

# THE EUROPEAN CONVENTION ON HUMAN RIGHTS IN PRACTICE

DIETRICH SCHINDLER\*

The European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on November 4, 1950 and in force since September 3, 1953, may properly be characterized as the foremost achievement of the Europe of the Sixteen, that is, the Council of Europe.<sup>1</sup> The spectacular achievements of the Europe of the Six

---

\* Professor of Law, University of Zurich.

1. The European Convention on Human Rights [hereinafter cited only by reference to article]. See generally, ROBERTSON, *THE LAW OF INTERNATIONAL INSTITUTIONS IN EUROPE* (1961); Coblenz & Warshaw, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 44 CALIF. L. REV. 94 (1956); Eustathiades, *La Convention européenne des droits de l'homme et le Statut du Conseil de l'Europe*, 52 FRIEDENSWARTE 332 (1953-1955); 53 *id.* at 47 (1955-1956); Golsong, *Das Rechtsschutzsystem der Europäischen Menschenrechtskonvention*, Karlsruhe (1958); Golsong, *Die Europäische Konvention zum Schutz der Menschenrechte und Grundfreiheiten*, 10 JAHRBUCH DES ÖFFENTLICHEN RECHTS (Germany 1961); Golsong, *The European Convention for the Protection of Human Rights and Fundamental Freedoms in a German Court*, 33 BRIT. YB. INT'L L. 317 (1957); Green, *The European Convention on Human Rights*, 5 WORLD AFFAIRS 432 (1951); Honig, *The European Human Rights Convention*, 105 L.J. 759 (1955); Horvath, *The European Court of Human Rights*, 5 OESTERREICHISCHE ZEITSCHRIFT FÜR ÖFFENTLICHES RECHT (Austria) 166 (1953); Lauterpacht, *The Proposed European Court of Human Rights*, 35 TRANSACTIONS OF THE GROTIUS SOC'Y 25 (1950); Modinos, *La Convention européenne des droits de l'homme, ses origines, ses objectifs, ses réalisations*, 1 EUROPEAN YEARBOOK 141 (1955); Mosler, *Organisation und Verfahren des Europäischen Gerichtshofs für Menschenrechte*, 20 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT (Germany) 415 (1959-1960); Partsch, *Die Entstehung der Europäischen Menschenrechtskonvention*, 15 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT (Germany) 631 (1954); Partsch, *Die Europäische Menschenrechtskonvention vor den nationalen Parlamenten*, 17 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT (Germany) 93 (1956); Robertson, *The European Convention for the Protection of Human Rights*, 27 BRIT. YB. INT'L L. 145 (1950); 28 *id.* at 359 (1951); 29 *id.* at 452 (1952); Robertson, *The European Court of Human Rights*, 9 AM. J. COMP. L. 1 (1960); Robertson, *The European Court of Human Rights*, 8 INT'L & COMP. L.Q. 396 (1959); Robertson, *The European Convention on Human Rights*, YEARBOOK OF HUMAN RIGHTS FOR 1951 (1953); Waldock, *The European Convention for the Protection of Human Rights and Fundamental Freedoms*, 34 BRIT. YB. INT'L L. 356 (1958); Wiebringhaus, *Die Rom-Konvention für Menschenrechte in der Praxis der Strassburger Menschenrechtskommission*, Saarbrücken (1959); Wiebringhaus, *Ein internationaler Gerichtshof zum Schutz der Menschenrechte*, 55 FRIEDENSWARTE 1 (1959-1960); Wiebringhaus, *Institution und bisherige Rechtsprechung der Strassburger Menschenrechtskommission*, 54 FRIEDENSWARTE 252 (1957-1958); Weil, *Decisions on*

with its supranational organs, it is true, have received more attention. Nevertheless, the European Convention on Human Rights, similar to the Common Market, marks an important step toward not only a united Europe, but also in the direction of novel forms of international co-operation. In this latter regard the Convention departs in at least three ways from traditional methods of international collaboration.

First of all, the European Convention on Human Rights is the first and to date the only international convention on human rights. Never before have signatories to international treaties guaranteed the protection of fundamental human rights and freedoms to all persons within a treaty's jurisdiction.

