the respondent Government.

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

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

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

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

174. The above Article 10 of the new Constitution is not yet in force. The entry into force of the provisions of this Constitution is regulated in Article 138 which states as follows: (1)

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(1) English translation submitted by the respondent Government.

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

The Constitution was signed by the Council of Ministers on 14th September (1) and approved by Referendum on 29th September, 1968 (2). With the exception of article 10 and the other provisions mentioned in article 138, it entered into force on 15th November, 1968 (3).

2. Legislation concerning deprivation of liberty

a) Law on the State of Siege

175. A state of siege was declared in Greece by Royal Decree No. 280 of 21st April (4) and maintained by Constitutional Act Beta of 5th May, 1967 (5).

176. According to Article 9, paragraph (d), of the Law on the State of Siege, the military authorities may "effect arrests even without the formalities stipulated in Article 5 of the Constitution" of 1952 (6).

177. An official announcement of 24th April, 1967, stated that, under the Law on the State of Siege: (7)

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- (1) See the document "Constitution of Greece - Text Submitted to the Greek People for Referendum on 29th September, 1968", page 56 (filed by the respondent Government).
 - (2) See the document "Constitution of Greece - Approved by Referendum on 29th September, 1968 - in effect as of 15th November, 1968" (submitted by the respondent Government).
 - (3) Ibidem.
 - (4) See paragraph 32 above.
 - (5) Article 1 of the Act - see Appendix XVIII of this Report (Constitutional Acts submitted by the respondent Government). Constitutional Act Beta remained in force under Article 136, paragraph 2, of the 1968 Constitution.
 - (6) Memorial of 6th July, 1968, page 10.
 - (7) English translation submitted by the applicant Governments of Denmark, Norway and Sweden - memorial of 25th March, 1968, Vol. II, page 8.

"(1) The arrest and imprisonment of any person is allowed without the observance of normal procedure; that is to say without any order from a competent authority and without that person being caught in the act of carrying out a crime. Length of imprisonment before trial is not restricted by any law.

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

b) Detention under administrative order

178. This detention is ordered by Committees of Public Safety in the case of persons considered dangerous to public order and security. (1) It is based on a Legislative Decree of 1924 and subsequent legislation, including Emergency Act No. 165 of 16th October, 1967, (2) Legislative Decree No. 11 of 28th November, 1968, (3) and Legislative Decree No. 188 of 14th/15th May, 1969. The complete text of this legislation has not been submitted to the Sub-Commission but English translations have been filed of Emergency Act No. 165 (4) and of Legislative Decree No. 188. (5)

179. From the parties' submissions (6) and the text of Emergency Act No. 165, it appears that the Committees of Public Safety are at present composed of the Prefect, the Public Prosecutor at the Court of first instance and the Commander of the Gendarmerie or Superintendent of Police. The Committees may order the detention and also decide that detention shall continue, but not for more than one year at a time.

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(1) Memorial of 6th July, 1968, pages 10, 12.

(2) On page 11 of its memorial of 6th July, 1968, the respondent Government lists 15 Acts and Decrees.

(3) Hearing of June 1969, page 16.

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

(5) Doc. D 31.218 of the Council of Europe (submitted under cover of the respondent Government's letter No. 1334 of 30th May, 1969). See also the Government's letter No. 1006 of 23rd April, 1969, to the Secretary-General of the Council of Europe, paragraph B1 - reproduced at Appendix V to this Report - and paragraph 157 above.

(6) Memorial of 6th July, 1968, page 12; hearing of June 1969, page 14.

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

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

182. This situation has recently been modified by Legislative Decree No. 188 of 14th/15th May, 1969, concerning the re-examination of the cases of persons subjected to administrative detention since 21st April, 1967. (1) According to Article 2 of the Decree, an ex officio examination of these cases is to be carried out by a Committee of three judges or three Public Prosecutors appointed by the Minister of Justice. The Committee "is obliged to take into consideration every element which is useful or helpful in enlightening the individual case", in particular:

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

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

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

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

No information has been received by the Sub-Commission ~~as to the result of~~ the application of the above Legislative Decree.

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

3. Practice concerning deprivation of liberty

a) Arrest

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

184. The witness Lambrou, Police Inspector in charge of the Department of Anti-Communist Activities in the Athens General Security Service, (1) has stated that "arrests are made on our own initiative. I, and those under me, do not wait for orders from anyone. If I decide to make an arrest I do not expect an order from anyone, because this is what the laws in force provide for.... I just apply the laws which deal with public security. Any person irrespective of his political beliefs can be arrested if he breaks the law concerning national security." (2)

185. As regards arrests ordered by the Committees of Public Safety for purposes of administrative detention, the witness Paspaspyropoulos, Director of the Athens General Security Service, (3) has stated:

"To this Committee, police authorities send their proposals as to the dangerousness of the person together with concrete evidence of his activity or the danger the State runs from his activity. And the decision is also carried out through the police authorities." (4)

186. The witness Kouvas, Police Inspector in charge of the Intelligence Service in the Piraeus Security Service, (5) stated that such arrests "did not take place following interrogation. That is, we already have all the particulars that have been collected from files compiled by persons who are not Communists but have watched these Communists and followed them etc. These files are formed without an investigation taking place, and are submitted to the Committee of Public Safety. And then the Public Prosecutor, after discussion, decides ... We make a proposal, but the Public Prosecutor does not have to accept our proposal." (6)

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- (1) Hearing of March 1969, Vol. I, pages 136, 137.
(2) Ibidem pages 140, 167.
(3) Ibidem, Vol. II, page 626.
(4) Ibidem page 640.
(5) Ibidem page 528.
(6) Ibidem page 531.

187. The witness Papaspyropoulos admitted that, "on the first day of the Revolution, arrests were made without this formal procedure". He added that, subsequently, commissions were sent to the detention places and each detainee "could present his case before them. Many, very many thousands ..., if I am not mistaken, were released as a result of the revision carried out by these commissions."(1)

188. A number of witnesses have described to the Sub-Commission the manner in which arrests were carried out by officers of the police or armed forces of the respondent Government. Some of this evidence raises questions of ill-treatment and will be considered in connection with Article 3 of the Convention.(2) Apart from that it also appears from the statements made, in particular, by the witnesses MM. Bakopoulos (3), Livanos (4) and Rallis (5), that, in many cases, persons arrested and detained were not informed of the reasons for their arrest. As a general rule, "arrests are made at night because people are out during the day."(6)

b) Detention under administrative order

189. The witness Papaspyropoulos, Director of the Athens General Security Service, has submitted to the Sub-Commission a chart showing the number of persons detained under administrative order between 1st January, 1950, and 8th March, 1969.(7) According to this document, the number of detainees was on 1st January

in 1950	2.815
in 1951	2.727
in 1952	1.342
in 1953	1.026
in 1954	994
in 1955	833
in 1956	653
in 1957	547
in 1958	399
in 1959	319

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

(2) See Chapter IV of this Report.

(3) Hearing of March 1969, Vol. II, page 665.

(4) Ibidem pages 594-595, 601.

(5) Ibidem Vol. I, page 55.

(6) witness Lambrou, ibidem page 142.

(7) Hearing of March 1969, Vol. II, page 638, and Vol. IV, page 997.

in 1960	304
in 1961	247
in 1962	158
in 1963	0
in 1964	0
in 1965	0
in 1966 (and on 20th April, 1967)	0

196. The same indications are contained in a document submitted by the respondent Government, as regards persons detained "for reasons of national security (Communists - anarchists)". (1) This document further states that the number of persons detained "for reasons of public security" was in: (2)

	<u>Detained under a decision of EDAN(3)</u>	<u>Detained under court order</u>
1951	128	6
1952	63	5
1953	163	8
1954	153	18
1955	135	13
1956	75	14
1957	119	18
1958	133	11
1959	62	11
1960	55	19
1961	47	84
1962	113	63
1963	74	62
1964	32	28
1965	35	28
1966	30	23
1967 (21.4.67)	21	7

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- (1) Memorial of 6th July, 1968, Annex 7 (the number given for 1961 is 304, but this appears to be a typing mistake).
 - (2) The figures given on page 13 of the memorial of 6th July, 1968, comprise the two groups of detainees mentioned in paragraphs 189 and 190.
 - (3) The meaning of this abbreviation has not been indicated by the Government.