It should be noted at this point that this writer does not disregard certain earlier efforts in the area of human rights. Notable among these are conventions against slavery and forced labor, reaching back to the 19th century; treaties to protect minorities in Eastern Europe, concluded after World War I; and the more than one hundred conventions adopted since 1919 by the International Labor Organization for the protection of workers. These treaties, however, differ fundamentally from the European Convention in that they offer protection only to certain classes of individuals.

The United Nations, too, in adopting the Universal Declaration of Human Rights, recognized a need to protect all individuals. However, the United Nations failed in its attempt to reach agreement on binding covenants. Thus, the Universal Declaration remains a mere declaration devoid of formal sanction.

Secondly, the Convention departs from traditional international law in that individuals are allowed access to international judicial organs. This represents a radical departure from the well-established procedure which allowed only states to be parties before international tribunals. A rare exception to this requirement is found in the Central American Court of Justice; however, during the ten years of its existence (1907-1917), only five petitions were submitted by individuals. The European Commission of Human Rights, the tribunal of the Convention which receives individual petitions, has received more than one thousand such petitions since its organization in 1954.

Thirdly, and closely connected with the right of individual petition, is another individual right—namely, one may petition not only against foreign governments, but against his own as well. Thus, the relationship between governments and their nationals has ceased to be a matter of purely domestic jurisdiction. On the other hand, the Central American Court of Justice allowed individuals to petition only against

---

*Inadmissible Applications by the European Commission on Human Rights*, 54 AM. J. INT'L L. 874 (1960); Comment, *The European Convention for the Protection of Human Rights and Fundamental Freedoms*, 49 CALIF. L. REV. 172 (1961).

foreign governments. The view was that international law governed only the relationship of governments and aliens, not of governments and their citizens.

### I. ORIGIN OF THE CONVENTION

During and since World War II, as a consequence of the Nazi atrocities, there has been a general movement toward the international protection of human rights. It is to this coming awareness that the European Convention owes its existence. To view human rights purely as a matter of domestic concern, it was clear, could and did lead to grave international disturbances. This has been recognized by the United Nations. Its Charter, adopted in 1945 and containing no less than seven references to human rights, declares as one of its purposes the promotion and encouragement of respect for human rights. One may recall General Marshall's statement in the United Nations General Assembly in 1948:

Systematic and deliberate denial of basic human rights lies at the root of most of our problems and threatens the work of the United Nations. It is not only fundamentally wrong that millions of men and women live in daily terror of secret police, subject to seizure, imprisonment, and forced labor without just cause and without fair trial, but these wrongs have repercussions in the community of nations. Governments which systematically disregard the rights of their own people are not likely to respect the rights of other nations and other people, and are likely to seek their objectives by coercion and force in the international field.<sup>2</sup>

The statesmen of Europe, personally experienced in the evils of tyranny, were perhaps even more aware of the importance of an effectual guarantee of human rights in international relations than the statesmen of other continents. The Council of Europe, established in 1949 by ten Western European countries, urged the international protection of human rights as one of its foremost aims. In the preamble of its Statute, the signatory governments declare that they are:

[R]eaffirming their devotion to the spiritual and moral values which are the common heritage of their peoples and the true source of individual freedom, political liberty and the rule of law, principles which form the basis of all genuine democracy.

Article Three states the proposition more specifically:

Every member of the Council of Europe must accept the principles of the rule of law and the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms, and collaborate sincerely and effectively in the realization of the aim of the Council as specified in Chapter I.

---

2. Contained in Cohen, *Human Rights Under the United Nations Charter*, 14 *LAW & CONTEMP. PROB.* 430, 436 (1949).

The terms of this provision require a denial of membership in the Council of Europe to any nation which does not guarantee fundamental human rights, or which does not observe the rule of law. Thus, neither the Communist countries in Eastern Europe, nor Spain and Portugal, with their autocratic governments, could become members.<sup>3</sup>

The efforts of the United Nations toward the adoption of universal covenants on human rights were doomed to failure because of the great diversity of opinion among its member nations. The Western states, mainly striving toward a recognition of individual liberties in the traditional meaning; the uncommitted nations, primarily interested in economic and social rights; and the Communist nations, taking sides for the most part with the uncommitted nations and rejecting the internationalization of human rights, could not, it was evident when the Council of Europe was organized, reach agreement in the area of human rights.

This failure of the United Nations provided strong impetus for a European Convention on Human Rights. Thus, immediately after its organization in 1949, the Council of Europe began drafting the Convention. On November 4, 1950 it was signed in Rome, and, on September 3, 1953, the last of the ten instruments of ratification necessary for the Convention to have binding effect was deposited.

The Convention is open to all members of the Council of Europe. With the increase of membership in the Council, the number of adherents to the Convention has grown. Only France and Cyprus,<sup>4</sup> of the sixteen nations which are members of the Council of Europe today, have not ratified the Convention. The United Kingdom, the Netherlands and Denmark have extended its application to forty-six of their overseas territories. The Convention is now in force in a combined area of some 236 million inhabitants.

Only four nations in free Europe are not members of the Council, and therefore not parties to the Convention. Switzerland and Finland for reasons of neutrality, and Spain and Portugal because of their political regimes, have not joined the Council.

## II. RIGHTS AND FREEDOMS GUARANTEED BY THE CONVENTION

The Convention protects most of the civil rights and liberties traditionally guaranteed by the bills of rights of national constitutions. The point of departure chosen by the drafters was the Uni-

---

3. The provision of Article Three is also one of the reasons why Switzerland did not join the Council of Europe. The Swiss Government, though strongly supporting human rights, believed that it could be prejudicial to Swiss neutrality to be a member of a group of states which is clearly opposed to the Communist countries.

4. Cyprus joined the Council of Europe in 1961 after attaining independence.

versal Declaration of Human Rights. Eleven substantive rights and freedoms, proclaimed in Articles Three to Twenty of the Universal Declaration, are now guaranteed by the Convention. Included are the right to life;<sup>5</sup> freedom from torture;<sup>6</sup> freedom from slavery and servitude;<sup>7</sup> the right to liberty and security of person;<sup>8</sup> the right to a fair trial;<sup>9</sup> the prohibition of *ex post facto* criminal laws;<sup>10</sup> freedom from arbitrary interference in private and family life, home and correspondence;<sup>11</sup> freedom of thought, conscience and religion;<sup>12</sup> freedom of expression;<sup>13</sup> freedom of assembly and association;<sup>14</sup> and the right to marry and found a family.<sup>15</sup> Furthermore, the Convention, like the Universal Declaration, proscribes discrimination on any basis such as sex, race, color, language or religion.<sup>16</sup>

Finally, in order to prevent members of totalitarian organizations from invoking the rights of the Convention, it is provided:

[N]othing in this Convention may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention.<sup>17</sup>

This provision, too, is in conformity with the Universal Declaration.

Albeit these rights are based upon the Universal Declaration, the Convention elaborates them in much greater detail, in order that adherent states will be precisely aware of the commitments that they are assuming.

The Convention did not adopt all of the civil rights and liberties proclaimed in the Universal Declaration. Freedom of movement and residence, the right to asylum, to a nationality, to private property and of a national to take part in his government, were excluded. Subsequently, however, two of these rights were incorporated into a special Protocol. This addition, adopted on March 20, 1952, guarantees the rights to property<sup>18</sup> and to maintain free elections,<sup>19</sup> the funda-

---

5. Art. 2.

6. Art. 3.

7. Art. 4.

8. Art. 5.

9. Art. 6.

10. Art. 7.

11. Art. 8.

12. Art. 9.

13. Art. 10.

14. Art. 11.

15. Art. 12.

16. Art. 14.

17. Art. 17.

18. Protocol, art. 1.

19. Protocol, art. 3.

mental right of democratic government. The Protocol, furthermore, protects the right to education, and that of parents to educate their children in conformity with their beliefs.<sup>20</sup>

The Convention, unlike the Universal Declaration, does not proclaim any economic or social rights. The embodiment in an international bill of rights of such guarantees as social security, employment, periodic holidays with pay, decent standard of living and others, would constitute no more than a wish to member governments that they enact legislation and adopt other measures in recognition of these rights. Judicial organs, quite obviously, can offer no effective method of enforcement.

Despite this difficulty of enforcement and although it recognized that a different procedure would be necessary to secure such rights, the Council of Europe established a separate convention for these purposes. In Turin, on October 18, 1961, the Council members signed a European Social Charter setting the standards to be achieved in this area.<sup>21</sup>

### III. THE IMPLEMENTATION OF THE CONVENTION IN DOMESTIC LAW

In discussing the implementation of the Convention one must distinguish between the international and the national levels. In this section implementation on the national level is considered.