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

after 21st April, 1967	6.848(1)	6.844(2)	6.338(3)
on 1st January, 1968		2.625(4)	
on 2nd July, 1968		2.305(5)	
on 1st January, 1969		1.889(6)	
on 8th March, 1969		1.875(7)	

192. A further document submitted by the witness Papaspyropoulos(8) gives the following details with regard to the place of detention of the 1874 persons who were detained on 13th March, 1969:

1. Camp of Partheni on Leros		
a. Present in the camp ...	Men	379
b. In hospital etc. ...	"	50
c. Total	Men	<u>429</u>
2. Camp of Lakki on Leros		
a. Present in the camp ...	Men	1144
b. In hospital etc. ...	"	71
c. Total	Men	<u>1215</u>

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- (1) Letter of 29th April, 1968, from the respondent Government, paragraph 2(a) - see Appendix V to this Report.
 - (2) Memorial of 6th July, 1968, Annex 5.
 - (3) Chart submitted by Mr. Papaspyropoulos - cf. paragraph 189 above.
 - (4) Ibidem.
 - (5) Memorial of 6th July, 1968, Annex 6.
 - (6) Chart submitted by Mr. Papaspyropoulos.
 - (7) Ibidem.
 - (8) Hearing of March 1969, Vol. I, page 638, and Vol. IV, page 996. For a similar chart concerning the situation on 2nd July, 1968, see memorial of 6th July, 1968, Annex 6.

3.	Camp of Skala at Croyos		
a.	Present in the camp ...	Men	89
b.	In hospitals etc.	"	9
c.	Total	<u>Men</u>	<u>98</u>
4.	Camp of Halikarnassos		
a.	Present in the camp ...	Women	128
b.	In hospitals etc. ...	"	4
c.	Total	<u>Women</u>	<u>132</u>
	General Total		<u>1874</u>

193. Evidence has been given before the Sub-Commission as to the living conditions of detainees in the above places. This will be considered under Article 3 of the Convention (1).

c) Transfer and confinement to certain localities

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

195. Mr. Livanos stated that he was sent to Parga, a village in Epirus where he lived under surveillance and had to go to the police station twice a day to sign a paper that he was present. He was not permitted to speak to persons from outside the village: "When I saw a friend of mine they didn't allow me to talk to him. There were other persons ... to whom I was not allowed to say even 'good morning'". His wife

(1) See Chapter IV of this Report.

was with him and after a while his son was brought along. "I cannot say that my exile was severe, except financially ... I had to rent a room in a hotel and to bring my baby along with me, but apart from this there was no ... comparison with what happened to me previously" (1).

196. Evidence given by the witnesses Bakopoulos (2) and Andreas Papandreou (3), as well as a document submitted by the respondent Government (4), concerns some former deputies of the Centre Union Party who were transferred to the island Hagios Efstratios. These cases also raise questions which will be considered in connection with Article 3 of the Convention (5).

d) House arrest

197. House arrest has been imposed by the respondent Government on a number of former politicians and/or their families. Former Prime Minister Kanellopoulos has described to the Sub-Commission the different periods of his house arrests in 1967 and 1968 (6). Evidence concerning the house arrest of former Prime Minister Georgios Papandreou has been given by his son, Andreas Papandreou (7), and former Minister Mitsotakis has spoken of his house arrest and the subsequent confinement to their house of his wife and children (8).

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

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- (1) Hearing of March 1969, Vol. II, pages 301-302. The witness Papaspyropoulos, apparently referring not only to persons detained under administrative order but also to persons transferred and confined to certain localities, stated that "the expenses of the journey as well as the board and lodging expenses are paid by the State" - ibidem page 650.
 - (2) Hearing of March 1969, Vol. II, page 665.
 - (3) Hearing of November 1968, Vol. I, pages 24-25.
 - (4) Letter No. 652 of 28th February, 1969, Annex 36.
 - (5) See Chapter IV of this Report.
 - (6) Hearing of March 1969, Vol. I, pages 8-9.
 - (7) Hearing of November 1968, Vol. I, page 28.
 - (8) Ibidem Vol. II, page 510, and hearing of December 1968, Vol. I, page 62.

IV. Conclusions of the Sub-Commission

198. The Sub-Commission observes (1) that Article 5 of the 1952 Constitution and Article 10 of the 1968 Constitution embody in effect particular provisions of Article 5 of the Convention. It follows that the suspension of the first constitutional provision until 15th November, 1968, and the continuing non-enforcement of the second since that date, together with the application of the other emergency legislation enacted since 21st April, 1967, constitute breaches of Article 5 of the Convention.

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

- (1) Detention under administrative order of persons considered dangerous to public order and security, in accordance with the legislation described above (2), is contrary to Article 5 of the Convention, since it is a deprivation of liberty which does not correspond with any of the categories of deprivation of liberty permitted by paragraph (1) and, in particular, does not satisfy the requirements of sub-paragraph (c), read together with paragraph (3) of this Article.
- (2) The possibility of appeal against decisions of the Committees of Public Safety only to the Minister of Public Order does not satisfy the requirement of Article 5, paragraph (4), that the lawfulness of detention shall be determined by a court. The procedure recently made available under Decree No. 188 of 14th/15th May, 1969 (3), is also not consistent with the provisions of Article 5, paragraph (4), of the Convention, since the Committees to be established under the Decree are not courts and the decision to continue, limit or suspend detention is discretionary.
- (3) The use of house arrest by the respondent Government as described above, where confinement to the premises is virtually complete (4), does not correspond with any of the categories of deprivation of liberty permitted by Article 5, paragraph (1), of the Convention.

(1) Cf. paragraphs 171-174 above.

(2) Paragraphs 178-181.

(3) See paragraph 182 above.

(4) As in the cases of Kanelleopoulos and Georgios Papandreou - cf. paragraph 197 above.

200. The Sub-Commission will consider the manner and circumstances in which arrests have been carried out, in execution of the legislation already described, under Article 3 (1) and Article 8 (2) of the Convention.

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

- (1) While the security police continue to make arrests from time to time, over two-thirds of the persons detained on 21st April, 1967, have been released, and many persons convicted of offences have been amnestied.
- (2) Review by the Court of Appeal has been made possible of convictions by courts martial for offences not affecting national security or public order (3).

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

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- (1) See Chapter IV of this Report.
 - (2) See Section D below.
 - (3) See paragraph 219 below.

1. Applicant Governments

- I. Submissions of the parties
- C. Article 6 of the Convention

202. The applicant governments submitted that the respondent Government had in various respects violated article 6 of the Convention which provides that, in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair hearing within a reasonable time by an independent and impartial tribunal established by law. In particular, the respondent Government had on 21st April, 1967, suspended articles 5, 6 and 8 of the Greek Constitution of 1952 which in part corresponded to article 6 of the Convention (1); was in breach of article 6 of the Convention by:

- (2) establishing extraordinary courts martial (2), and
- (b) interfering with the independence of the judiciary (3).

reference was made in this connection to the temporary suspension of the judges' tenure of office by Constitutional Act "Kapota Delta" of 28th May, 1968, and the subsequent dismissal of thirty judicial officers by the respondent Government (4) and, further, to the recent conflict between the Government and the Council of State which had resulted in the dismissal of some of these officers (5);

- (1) Memorial of 25th March, 1968, pages 20-22; hearing of September 1968, page 75; hearing of June 1969, page 32; (Scandinavian) Memorial of 25th March, 1968, page 21; Netherlands Memorial of 25th March, 1968, pages 5-6.
- (2) Hearing of June, 1969, pages 36, 39-40, 48.
- (3) Ibidem.
- (4) Letter of 1st July, 1969, from the Governments of Denmark and Norway; Letter of 7th July, 1969, from the Government of Sweden.

- (3) was in breach of Article 6, paragraphs (1) and (3), of the Convention, in that:
 - (a) persons charged with political offences had not been given a fair hearing in accordance with paragraph (1), and
 - (b) the minimum rights set out in paragraph (3) had not been observed at their trials (1);
- (4) was in breach of Article 6, paragraphs (1) and (2), in that persons complaining of torture or ill-treatment during detention pending trial were:
 - (a) treated contrary to paragraph (2) of Article 6 as being guilty of defamation of the police without the truth or falsity of their complaints being investigated;
 - (b) convicted without investigation of their complaints, so that the influence of torture or ill-treatment, if it were shown to have taken place, upon any statements or admissions they made during the trial was not taken into account, with the consequence that there was no fair hearing (2):

2. Respondent Government

203. The respondent Government denied that there had been any violation of Article 6 of the Convention (3) and stated in particular:

- (1) the courts martial were established by law, their hearings were public, and accused persons before them had all the rights laid down in paragraphs (2) and (3) of Article 6 (4);
- (2) since November, 1967, nearly all offences were tried by the ordinary courts and persons convicted by courts martial had been amnestied (5);

- (1) Hearing of June 1969, pages 41 et seq.
- (2) Ibidem pages 40-41, 44-48.
- (3) Memorial of 6th July, 1968, page 22.
- (4) Ibidem page 21.
- (5) Ibidem pages 21-22.