International law provides that every state is privileged to decide for itself whether or not special legislation is necessary in order to incorporate a treaty into domestic law. Hence, although the Convention was conceived as a self-executing treaty requiring no implementing legislation, one must look to the law of the member states to determine whether implementing legislation is required.

In eight of the fourteen member states (Belgium, the Netherlands, Luxembourg, the Federal Republic of Germany, Austria,<sup>22</sup> Italy, Greece and Turkey) treaties have the force of law immediately upon ratification by their respective governments. Individuals may therefore invoke the provisions of the Convention in any national court. Furthermore, Austria, by adopting the Convention in the form of a constitutional law, has made it a part of her constitution.

The Convention, mainly a restatement of fundamental rights normally guaranteed by national constitutions, has by and large exercised

---

20. Protocol, art. 2.

21. Council of Europe News, Nov. 1961, p. 1.

22. In Austria the question has not yet been definitely settled. See Ermacora, *Die Menschenrechtskonvention als Bestandteil der österreichischen Rechtsordnung*, 81 JURISTISCHE BLÄTTER 396 (1959); Janowsky, *Auswirkungen der Europäischen Konvention zum Schutz der Menschenrechte und Grundfreiheiten auf das österreichische Recht*, *id.* at 145.

no important effect on domestic law. Even in federal states such as Germany and Austria, countries with national constitutions containing lengthy bills of rights which limit both federal and state governments, the Convention has not affected the federal division of powers. In these countries, unlike the United States, the implementation of basic rights remains almost exclusively a federal matter.

However, despite the general conformity between domestic law and the Convention, one may find a number of decisions of national courts in which provisions of domestic law differed from those of the Convention. In these cases, primarily concerned with the question of domestic criminal procedure as measured by the Convention's standards of due process, precedence is accorded to the Convention.<sup>23</sup> An excellent example of such a conflict arose in the German Federal Administrative Court in a case involving the deportation of a Belgian alien for criminal convictions.<sup>24</sup> The Court, holding that the defendant should not be deported, concluded that to decide otherwise would be to violate Article Eight of the Convention, which protects the family life.

The six nations in which treaties do not have the force of law are Great Britain and Ireland, the two English speaking countries; and Sweden, Norway, Denmark and Iceland, the four Scandinavian countries. The courts of these countries are required to follow domestic law even where it conflicts with the Convention. Changes necessary to bring the two into accord must be made by the legislatures. Failure to enact the necessary legislation or a decision in conflict with the Convention is, of course, not an acceptable excuse under international law. The state remains bound by the Convention, but the question of conformity can only be raised before international organs. Consequently, in these states there is no domestic court procedure pertaining to the Convention.

#### IV. INTERNATIONAL MACHINERY FOR IMPLEMENTATION OF THE CONVENTION

Two organs were established for enforcement of the rights guaranteed by the Convention—the European Commission of Human Rights and the European Court of Human Rights. In addition, the

---

23. For a useful survey of decisions of national courts under the Convention, see Morvay, *Rechtsprechung nationaler Gerichte zur Europäischen Konvention zum Schutze der Menschenrechte und Grundfreiheiten*, 21 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT 316 (1961).

24. *In re X v. State of Bavaria*, Oct. 25, 1956, [1958-1959] YEARBOOK OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS 584; [1956] Int'l L. Rep. 393. See Golson, *The European Convention for the Protection of Human Rights and Fundamental Freedoms in a German Court*, 33 BRIT. YB. INT'L L. 317 (1957).

Council of Ministers, composed of foreign ministers of member states and an already existing organ of the Council of Europe, was entrusted with further tasks.

#### *A. The European Commission of Human Rights*

The European Commission of Human Rights consists of a number of members equal to the number of High Contracting Parties. Members may be nationals of non-member states, but no two members may be nationals of the same state. They are elected by the Committee of Ministers of the Council of Europe from a list of names prepared by its Bureau of the Consultative Assembly. Their duties are as individual members, not as representatives of their respective states.

When an alleged violation of the Convention occurs, the complainant must submit his petition to the Commission. The Commission then classifies the petition into one of two categories: (1) *state* petitions, whereby one High Contracting Party complains of another's breach; (2) *individual* petitions, whereby a person, non-governmental organization or group of individuals complains that a High Contracting Party has violated the Convention, thereby injuring the complainant. The state petition is, of course, the traditional manner in which international controversies are handled.