(3) Constitutional Act Kappa Delta of 28th May, 1968, suspended the judges' tenure of office for a period of three days. Its object was to improve justice by removing the incapable, those lacking social prestige, and judges with an anti-social activity (1). On the basis of the above Act, a limited number of judges were dismissed who, before 21st April, 1967, had committed acts which were incompatible with the exercise of judicial functions (2);

(4) As regards the recent conflict between the Government and the Council of State, this was not a question of interference by the Government in the workings of justice, but of the judiciary taking political action against the Government (3). By its decisions of June 1969 ordering the re-instatement of judicial officers dismissed under Constitutional Act "Kappa Delta", the Council had not only transgressed and grossly violated the provisions of this Act, but also disregarded its own decision of March 1969 rejecting the appeal of Mr. Flores, another judge dismissed under the same Act (4).

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- (1) Letter No. 1876 of 23th August, 1969
(2) Hearing of May 1968, pages 172-174; Memorial of 15th November, 1968, page 11.
(3) Letter No. 1722 of 15th July, 1969.
(4) Letters No. 1876 of 23th August and No. 1877 of 26th August, 1969.

II. Evidence before the Sub-Commission

1. Witnesses

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

- Philippos Anghelis (1)
- Evangelos Averoff (2)
- Athanasios Georgiou (3)
- Constantinos Georgopoulos (4)
- Constantinos Kalambokias (5)
- Georgios Kekkos (6)
- Joannis Kritselis (7)
- Antonia Marketakis (8)
- Stylianos Mavromichalis (9)
- Constantinos Mitsotakis (10)
- Christos Papagiannakis (11)
- Andreas Toussis (12)

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

2. Documents

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

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- (1) Hearing of March 1969, Vol. II, pages 772 et seq. (in particular pages 773-777, 787-788).
 - (2) Ibidem Vol. I, page 92.
 - (3) Ibidem Vol. II, pages 689-691.
 - (4) Hearing of December 1968, Vol. II, page 237.
 - (5) Hearing of March 1969, Vol. I, pages 223-228, 232.
 - (6) Ibidem Vol. I, pages 340-341.
 - (7) Ibidem Vol. II, pages 753 et seq.
 - (8) Hearing of November 1968, Vol. I, page 274.
 - (9) Hearing of March 1969, Vol. II, pages 677-678, 682.
 - (10) Hearing of December 1968, Vol. I, pages 64-65.
 - (11) Hearing of March 1969, Vol. II, pages 472-473, and Vol. IV, Doc. No. 38 - I (page 1127).
 - (12) Ibidem Vol. II, pages 744 et seq.

III. Examination of the evidence by the
Sub-Commission

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

a) Constitution of 1952

206. The full text of Article 5 of the Greek Constitution of 1952 is reproduced at paragraphs 31 and 174 above.

207. Article 6 of the Constitution of 1952 provided (1):

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

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

Interpretation Clause

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

(1) As reproduced in Annex A of the Netherlands' application of 27th September, 1967. The French text received from the respondent Government is reproduced at Appendix I to the present Report (page).

208. Article 8 of the Constitution of 1952 provided (1):

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

209. The above constitutional provisions were suspended by Royal Decree No. 280 of 21st April, 1967 (2).

b) Constitution of 1968

210. The full text of Article 10 of this Constitution is reproduced in paragraph 176, above.

211. Article 12 of the Constitution of 1968 provides:

"No one shall be removed without his consent from the jurisdiction of the judge assigned to him by law. The establishment of judicial committees or extraordinary courts under any name is prohibited." (3)

212. The above constitutional provisions have not yet entered into force (4).

2. Courts martial

213. Royal Decree No. 281 of 21st April, 1967, (5) established ten extraordinary courts martial. In August 1968 their number was reduced to four (6).

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- (1) Ibidem.
(2) See paragraph 50 above.
(3) English translation submitted by the respondent Government.
(4) See paragraph 174 above.
(5) See the English translation submitted by the first three applicant Governments, memorial of 25th March, 1968, Vol. II, pages 12-13.
(6) Witness Kritselis, hearing of March 1969, Vol. II, page 754.

214. The jurisdiction of the courts martial is defined in Article 5 of the Law on the State of Siege (1):

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

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

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

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

217. By an order of the Minister of National Defence of 2nd November, 1967 (3), the jurisdiction of the ordinary courts was partially restored in criminal cases.

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- (1) Memorial of 6th July, 1968, Annex 2 (English translation by the Council of Europe).
 - (2) See paragraph 31 above.
 - (3) For the full text of this order see memorial of 6th July, 1968, Annex 8.

218. Article 8 of the Law on the State of Siege provides that there is no appeal from decisions of the courts martial (1).

219. According to a recent statement by the respondent Government, persons convicted by court martial after 21st April, 1967, "will be entitled to apply for a re-hearing of their case in the Court of Appeal". This, however, does not apply to persons convicted of "offences against national security and ordre public" (2).

220. It appears from the evidence given by the witnesses Georgiou (3) and Kritselis (4), that the courts martial are normally composed of an ordinary judge as President and four officers of the armed forces without legal training. These officers are appointed by the Public Prosecutor who is a commander of an army corps or division.

221. According to Kritselis, "there have been approximately 6,000 cases ... before the Courts Martial" and "at least 30% of the decisions were acquittals" (5).

3. Action by the Government with regard to the judiciary

a) Dismissal of thirty judicial officers in May 1968

222. Article I of Constitutional Act "Kappa Delta" of 28th May, 1968, provided (6):

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- ./.
- (1) This was confirmed by the witness Kritselis - hearing of March 1969, Vol. II, page 759.
 - (2) Letter No. 1006 of 23rd April, 1969, from the respondent Government to the Secretary General of the Council of Europe (reproduced as Appendix V to this Report), paragraph C.
 - (3) Hearing of March 1969, Vol. II, pages 688-691.
 - (4) Ibidem pages 760-761.
 - (5) Ibidem page 762.
 - (6) English translation submitted by the respondent Government - cf. Appendix XVIII to this Report.

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

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

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

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

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

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

223. Under Constitutional Act "Kappa-Delta", the President of the Supreme Court, the Attorney General at the Supreme Court and twenty-eight other judicial officers were removed from office by Act No. 94 of the Council of Ministers of 28th May and a Royal Decree of 29th May, 1968 (1).

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

225. Mr. Mavromichalis, when heard as a witness by the Sub-Commission, maintained that the suspension of the judges tenure of office by the respondent Government had shaken the judiciary in its foundations (2).

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

226. Appeals were lodged with the Council of State by a number of the judicial officers dismissed under Constitutional Act "Kappa Delta". By its decision 503/1969 of 6th/8th March, 1969, the Council rejected the appeal introduced by a former judge of the Supreme Court, Mr. Floros (3). This appellant had, inter alia, complained that he had not been heard by the authorities before the decision to dismiss him had been taken. The Council rejected this complaint, stating that the requirement of a hearing "does not rank among the conditions required by the provisions of Constitutional Act 'Kappa Delta' for issuing acts of dismissal under it, which do not have the character of disciplinary sanctions but of unfavourable administrative measures". According to the respondent Government, this decision was taken unanimously (4). ./.

(1) See the respondent Government's letter No. 1983 of 14th November and its memorial of 15th November, 1968, page 11.

(2) Hearing of March 1969, Vol. II, page 681.

(3) Ibidem Vol. IV, pages 1191-1198.

(4) Letter No. 1876 of 28th August, 1969.

227. By further decisions of June 1969 (1), the Council of State accepted the similar appeals lodged by other judicial officers who had also been dismissed under Constitutional Act "Kappa Delta". Referring to a Legislative Decree (2) which had been promulgated on 29th May, 1969, the Council now found that this dismissal must be considered as a disciplinary measure and that, consequently, Constitutional Act "Kappa Delta" must be interpreted as requiring a hearing of the persons concerned. The Council therefore annulled Act No. 94 of the Council of Ministers of 28th May, 1968, and the Royal Decree of 29th May, 1968, insofar as they concerned the dismissal of the above officers. According to the respondent Government, this decision of the Council of State was taken "by an extremely feeble majority (11 against 10)" (3).