The right of individual petition, on the other hand, since it is a radical departure from traditional principles of international law, has not been accepted by all of the parties. Some states, particularly the United Kingdom, feared that individual petitions might lead to abuses, especially in the area of subversive propaganda. Therefore, in order to resolve the conflict between states favoring and those opposing individual petitions, a compromise was effected. This solution provides that individual petitions are admitted only if the party against whom they are directed has expressly recognized this right.<sup>25</sup>

Generally, the smaller European nations have demonstrated greater willingness to recognize individual petitions than have larger nations. Among the greater powers, only the Federal Republic of Germany has been willing to accept this right. The United Kingdom, as previously noted, and Italy stand opposed to individual petitions, and France did not ratify the Convention.

The number of individual petitions, as expected, has gradually increased as Europeans have become aware of this new remedy. The number of state petitions submitted, on the other hand, has remained

---

25. The states which have accepted the right of petition are: Austria, Belgium, Denmark, the Federal Republic of Germany, Iceland, Ireland, the Netherlands, Luxembourg, Norway and Sweden.



small. Between 1954 and the latter part of 1961, the Commission received three state and 1310 individual petitions.<sup>26</sup>

The Commission's main function is to investigate alleged violations of the Convention and, if possible, to arrive at a friendly settlement. The task, in other words, is mainly one of conciliation, not of judicial decision. Responsibility for achieving the settlement is vested in a Sub-Commission of seven. If they are successful, a short report is published. If, however, the attempt to settle fails, the Commission as a whole submits a report to the Committee of Ministers of the Council of Europe and to the defendant state, stating whether or not a violation has occurred.

After the report, which is secret, is submitted, two avenues are open to the parties. They may proceed before the European Court of Human Rights, or before the Council of Ministers. These alternatives were chosen because the parties could not agree upon a single organ to decide the cases. A number of states, for reasons similar to those giving rise to their opposition to the right of individual petitions, stood opposed to the creation of a court. Therefore, as a compromise, the jurisdiction of the Court was made dependent upon special declarations of acceptance by the parties. Eight such declarations were necessary to establish the Court. This condition was fulfilled in September 1958, when the eighth declaration was made, and the first election to the Court was held in January 1959. The first session was held in 1959 at Strassburg, the seat of the Council of Europe. Thus far, no additional states have accepted the Court's jurisdiction.<sup>27</sup>

#### *B. The European Court of Human Rights and the Committee of Ministers of the Council of Europe*

Cases which the Commission is unable to settle may be referred to the Court within a period of three months from the date on which the report is transmitted to the Committee of Ministers. If the parties do not refer the case to the Court, or if it is one involving a state which has not accepted the Court's jurisdiction, it is decided by the Committee of Ministers. Jurisdiction of the Committee is compulsory, and a two-thirds majority is required to reach a decision.

The theory under which the Court is organized is that it should be an organ of the entire community of states which form the Council of Europe. The number of judges (sixteen), no two of whom may be nationals of the same state, is equal to the number of members of the

---

26. COUNCIL OF EUROPE, EUROPEAN CO-OPERATION IN 1961: REPORT OF THE SECRETARY-GENERAL 194 (1961).

27. The eight countries that have accepted jurisdiction are Austria, Belgium, Denmark, the Federal Republic of Germany, Iceland, Ireland, Luxembourg and the Netherlands.

Council of Europe. The judges are elected by the Consultative Assembly of the Council of Europe from a list of persons nominated by the member states, including those which are not parties to the Convention or have not accepted the Court's jurisdiction. Some of the leading international lawyers of Europe were elected to the Court in 1959.

A case may be referred to the Court by the Commission, by the state of the national who is alleged to be the victim, by the state which referred the case to the Commission, or by the state against which the complaint has been lodged. Technically, an individual who is the victim of an alleged violation has no access. In practice, however, the Court has demonstrated the willingness to allow him to be heard. It has decided that he may receive the Commission's report, offer the Commission his comments and be called to address the Court.<sup>28</sup>

Generally, parties have been more willing to submit cases to the Committee of Ministers than to the Court. The foreign ministers who compose the Committee are considerably more reluctant to render a decision which is unfavorable to one of their colleagues than are the independent judges of the Court. In addition, the Court is more likely to render an unfavorable decision since only a simple majority of its members is required.

### *C. The Practice of the Three European Organs*

As previously mentioned, the Commission, from the time of its establishment in 1954 until the end of 1961, has received three state petitions and 1310 individual petitions.

In two of the state petitions, lodged in 1956 and 1957 respectively, Greece complained of the United Kingdom's activities on Cyprus. The first, pertaining to British emergency legislation on Cyprus, was held admissible. Twenty-nine cases of the second petition, which alleged that the British government was responsible for forty-nine instances of torture on the island, were also admitted.

To determine the facts of these alleged violations, a Sub-Commission was organized and held several meetings with the parties. However, before any conclusions could be reached, the situation on Cyprus was settled by the consummation of the Zurich and London agreements. In view of this, and at the parties' requests, the Commission closed the cases rendering no decision upon the substance of the applications. The Committee of Ministers, following the advice of the Commission, decided that "no further action was called for."<sup>29</sup>

---

28. See Robertson, *THE LAW OF INTERNATIONAL INSTITUTIONS IN EUROPE* 77-81 (1961); Robertson, *The First Case before the European Courts of Human Rights: Lawless v. The Government of Ireland*, 36 *BRIT. YB. INT'L L.* 343, 350-54 (1960).

29. See [1958-1959] *YEARBOOK OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 178-80.

The third state petition, received by the Commission in 1960 from Austria, concerns the trial of six young men before the Italian courts for the murder of a customs official in South Tyrol. The Austrian government alleged that certain elements of these proceedings were in violation of Articles Six (right to a fair trial) and Fourteen (prohibition of discrimination) of the Convention. The Commission declared part of this application to be admissible, and a Sub-Commission is now engaged in an investigation.

Of the 1310 individual petitions submitted, only seven were declared admissible. This large percentage of rejections, while it may be surprising at first glance, becomes easily understandable upon closer viewing. The Commission is given great discretion in deciding whether or not to admit a petition. It is provided that petitions which are incompatible with the provisions of the Convention, manifestly ill-founded, or an abuse of the right of petition may be declared inadmissible.

Relying upon this provision, the Commission has dismissed many petitions filed by querulous persons with obviously ill-founded complaints. Others have been dismissed because the complainant had not exhausted his domestic remedies; the complaint to the Commission was not made within six months after local remedies were exhausted; or the alleged violation had occurred before the Convention came into force.

In addition to these reasons, the large number of rejections is partly a consequence of the fact that proceedings before the Commission have been made gratuitous in order to insure an efficacious protection of human rights. And, one may add, the record of decisions clearly indicates that in these past years an effective protection of human rights has been provided for in all of the states which are parties to the Convention.

Among the petitions rejected by the Commission was an application made by the West German Communist Party which alleged that the Federal Republic violated the provision guaranteeing freedom of association and expression when the Federal Constitutional Court, in 1956, declared the party to be anti-constitutional and ordered it dissolved. The petition was declared inadmissible because Article Seventeen provides that no group or person engaging in an activity aimed at the destruction of the rights and freedoms guaranteed by the Convention may derive rights therefrom.<sup>30</sup>

Also denied was a petition submitted by Rudolph Hess, a convicted Nazi war criminal. Hess alleged that his conviction at Nuremberg had violated the Convention. The application was dismissed because

---

30. EUROPEAN COMM'N OF HUMAN RIGHTS, DOCUMENTS AND DECISIONS 222 (1955-1957).

only Britain of the four powers responsible for the Nuremberg Trials is a party to the Convention. Moreover, Britain does not recognize the right of individuals to petition the Commission.<sup>31</sup> It was further held that the Convention specifically excludes petitions submitted by persons who are guilty of crimes under general principles of law recognized by civilized nations.<sup>32</sup>

Of the seven applications considered admissible, one has been decided by the Court and one by the Committee of Ministers. The remaining five are still pending. The case decided by the Court, *Lawless v. Ireland*, involved an Irish student who was arrested in July 1957 on suspicion of being a member of an illegal organization—the “Irish Republican Army.” Petitioner had also been detained for six months without trial by the Irish Government. After an unsuccessful suit against Ireland in the Irish courts, Lawless petitioned the European Commission on Human Rights. No friendly settlement was reached and the case was submitted to the Court. The Court, based on an escape clause providing states with limited right to derogate from their obligations under the Convention in time of war or other public emergency, held that no violation had occurred.<sup>33</sup>

The case of *Nielson v. Denmark*, decided on October 26, 1961, is the first decision on the merits rendered by the Committee of Ministers.<sup>34</sup> Nielson had been sentenced to life imprisonment for bank robbery, attempted bank robbery and the murder of two bank clerks committed by a co-accused. The petition alleged violations of Article Six (right to fair trial). After the Commission had transmitted its report to the Committee of Ministers, neither the Danish Government nor the Commission exercised its right to submit the case to the Court. The Committee of Ministers, thereby required to reach a decision, held that Article Six had not been violated.