228. The first three applicant Governments maintain that, following this decision, the President of the Council of State, Mr. Stassinopoulos, was "summarily dismissed" by the respondent Government and that, thereupon, eighteen members of the Council "announced their resignation" (4). According to the respondent Government, the President of the Council of State submitted his resignation but immediately withdrew it; the Government, "taking advantage of the resignation, accepted and published it" (5).

4. Evidence concerning particular trials

229. Evidence has been submitted to the Sub-Commission with regard to certain trials before courts martial of persons charged with political offences (6), in particular:

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- (1) One of these decisions, dated 20th/21st June, 1969, has been submitted in French, translation by the respondent Government (letter No. 1877 of 26th August, 1969).
 - (2) No. 192. The text of this Decree has not been submitted to the Sub-Commission but its origin and contents were described by the applicant Governments (hearing of June 1969, page 133).
 - (3) Letter No. 1876 of 28th August, 1969.
 - (4) Letters of 1st and 7th July, 1969.
 - (5) Letter No. 1722 of 25th July, 1969.
 - (6) Cf. Appendix XIII to this Report (list of documents).

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

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

230. A general analysis of trials before courts martial, prepared by Mr. Kiritsis, a detained barrister, has also been submitted to the Sub-Commission. (1)

IV. Conclusions of the Sub-Commission

231. In its second decision on admissibility (2), the Commission, having particular regard to the dismissal of thirty judicial officers in May 1968, found that domestic remedies in Greece for complaints alleging torture or ill-treatment of political prisoners by public authorities could not be regarded as effective or sufficient. That the courts and other tribunals in Greece are not seen to be independent is further shown by the consequences of the recent decisions of the Council of State, and the status of the extraordinary courts martial. Without entering into the

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- (1) Document I deposited by the witness, Mr. Papagiannakis, hearing of March 1969, Vol IV, pages 1127-1133.
 - (2) Appendix II to this Report.

legal basis of the recent decisions of the Council of State, the Sub-Commission observes that, despite the clear provisions of Article 107, paragraph 4, of the Constitution of 1968 (1), a dispute arose over these decisions and was resolved by the resignation (2) or dismissal (3) of the President of the Council of State.

232. Though reduced in number from 10 to four in August 1968, (4) the extraordinary courts martial continue to function. The dependence of these courts upon ministerial direction is marked by the fact that their jurisdiction is to be exercised "in accordance with decisions of the Minister of National Defence" (5). Further, the heavy sentences of imprisonment which they have frequently imposed, including life imprisonment (6), have been in many cases simply annulled by amnesties (7). However humane and just these acts of amnesty may be, they indicate the arbitrary basis on which political offenders are treated. The Sub-Commission also observes that the respondent Government, while conceding a right of re-hearing before the Court of Appeal to persons convicted by extraordinary courts martial, has denied it to those convicted of "offences against national security and ordre public" (8).

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- (1) Article 107 (3) states: "Compliance with the annulling decision of the Council of State constitutes an obligation of the Administration."
- (2) According to the respondent Government - see paragraph 228 above.
- (3) According to the first three applicant Governments - see paragraph 228 above.
- (4) See paragraph 213 above.
- (5) See paragraph 216 above.
- (6) See the case of the witness Belouças (described in Chapter IV below). As to sentences imposed, cf. hearing of March 1969, Vol IV, pages 1127-1130 (Document I submitted by the witness Papagiannakis).
- (7) In its letter of 19th April, 1968, paragraph 3b (reproduced in Appendix V to this Report), the respondent Government stated: "Most of the persons sentenced by the military tribunals and subsequently imprisoned are already at liberty, persons convicted of political offences ... having been amnestied on 23rd December, 1967." See also the case of former Minister Averoff (described under Articles 9 and 10 below).
- (8) See paragraph 219 above.

233. As regards the position of counsel for the defence in trials before courts martial, the Sub-Commission notes the statement of a barrister (1) who participated in the "Trial of the 31" that he was "given complete freedom, even more freedom than I would have in an ordinary criminal court". But it also notes that, in the same trial, defending counsel felt compelled to flatter the tribunal in extravagant terms and even in one instance to demand "long exile" for some defendants (2). As to the arrest and detention of barristers, the President of the Athens Bar Association was not able to give precise indications because "it is practically and virtually impossible for the Association to keep track of all its 7,000 members" (3).

The Sub-Commission observes in this connection that Geogios B. Mangakis, who served as defence counsel on behalf of a number of persons charged with political offences and was summoned to give evidence before the Sub-Commission, was prevented by the respondent Government from appearing before the Sub-Commission and later arrested (3). The investigation by the Sub-Commission of the proceedings before the extraordinary courts martial and the facilities for defence has therefore been limited.

234. The Sub-Commission finally refers to its opinion concerning the alleged violation of Article 5 of the Convention (4) and by similar reasoning considers that, even if be said that there has been a continuing public emergency threatening the life of the Greek nation since 21st April, 1967, maintenance of extraordinary courts martial, and the denial of a right of re-hearing before the Court of Appeal to offenders against national security or ordre public, are not strictly required by the exigencies of the situation.

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- (1) S. Kanellopoulos. This statement was quoted by the President of the Athens Bar Association, Ph. Anghelis - hearing of March 1969, Vol. II, page 776.
 - (2) Memorial of 25th March, 1968, Vol. II, page 16.
 - (3) Witness Ph. Anghelis, hearing of March 1969, Vol. II, page 788.
 - (4) See Chapter IV below.
 - (5) Paragraph 201 above.

D. Article 8 of the Convention

I. Submission of the parties

1. Applicant Governments

235. The applicant Governments submitted that, by suspending on 21st April, 1967, Articles 12 and 20 of the Greek Constitution of 1952, the respondent Government had violated the corresponding provisions of Article 8 of the Convention (1). Further, Article 13 of the new Constitution of 1968 concerning the inviolability of the home had not yet entered into force (2).

236. The applicant Governments also referred to the respondent Government's administrative practice in these matters and stated that the right to respect for one's private and family life, home and correspondence had been disregarded in many cases (3).

2. Respondent Government

237. The respondent Government denied that there had been any violation of Article 8 of the Convention (4), and submitted in particular that correspondence was not subject to censorship and that house searches were permitted by paragraph (2) of Article 8.

II. Evidence before the Sub-Commission

1. Witnesses

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

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- (1) Memorial of 25th March, 1968, pages 24-25.
 - (2) Hearing of June 1969, page 52.
 - (3) Ibidem pages 42-54.
 - (4) Memorial of 6th July, 1968, page 24.

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Georgios Kekkos (1)
Constantinos Mitsotakis (2)
Constantinos Papaspyropoulos (3).

A number of further witnesses heard under Article 3 of the Convention have also given evidence involving Article 8 (4).

2. Documents

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

III. Examination of the evidence by the Sub-Commission

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

a) Constitution of 1952

240. The right to respect for private and family life was not expressly safeguarded by the Greek Constitution of 1952 (5).

241. The right to respect for the home was protected by Article 12 of the 1952 Constitution which read (6):

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- (1) Hearing of March 1969, Vol. I, page 342.
(2) Hearing of December 1968, Vol. I, pages 61-64.
(3) Hearing of March 1969, Vol. II, pages 634, 647.
(4) See **Chapter IV** of this Report.
(5) Memorial of 6th July, 1968, page 23.
(6) As reproduced in Annex A of the Netherlands' application of 27th September, 1967. The French text received from the respondent Government is reproduced at Appendix I to the present Report (page).

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

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

242. The right to respect for correspondence was safeguarded by Article 20 of the 1952 Constitution which stated (1):

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

243. Articles 12 and 20 of the 1952 Constitution were suspended by Royal Decree No. 280 of 21st April, 1967 (2), but Article 1 of Constitutional Act "Beta" of 5th May, 1967, (3) upheld only the suspension of Article 12 of the 1952 Constitution.

b) Constitution of 1968

244. Article 13 of the new Greek Constitution of 1968 provides (4):

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

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

(1) Cf. the above footnote.

(2) See paragraph 30 above.

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

(4) English translation submitted by the respondent Government.