*De Becker v. Belgium*, currently pending before the Court, concerns the question of whether certain provisions of the Belgian Penal Code are contrary to the Convention. At the conclusion of public hearings held in July and October 1961, De Becker withdrew from the case, notifying the Court that he had no further claims.<sup>35</sup> However, since he is not a party before the Court, the Court will have to determine at a later session whether the proceedings should be continued.

The remaining four individual petitions declared admissible by the Commission are directed against Austria. The four applicants, convicted of crimes by Austrian courts, allege, among other complaints,

---

31. Council of Europe News, Jan. 1960, p. 9.

32. Art. 7, ¶ 2.

33. Council of Europe News, Sept. 1961, p. 3 and Doc. A 63.550.

34. *Id.* Nov. 1961, p. 3.

35. *Ibid.*

that the Attorney General was heard by the Supreme Court in a non-public hearing to which neither they nor their counsels were admitted.<sup>36</sup>

#### CONCLUSION

Viewing the practice which has thus far developed under the Convention, there would seem to be substantial justification for questioning its value. Is it merely an interesting innovation in international law, or is it a step toward better protection of human rights in the interest of international peace? Certainly the facts that most petitions have been rejected as inadmissible, and that no violations have thus far been established, suggest that the Convention and its machinery are superfluous. However, one should not rest his judgment solely upon the practice of the three organs during the few years of their existence.

First of all, the mere existence of these organs coupled with the possibility of being sued before them exerts a strong influence upon the states. Every government has endeavored to comply with the Convention, and several states have amended their legislation to bring it into conformity with the Convention. Others have made changes in their policy regarding controversial issues—for instance, it has become known that the British government repealed the death penalty regulations on Cyprus principally as a result of the conciliatory proceedings brought before the Commission by Greece against it.

One must also keep in mind that the political situations of the various states may change. Today's majority is well-aware that it may become tomorrow's minority. It may be illustrative to quote a statement made by Pierre-Henri Teitgen, the French statesman, at the time of the drafting of the Convention:

Why is it necessary to build such a system?—Democracies do not become Nazi countries in one day. Evil progresses cunningly, with a minority operating, as it were to remove the levers of control. One by one, freedoms are suppressed, in one sphere after another. —It is necessary to intervene before it is too late. A conscience must exist somewhere which will sound the alarm in the minds of a nation menaced by this progressive corruption, to warn them of the peril.—An international court, within the Council of Europe, and a system of supervision and guarantees could be the conscience of which we all have need, and of which other countries have perhaps a special need.<sup>37</sup>

Furthermore, the impact of the Convention is demonstrated by those countries outside Europe which have followed the European ex-

---

36. *Id.* July 1961, p. 3.

37. ROBERTSON, *THE LAW OF INTERNATIONAL INSTITUTIONS IN EUROPE* 56 (1961).

ample. Three countries, Nigeria, Cyprus, and Sierra Leone, each under British rule before achieving its independence, have embodied the substantive rights guaranteed by the Convention within their constitutions. Moreover, there has been a notable influence on the American Continent. The Organization of American States, in 1959, charged the Inter-American Council of Jurists with preparation of drafts for a Convention on Human Rights, and for the creation of an Interamerican Court to protect Human Rights. In the same year, the Interamerican Council of Jurists met in Santiago and prepared a draft convention containing substantially the same provisions as the European Convention.<sup>38</sup>

Similar attempts have also been undertaken in Africa. In January 1961, the African Conference on the Rule of Law held at Lagos, Nigeria, under the auspices of the International Commission of Jurists, adopted a resolution inviting the African governments to explore the possibility of adopting an African Convention on Human Rights.

These developments are persuasive evidence that the European Convention on Human Rights has begun to exert considerable influence both in Europe and on other continents. The growing awareness that certain basic individual freedoms must be guaranteed is a significant step toward equality for all men under law.

---

38. *Id.* at 61-67; Comment, *supra* note 1, at 186; [1960] YEARBOOK OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS 677.