245. Article 15 of the 1968 Constitution states (1):

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

246. Article 26 of the 1968 Constitution provides (2):

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

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

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

247. Articles 15 and 26 entered into force on 15th November, 1968, while the entry into force of Article 13, paragraph (1), was delayed by Article 138 of the Constitution (3). By Constitutional Act "Beta" of 9th April, 1969, (4), Article 13 of the Constitution was put into force, but subsequently the respondent Government referred to the preparation of laws which were described as "nécessaires à l'application" of, inter alia, this Article (5). Its present status is therefore uncertain (6).

- (1) Translation submitted by the respondent Government. ./.
- (2) Ibidem.
- (3) See paragraph 167 above.
- (4) See Appendix XVIII to this Report (Constitutional acts).
- (5) Letter No. 1006 of 23rd April, 1969, paragraph E - reproduced at Appendix V to this Report.
- (6) During the friendly settlement negotiations, the Government stated with regard to other Articles of the 1968 Constitution that, pending the promulgation of her legislation, the relevant legislation in force continued to be applied - see Appendix III to this Report.

2. Further legislation and administrative practice

a) Right to respect for one's home

248. As already mentioned (1), a state of siege was declared in Greece on 21st April, 1967, and has been maintained since that date. According to Article 9, paragraph (a), of the Law on the State of Siege, the military authorities may "search a house by day or night" (2).

249. Entries to peoples' homes and house searches have frequently been carried out without a warrant (3). According to Police Inspector Lambrou, arrests are usually made "at night" because "people are out during the day" (4).

b) Family life

250. In a number of cases the attention of the Sub-Commission has been drawn to the effect on the spouses or children of the arrest and detention of political prisoners (5)

IV. Conclusions of the Sub-Commission (6)

251. The Sub-Commission considers that the suspension from 21st April, 1967, until 9th April, 1969, (7) the right to respect for one's home and the consequent disregard of this right, in particular by the practice of the police authorities of carrying out arrests at night (8), is an interference with this right which, in the absence of a "public emergency threatening the life of the nation" in the sense of Article 15 of the Convention, cannot be regarded as "necessary in a democratic society" for any of the purposes set out in paragraph (2) of Article 8.

- (1) See paragraph 175 above.
- (2) Memorial of 6th July, 1968, page 24.
- (3) Cf. the cases of the persons mentioned in Chapter IV of this Report.
- (4) Hearing of March, 1969, Vol. I, page 142.
- (5) See, for example, the cases of Livanos (hearing of March 1969, Vol. II, pages 586, 597), Mitsotakis (hearing of December 1968, Vol. I, pages 62-63; hearing of March 1969, Vol. II, page 647 - witness Papaspyropoulos) and Papagiannakis (hearing of March 1969, Vol. II, page 442; ibidem page 642 - witness Papaspyropoulos). As regards the visits of children, see Papaspyropoulos ibidem page 648.
- (6) The Sub-Commission has considered under Articles 3 and 5 of the Convention the cases of the persons mentioned in paragraph 250 above.
- (7) See paragraphs 243 and 247 above.
- (8) See paragraphs 248 and 249 above.

E. Articles 9, 10 and 14 of the Convention

I. Submission of the parties

1. Applicant Governments

252. The applicant Governments submitted that the respondent Government severely interfered with the freedom of thought and attempted to control the minds of its citizens (1). This was shown, in particular, by:

- (1) a number of acts and decrees restricting the freedom of expression (2);
- (2) the dismissal of civil servants on the ground that they were not loyal towards the present regime (3);
- (3) the control not only of professors and other teachers but also of students (4);
- (4) the continued detention, under administrative order, of persons who refused to sign a "declaration of repentance" (5);
- (5) press censorship (6); and
- (6) discrimination "in nearly every regard" against political opponents (7).

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- (1) Hearing of June 1969, pages 55-62.
 - (2) Applications of 20th and 27th September, 1967, part II; (Scandinavian) memorial of 25th March, 1968, pages 27 et seq.; Netherlands memorial of 25th March, 1968, pages 7 et seq.
 - (3) (Scandinavian) Memorial of 25th March, 1968, pages 27-30; Netherlands memorial of 25th March, 1968, pages 7-9.
 - (4) (Scandinavian) Memorial of 25th March, 1968, pages 27, 30; Netherlands memorial of 25th March, 1968, page 8; hearing of June 1969, pages 56-57.
 - (5) Hearing of June 1969, page 56.
 - (6) (Scandinavian) Memorial of 25th March, 1968, pages 32-35; Netherlands memorial of 25th March, 1968, pages 10-15.
 - (7) Hearing of June 1969, page 96.

2. Respondent Government

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

- (1) as regards civil servants, that their freedom of expression was restricted in all countries and that they were under a duty of loyalty to the regime (1);
- (2) as regards the Press, that a system of press control had been introduced by Ministerial Order No. 19603 "Gamma" of 27th April, 1967 (2), but that the freedom of the press had been restored by Ministerial Order No. 579 of 25th January, 1968 (3).

II. Evidence before the Sub-Commission

1. Witnesses

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

Constantinos Kalambokias (4)
Georgios Kekkos (5)
Georgios Rallis (6)
Nicolaeas Tomadakis (7)

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- (1) Memorial of 6th July, 1968, pages 30-34.
 - (2) For the text of this Order, see (Scandinavian) memorial of 25th March, 1968, Vol. II; pages 35-36.
 - (3) Memorial of 6th July, 1968, page 35, The text of Order No. 589 has not been submitted by the respondent Government, but cf. Annex 17 to the (Scandinavian) memorial of 25th March, 1968, and paragraph 268 (footnote) below.
 - (4) Hearing of March 1969, Vol. I, pages 223-238.
 - (5) Ibidem Vol. I, page 330.
 - (6) Ibidem Vol. I, pages 54-55.
 - (7) Hearing of November 1968, Vol. II, pages 369-372.

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

Evangelos Averoff (1)
Constantinos Georgopoulos (2)
Constantinos Kalambokias (3)
Georgios Kekkos (4)
André Lambert (5)
Panayotis Lambrias (6)
Athanasios Paraschos (7)
Georgios Rallis (8)
Nicolaios Tomadakis (9)
Panayotis Troubounis (10)
Helen Vlachou (11)

256. Some of the witnesses mentioned in paragraphs 254 and 255 above had originally been called under Article 3 of the Convention and a number of further witnesses heard under Article 3 have also given evidence concerning Articles 9 and 10.

2. Documents

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

III. Examination of the evidence by the Sub-Commission

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

(a) Constitution of 1952

258. Article 14 of the Greek Constitution of 1952 (12) provided:

- (1) Hearing of March 1969, Vol. I, page 77.
- (2) Hearing of December 1968, Vol. II, pages 245, 247.
- (3) Hearing of March 1969, Vol. I, pages 223-238.
- (4) Ibidem Vol. I, pages 323-351.
- (5) Hearing of November 1968, Vol. II, pages 383-385.
- (6) Hearing of December 1968, Vol. I, page 69.
- (7) Ibidem Vol. II, page 110.
- (8) Hearing of March 1969, Vol. I, pages 54-55.
- (9) Hearing of November 1968, Vol. II, pages 369-372.
- (10) Ibidem Vol. II, pages 397-400.
- (11) Hearing of December 1968, Vol. I, pages 161-162.
- (12) As reproduced in Annex A of the Netherlands' application of 27th September, 1967. The French text received from the respondent Government is reproduced at Appendix I to the present Report (page ...).

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

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

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

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

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

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

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

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

259. The above constitutional provisions were suspended by Royal Decree No. 230 of 21st April, 1967 (1).

b) Constitution of 1968

260. Article 14 of the Constitution of 1968 provides: (2)

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

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

3. Censorship and every other preventive measure is prohibited.

(1) See paragraph 30 above.

(2) English translation submitted by the respondent Government.

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

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

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

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

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

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

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

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

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

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

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

261. Of the above provisions of Article 14, only paragraphs 4 to 14 have entered into force in accordance with Article 138 of the Constitution (1).

262. The respondent Government has on various occasions (2) declared that a press law is being drafted by a committee of experts.

(1) See paragraph 167 above.

(2) For example, memorial of 6th July, 1968, pages 35-36; letter of 23rd April, 1968. During the friendly settlement negotiations the Sub-Commission was informed by the respondent Government that, in August, 1969, a draft press law has been presented to the professional organisations of the press for their comments - see Appendix III to this Report. The text of this draft has not been submitted to the Sub-Commission.

2. Press censorship

263. Article 14 of the Constitution of 1952, which safeguarded the freedom of the Press, was suspended on 21st April, 1967 (1) and therefore was not applicable in the period between that date and 15th November, 1968, when the Constitution of 1968 came into force. The entry into force of Article 14, paragraphs (2) and (3), of the 1968 Constitution (freedom of the press, prohibition of censorship) was delayed by Article 138 of the Constitution (2).

264. Article 14 of the 1968 Constitution follows closely the earlier suspended Article 14 of the 1952 Constitution (3). There are, however, two significant differences:

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

265. As already mentioned (4), a state of siege was declared in Greece on 21st April, 1967, and has been maintained since that date. According to Article 9, paragraph (f), of the Law on the State of Siege, the military authorities may "forbid the communication or publication of information ... by the Press" and "seize newspapers and other printed matter either before or after publication" (5).

266. Under this provision, a system of Press control was introduced by Ministerial Order No. 19603 "Gamma" of the Minister to the Prime Minister's Office (6), and by the general instructions on the operation of the Press Control Department, both of 27th April, 1967. (7).

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- (1) See paragraph 259 above.
 - (2) See paragraph 261 above.
 - (3) See paragraphs 258 and 260 above.
 - (4) See paragraph 175 above.
 - (5) Memorial of 6th July, 1968, page 35.
 - (6) The text of this Order was submitted by the first three applicant Governments - memorial of 25th March, 1968, Vol. II, pages 35-36.
 - (7) Ibidem pages 36-37 and Netherlands memorial of 25th March, 1968, pages 9-13.

267. It would be difficult either to summarise these provisions or to judge their effect without precise knowledge of how they are applied in practice (1). Ministerial Order No. 19603 "Gamma" of 27th April, 1967, established a Press Control Department for the "preventive censorship of all sorts of printed matter put into circulation". The broad aim is to prevent "publication of any piece of information, comment, picture or cartoon, tending to vilify the general policy of the National Government, the constitutional order, and to sabotage the internal and external security of the country". Detailed statements follow in the general instructions as to what kind of publication is prohibited. Here the notion of insult to the Government or to the armed forces or "the State machinery in general" appears; prohibited is "any publication which in the opinion of the Press Control Service damages the task of the Government". Prohibited also is "the insertion of notices of any left wing organisation, EDA and its affiliates included"; "the reproduction of foreign radio broadcasts of leftist nature and the more so of reports and comments by the KKE (2) radio station"; and publication of any text or reproduction local or foreign criticising directly or indirectly the Prime Minister or the members of his cabinet in the discharge of their duties". Publication of certain Government reports or statements and of "one comment a day, at least," on the activities of the Government are obligatory.

268. The rules which entered into force on 1st February, 1968, (3), plainly relax the earlier restrictions. In particular:

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

(1) According to the Netherlands Government, the general indications mentioned in paragraph 266 above "were followed by many others (generally conveyed to the editors by telephone) which placed the collection and selection of news, the substance and form of the articles and even the layout entirely in the hands of the Government" (memorial of 25th March, 1968, page 14; see also the further reference to "oral instructions", *ibidem* page 15). The texts of such instructions have not been submitted by the respondent Government.

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

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

269. Censorship continues to be applied in Greece. The President of the Athens Association of Newspaper Writers, Athanasios Paraschos, stated before the Sub-Commission that the main objective of censorship has been "to prevent the publication of false and unsubstantiated information. As for article writing, there is no longer any restriction now." (3). He added that, "if I were ... the Government, I would ... withdraw all the measures" (2).

270. The Lambrias incident (3) and his description of difficulties of newspaper editing show that Government pressure can be heavy and take unusual forms.

(b) Other aspects of Articles 9 and 10

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

Legislative Decree No. 93 of 22nd January, 1969, (4) governs the rights and obligations of the students in higher educational institutes. Amending or replacing previous legislation, enacted in 1932 and 1935, it contains a number of provisions which would normally be found in university regulations.

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- ./.
- (1) Hearing of December, 1968, Vol. II, page 110.
 - (2) Ibidem page 131.
 - (3) Ibidem Vol. I, page 69. Cf. also the Netherlands' memorial of 25th March, 1968, pages 15-17 ("Government action against journalists").
 - (4) Hearing of March 1969, Vol. IV, pages 1146-1154.

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

"not inspired by the proper spirit conforming to the existing structure of the State or social regime and the national ideas" (1).

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

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

272. In a statement presented to the Sub-Commission (3) by students detained in Averoff Prison, it is said that:

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

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

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

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- (1) Article 120, paragraph 7, of the Decree. . . /.
 - (2) Detention under administrative order (cf. paragraphs 178 et seq. above).
 - (3) Hearing of March 1969, Vol. IV, pages 1073-1075.

It is also stressed that:

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

273. The Sub-Commission notes that numerous persons, who have not been convicted of any criminal offence, are detained in Greece for their political beliefs or activities (1).

IV. Conclusions of the Sub-Commission

1. Press censorship

274. The Sub-Commission considers that the rules described above (2), if applied to their full extent, are inconsistent with Article 10 of the Convention. In particular:

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

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

275. The Sub-Commission finds that the provisions of Article 120, paragraph 7, of Legislative Decree No. 93 (3), are unacceptably broad in that they in effect leave the definition of the offence to the Disciplinary Council. It must, however, be possible for the individual to know beforehand whether his acts are lawful or not.

276. The Sub-Commission does not consider that the exclusion from University of students who have committed political offences, in addition to any sentence imposed on them, is in itself contrary to Articles 9 or 10 of the Convention. It raises an issue under Article 2 of the First Protocol which, however, has not been invoked by the parties in the present case (4).

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(1) Cf. Section B (Article 5) above.

(2) Paragraphs 266-268.

(3) Subjecting to disciplinary punishment any student whose acts or behaviour show that he is "not inspired by the proper spirit conforming to the existing structure of the State or social regime and the national ideas" - cf. paragraph 271 above.

(4) Cf. paragraph 14 above.

F. Article 11 of the Convention

I. Submissions of the parties

1. Applicant Governments

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

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

2. Respondent Government

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

- (1) the restrictions of the freedom of assembly and the dissolution of a number of Communist or Communist-inspired organisations were justified under paragraph (2) of that Article (5); and
- (2) the suspended provisions of Articles 10 and 11 of the Constitution of 1952 "relating to the right of assembly of members of recognised professional organisations and the right of association for professional purposes" had been brought back into force by Decree No. 369 of 29th May, 1968 (6).

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- (1) Hearing of June 1969, pages 63-64.
 - (2) Ibidem page 64.
 - (3) Ibidem page 67.
 - (4) Ibidem pages 65 et seq
 - (5) Memorial of 6th July, 1968, page 39.
 - (6) Ibidem.

II. Evidence before the Sub-Commission

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

Philippos Anghelis (1)
Evangelos Averoff (2)
Constantinos Georgopoulos (3)
Georgios Kekkos (4)
Dionysos Livanos (5)
John Vassilekopoulos (6)

2. Documents

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

III. Examination of the evidence by the Sub-Commission

1. The suspension of constitutional provisions protecting the freedoms of assembly and association (7)

a) Constitution of 1952

281. Article 10 of the Greek Constitution of 1952 provided (8):

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- ./.
- (1) Hearing of March, 1969, Vol. II, page 245.
 - (2) Ibidem Vol. I, page 82.
 - (3) Hearing of December 1968, Vol. II, page 245.
 - (4) Hearing of March 1969, Vol. I, page 331.
 - (5) Ibidem Vol. II, pages 586-587.
 - (6) Ibidem Vol. II, page 616.
 - (7) See also Section E below (Article 3 of the First Protocol).
 - (8) As reproduced in Annex A of the Netherlands' application of 27th September, 1967. The French text received from the respondent Government is reproduced at Appendix I to the present Report (page ...).

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

282. Article 11 of the 1952 Constitution stated (1):

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

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

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

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

283. The above constitutional provisions were suspended by Royal Decree No. 280 of 21st April, 1967 (2).

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

- (1) the right of assembly of members of recognised professional organisations; and
- (2) the right of association for professional purposes (3).

b) Constitution of 1968

285. Article 18 of the Constitution of 1968 provides (4):

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

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

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- (1) Ibidem.
 - (2) See paragraph 30 above.
 - (3) Cf. paragraph 278 above.
 - (4), English translation submitted by the respondent Government.

286. Article 19 of the Constitution states (1):

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

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

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

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

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

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

288. By Act "Alpha" of 16th November, 1968, the respondent Government "in accordance with its promise to recognise the right of assembly and the right of association to citizens being members of recognised professional organisations for the pursuit of their professional aims" put "into effect Articles 18 and 19 ... concerning the right of assembly and the right of association for the members of recognised professional organisations". (2)

(1) Translation submitted by the respondent Government.

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

289. By Constitutional Act "Beta" of 9th April, 1969, (1) Articles 18 and 19 of the Constitution were again put into force, this time without the limitation made in Act "Alpha" (2). However, the Government also referred to the preparation of laws which were described as "nécessaires à l'application" of, inter alia, these Articles (3). Their present status is therefore uncertain (4).

2. Further measures affecting the freedom of assembly

(a) Legislation

290. A state of Siege was declared in Greece by Royal Decree No. 280 of 21st April, 1967 (5). According to Article 9, paragraph (e), of the Law on the State of Siege, the military authorities may "forbid and disperse any gathering or meeting" (6).

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

- (1) Proclamation No. 1 of 22nd April, 1967, prohibited all open air gatherings of more than five persons and all indoor gatherings apart from public entertainments (7).
- (2) Proclamation No. 14 of 29th May, 1967, (8) stated that indoor gatherings were allowed with the permission of the competent public authority.
- (3) Proclamation No. 26 of 1967 (9), further modified the prohibition on freedom of assembly, the following gatherings being permitted:

aa indoor gatherings of persons attending a lecture with the authorisation of the competent military authority;

-
- (1) See Appendix XVIII to this Report (Constitutional Acts).
 - (2) See paragraph 288 above.
 - (3) Letter No. 1006 of 23rd April, 1969, paragraph E - reproduced at Appendix V to this Report.
 - (4) During the friendly settlement negotiations, the Government stated that, pending the promulgation of new legislation, the relevant legislation in force continued to be applied.
 - (5) See paragraph 32 above.
 - (6) Memorial of 6th July, 1968, page 38.
 - (7) Ibidem.
 - (8) Ibidem.
 - (9) Ibidem pages 38-39.

- bb open air gatherings of a social or religious nature (weddings, etc.);
- cc private indoor gatherings of a social nature or for amusement (receptions);
- dd meetings of the boards of directors and general meetings of juridical persons;
- ee public entertainments.

292. Under Proclamation Nos. 5 and 6 of 6th May, No. 16 of 2nd June, No. 19 of 14th June, No. 22 of 15th July, No. 28 of 22nd September and No. 30 of 13th November, 1967, by the Chief of the General Staff a number of associations and organisations were dissolved - according to the respondent Government they were "Communist or Communist-inspired" and "dangerous to public order and security" (1).

Furthermore, Proclamation No. 12 of 25th May, 1967, by the Chief of the General Staff prohibited the incorporation of any society without the permission of the military authorities (2).

(b) Other measures

293. It is not disputed between the parties that the respondent Government ordered the dissolution of 279 associations and organisations and the seizure of their property in May 1967, (3). According to the Government, these organisations were Communist or Communist-inspired (4).

294. The Government further dismissed "the administrative boards of all organisations, with the exception of the Bar Association and the Association of Notaries" (5).

(1) Ibidem page 39.

(2) Ibidem.

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

(4) Memorial of 6th July, 1968, page 39.

(5) Witness IH: Anghelis, hearing of March 1969, Vol. II, page 789. See also the recent case of Mr. Makris (hearing of June 1969, page 67).

295. Former Foreign Minister Averoff described how he was sentenced to five years' imprisonment for holding a non-political dinner attended by more than five persons. "It was", he said, "to show that those will be punished who do not obey." The King intervened on his behalf and he was pardoned (1).

IV. Conclusions of the Sub-Commission

296. Freedom of assembly is a major part of the political and social life of any country. It is an essential part of the activities of political parties, envisaged in Article 58 of the Constitution, and of the conduct of elections under Article 3 of the First Protocol, which are to ensure the free expression of the opinion of the people.

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

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

(1) Hearing of March 1969, Vol. I, page 86.

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

299. As regards the freedom of association, the Sub-Commission observes that the respondent Government (1):

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

300. The Sub-Commission notes that the International Labour Office is enquiring into the situation in Greece in the light of international labour conventions, to which Greece is a party. The Sub-Commission, confining itself to Article 11, paragraph (2), of the Convention on Human Rights, observes that it has not been shown that the above measures have been necessary under this provision as far as concerns the professional functions of trade unions, particularly where the right to hold meetings for professional purposes has been restored to recognised trade unions and professional associations since May 1968.

(1) See paragraphs 293 and 294 above.

G. Article 13 of the Convention

I. Submissions of the parties

1. Applicant Governments.

301. The applicant Governments submitted generally that no "effective remedy" in the sense of Article 13 of the Convention could exist in the present case where the national authorities "on a general and extensive basis violate so to speak all the rights and freedoms embodied in the Convention" (1). In particular:

- (1) The respondent Government had issued a number of Constitutional Acts which "deprive explicitly of any remedy before a national authority" (2);
- (2) the Commission itself had stated with regard to the first three applicant Governments' allegations under Article 3 of the Convention that it "does not find that, in the particular situation at present prevailing in Greece, the remedies indicated by the respondent Government can be considered as effective and sufficient" (3);
- (3) the recent administrative enquiries in cases of alleged ill-treatment of political prisoners had not been carried out by impartial authorities (4).

2. Respondent Government

302. The respondent Government denied that there had been any violation of Article 13 of the Convention and indicated a number of remedies which were available under Greek municipal law, by way of criminal, civil and administrative proceedings, to persons whose rights under the Convention had been violated (5).

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- (1) Hearing of June 1969, page 91.
 - (2) Ibidem page 92.
 - (3) Ibidem.
 - (4) Ibidem page 93.
 - (5) Memorial of 6th July, 1968, page 40.

II. Evidence before the Sub-Commission

1. Witnesses

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

Dionysios Livanos (1)
Eleftherios Voryvakis (2)

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

2. Documents

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

III. Opinion of the Sub-Commission

305. The Sub-Commission observes that there is a doubt as to the precise meaning of the term "violation" in Article 13 of the Convention, that is to say, whether it means an alleged violation or a violation that has been found by the Court or the Committee of Ministers. However, it is in any view clear that the remedies called for by Article 13 have not been fully effective in Greece since 21st April, 1967. The respondent Government has said that remedies by way of criminal, civil and administrative proceedings have continued to be available (3) and have not been affected by the suspension or delayed entry into force of particular Constitutional provisions. But the Sub-Commission observes the following.

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- (1) Hearing of March 1969, Vol. II, page 728.
(2) Ibidem Vol. II, page 595.
(3) See paragraph 302 above.

- (1) The lack of independence of the judicial tribunals has already been noted in the second decision of the Commission upon admissibility and further examined in connection with Article 6 above (1).
- (2) As regards, in particular, complaints of political prisoners alleging torture or ill-treatment (2), the Sub-Commission observes that the administrative inquiries mentioned by the respondent Government are not ordered in all cases of such complaints and not always carried out when ordered. Further, to judge from reports of them submitted by the respondent Government, they are wholly inadequate in their conduct for even the elucidation of facts, let alone the arrival at a proper judgment upon them. Of eight individuals, whose complaints were the subject of administrative inquiries (3), the results of which were communicated to the Sub-Commission, six were not interviewed or questioned at all by the officer conducting the inquiry, the testimony of the police officers concerned being alone heard. Further, in these six cases there is no investigation or even adequate description of the complaints actually made; and, in the case of Xintavelonis, though the officer conducting the inquiry notes that he was taken to hospital because "he fell ill", he does not pursue the matter so as to obtain the medical documents, which the Sub-Commission has examined (5).

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

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- (1) Paragraphs 222 et seq.
 - (2) See Chapter IV of this Report.
 - (3) Photopoulos, Dragatidis, Papadatos, Xintavelonis, Polychronaki, Drossos, Anastasia Tsirka and Notaras - see hearing of March 1969, Vol. IV, pages 1159-1167 (Notaras) and the respondent Government's memorial of 24th April, 1969.
 - (4) Only Notaras and Tsirka were interviewed - see the description of their cases in Chapter IV below.
 - (5) Ibidem.

H. Article 3 of the First Protocol

I. Submission of the parties

1. Applicant Governments

306. The three applicant Governments stated that, following the change of Government in Greece on 21st April, 1967, political leaders had been arrested, political parties prohibited and political organisations dissolved (1); parliamentary elections scheduled for 28th May, 1967, had been cancelled (2), and political activities as a whole prohibited (3). In the meanwhile, no elections had been held (4) and parliamentary democracy had been abolished (5).

307. There was at present no legal basis in Greece for the holding of free elections through which the people could express their opinion in the choice of the legislature as provided for by Article 3 of the First Protocol to the Convention (6), and there was no indication that the respondent Government contemplated such elections for the near future (7). This situation, together with the present conditions regarding political activities, political parties and the communication of political ideas (8), excluded any genuine and equal participation of the Greek citizens in the political life of their country (9).

2. Respondent Government

308. The respondent Government referred to the provisions of the new Constitution which provided for parliamentary elections (10) and stated that a committee of jurists and

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- ./.
- (1) Memorial of 25th March, 1968, page 114.
 - (2) Ibidem.
 - (3) Ibidem.
 - (4) Hearing of June 1969, pages 75, 90.
 - (5) Memorial of 25th March, 1968, page 114.
 - (6) Hearing of June 1969, pages 76, 90.
 - (7) Ibidem pages 82, 90.
 - (8) Ibidem page 90.
 - (9) Ibidem.
 - (10) Memorial of 19th August, 1968, pages 45-46.

senior civil servants had been appointed to draft the implementing legislation, "if possible within six months" (1). Greece would return to parliamentary life when "a normal state of affairs has been restored and appropriate conditions created" (2).

II. Evidence before the Sub-Commission

1. Witnesses

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

- Evangelos Averoff (3)
- Constantinos Georgopoulos (4)
- Panayotis Kanellopoulos (5)
- Georgios Kekkos (6)
- Constantinos Mitsotakis (7)
- Panayotis Papaligouras (8)
- Constantinos Pasyropoulos (9)
- Georgios Rallis (10)

2. Documents

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

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- (1) Letter No. 1006 of 23rd April, 1969, paragraph E - see Appendix V to this Report. The letter refers to a statement by Prime Minister Papadopoulos of 9th April.
 - (2) Memorial of 6th July, 1968, page 76.
 - (3) Hearing of March 1969, Vol. I, pages 77-78, 82-84.
 - (4) Hearing of December 1968, Vol. II, pages 244-247.
 - (5) Hearing of March 1969, Vol. I, page 10.
 - (6) Ibidem Vol. I, pages 325, 332-333, 336, 339.
 - (7) Hearing of November 1968, Vol. II, page 511.
 - (8) Hearing of March 1969, Vol. I, page 45.
 - (9) Ibidem Vol. I, page 635.
 - (10) Ibidem Vol. I, page 56.

III. Examination of the evidence by the Sub-Commission

1. Provisions of the Constitution of 1968

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

312. Article 56 of the Constitution provides:

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

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

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

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

313. Article 57 of the Constitution states:

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

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

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

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

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

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

314. Article 58 of the Constitution provides:

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

2. The organisation, the programme and the activity of the parties must be governed by national and democratic principles. Their leaders and governing committee must be elected by representative conventions of their members. The Charter of every party must be approved by the Constitutional Court, which checks as to the conformity of its provisions in relation to the Constitution. No party shall have the right to participate in elections if its Charter has not had the aforementioned approval.

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

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

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

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

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

315. Article 60 of the Constitution states:

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

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

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

4. In the event of war, the Parliamentary period is extended for its entire duration. If Parliament has dissolved, the carrying out of elections is postponed until the end of the war."

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

2. The present situation

317. The following is not disputed between the parties:

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

318. The Sub-Commission has heard a number of witnesses with regard to this situation (2). It notes that, according to the statement of Professor Georgopoulos (3), constitutional provisions concerning elections have not been put into force.

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- (1) See paragraph 174 above.
 - (2) Cf. paragraph 309 above.
 - (3) Hearing of December 1968, Vol. II, pages 244-247.

in the absence of implementing legislation. But it also observes that, according to the Director General of the Ministry of the Interior, the respondent Government, "as provided by the relevant article of the Constitution (1), has the possibility of carrying out elections within a reasonable time-limit - a time-limit which cannot exceed five years - in order that in this period of time new politicians may appear on the scene and contribute to a sounder parliamentary system" (2).

IV. Conclusions of the Sub-Commission

319. The Sub-Commission considers that Article 3 of the First Protocol presupposes the existence of a representative legislature, elected at reasonable intervals, as the basis of a democratic society. The Greek Parliament, elected under the old Constitution of 1952, was dissolved in April 1967 and since that date there has been no elected legislative body in Greece. The new Constitution of 1968 provides for an elected legislature, but the entry into force of the relevant provisions has been delayed and no electoral law has yet been prepared. The Greek people are thus prevented from expressing their political opinions by choosing a legislature in accordance with Article 3.

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

321. Even if it be said that there has been a continuing "public emergency threatening the life of the nation" in the sense of article 15 of the Convention, there is no indication that it requires the suspension of Parliament, or that elections could not be held. The Sub-Commission observes in this connection that Parliament continued to operate in Greece during the civil war of 1946-1949.

(1) Cf. Article 60, quoted in paragraph 315 above.

(2) Witness Kekkas, hearing of March 1969, Vol. I, page 334.

CHAPTER III - ARTICLE 7 OF THE CONVENTION

AND ARTICLE 1 OF THE FIRST PROTOCOL

A. Submissions of the parties

I. Applicant Governments

1. As to Article 7 of the Convention

322. The three applicant Governments submitted that the Constitutional Act "Eta" of 11th July, 1967, violated Article 7 of the Convention (1). Article 1 of the Act stated as follows (2):

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

2. (Definition of "unpatriotic activity")

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

(1) Memorial of 6th July, 1968, pages 107-108.

(2) English translation submitted by the three applicant Governments. The French translation submitted by the respondent Government is reproduced at Appendix II to this Report (page).

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

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

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

323. It was true that, by a subsequent Constitutional Act amending Act "Eta", any retroactive effect of the penal provision in Article 1 had been excluded. This, however, did not alter the fact that, until the promulgation of the new Act, Article 7 of the Convention had been violated through the mere existence of Act "Eta" (1).

2. As to Article 1 of the First Protocol

324. The three applicant Governments submitted that the above Constitutional Act "Eta" also violated Article 1 of the First Protocol to the Convention. In this respect they referred to Article 2 of the Act which stated as follows (2):

"1. It is possible to order the confiscation of (the whole or part) (3) a part of the immovable and movable property of any person who loses the Greek citizenship in accordance with Article 1.

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

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(1) Hearing of June 1969, page 51.

(2) English translation submitted by the three applicant Governments. The French translation submitted by the respondent Government is reproduced at Appendix II to this Report (page).

(3) Eliminated by Constitutional Law "Lambda" Article 2 (see Appendix XVIII to this Report).

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

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

4. The confiscation according to the previous article is imposed by decision of the Court of the first instance at the place of the last residence or stay of the person who will be deprived of his Greek citizenship, after proposal of the Minister of the Interior, to be transmitted to the Court through the competent Public Prosecutor.

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

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

The three applicant Governments considered that the above provisions for confiscation of property did not fulfil the condition of "public interest" laid down in the first paragraphs of Article 1 of the First Protocol and, further, that they could not be regarded as a law which was "necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties" within the meaning of the second paragraph of this Article. It was irrelevant whether they had in fact been applied "as it is a violation of Article 1 of the Protocol even to have a law of that kind" (1).

(1) Hearing of June 1969, page 74.

II. Respondent Government

1. As to Article 7 of the Convention

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

In this respect, reference was made to Articles 1 and 2 of Obligatory Law No. 509/1947 and to Article 4 of Ordinance No. 4234/1962 (2). Constitutional Act "Lambda" of 20th September, 1968, had clarified this situation. It was also stated that Article 1, paragraph 3, of Constitutional Act "Eta" had not so far been applied.

- (1) Observations of 27th May, 1968, page 21.
- (2) Ibidem page 20. Article 4 of Ordinance No. 4234/1962 provided (ibidem pages 20-21):

"1. Greek citizens temporarily or permanently resident abroad who engage or have engaged there in anti-national activities in order to serve the aims of the parties and organisations which have been or are dissolved in pursuance of Section 1 of Act of Necessity 509 of 1947, sanctioned by Resolutions MH and KA of 1948, shall be declared to have forfeited Greek nationality under Section 20, paragraph 2, of Legislative Decree 3370 of 1955.

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

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

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

3. Greek nationals who have crossed the State frontiers without complying with Act 4310 of 1929 may not return to Greek territory without a passport and a consular visa, nor may their spouses or children."

2. Access to Article 1 of the First Protocol

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

B. Opinion of the Sub-Commission

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

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

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

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

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

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