CIVIL RIGHTS

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Court of Human Rights

Once again we are indebted to the Civil Liberties Bulletin of the All-India Civil Liberties Council for drawing our attention to an important development which has not so far been featured, to our knowledge, in the South African Press. The European Court of Human Rights is to have before it shortly its first case - a case of detention without trial. This Court , says the Bulletin, may be regarded as the highest appellate authority under the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in 1950 by all the fifteen nations which are members of the Council of Europe. The nations took this step because they felt that as they "are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law", they could both define the rights to be secured more precisely than the U.N. was doing (in its still uncompleted Covenant on Human Rights) and also lay down a better procedure for the protection of the rights - that is to say, provide a more effective machinery for consideration of complaints about breaches of those rights - than the U.N. (comprising necessarily heterogeneous groups of nations) was capable of doing. Several of the rights (including Freedom of the Person) are more closely defined in the Convention than in the U.N. Covenant.

The case now coming up, says the Bulletin, will be regarded everywhere as an epoch-making event in the field of international law and the guarantee of human rights, first because the Court is a supranational tribunal competent to pass judgment on the actions of States otherwise sovereign in their own territories, and secondly because it is on the application of a private individual that the Court will consider the legality of his detention. The Convention provides for a Commission of Human Rights to which complaints of violations of the rights set forth in the Convention are submitted. If the Commission does not succeed in "effecting a friendly settlement" of the dispute, it submits a report to the Committee of Ministers, which then decides by a majority of two thirds whether there has been a violation of the Convention, and indicates what measures the State concerned must take within a prescribed period. Should the State not do this, the Commission can apply sanctions. States signing the Convention, however, must declare their acceptance of the compulsory jurisdiction of the Court before it becomes effective. Last year the necessary minimum

of eight member States declared their acceptance, and thus enabled the Court to be properly constituted.

One great advantage of the Convention over the U.N. Covenant is that it deals not merely with inter-state disputes but recognises the right of any person, non-governmental organisation or group of individuals claiming to be the victim of a violation of human rights by any of the member States to bring the matter before the Commission (or through the Commission, before the Court). This is subject to the member State concerned having declared that it recognises the competence of the Commission to receive such declarations.

The case concerns an application by a subject of the Irish Republic (which has acceded to the Commission's jurisdiction) complaining against his wrongful detention in violation of the Convention of Human Rights and seeking damages. His case is that, although he was detained under the so-called emergency regulations, there was in fact no emergency within the meaning of Article 15 of the Convention justifying the detention. (This Article provides for the departure from the principle laid down in Article 5, that "everyone has the right to liberty and security of person"; in "time of war or other public emergency threatening the life of the nation".)

The Commission, while not considering that the Irish Government has in fact violated the Convention, has referred the case to the Court of Human Rights, and has asked the Irish Government to provide answers to three questions, namely

1. Why it was considered that a state of emergency was necessary in July 1957, although not a shot had been fired on the territory of the Republic.

2. Why it was decided that the ordinary courts of law were inadequate to deal with the situation considering that a couple of hundred prosecutions took place and there were only thirteen acquittals.

3. Why the emergency regulations were brought into force at that particular time.

These questions, as the Bulletin says, are highly relevant to the exception to the rule of Article 5 that "everyone has the right to liberty and security of person".

The question before the Court, says the Bulletin, is whether the terrorist campaign of the Irish Republican Army (undoubted threat to Eire though this was) was in fact creating such an exigency as to warrant recourse to extraordinary legislation sanctioning detention without trial. Whatever the decision of the Court may be, the very fact that the Irish Republican Government is being called upon to

adduce its justification is a matter of the greatest significance. The Bulletin adds, "It is Eire's voluntary accession to the compulsory jurisdiction of the European Court of Human Rights ... which has ... given rise to the present litigation. And whatever the result of the litigation may be, there can be no doubt that the Irish Republican Government has shown a commendable regard for the citizens' personal liberty." And it goes on to compare the Act of Eire with India's own, originally temporary Preventive Detention Act, which the Indian Government is proposing to prolong. "Eire's Act", it says, "empowers the Government to detain members of illegal organisations, while the Indian Act is enforced against persons who may just be suspected of making the maintenance of public order difficult without endangering the safety of the State or even against ordinary bad characters like black-marketers (italics ours)." Both laws provide that if the Appeals Commission set up to hear appeals from detainees comes to the conclusion that the detention seems unjustifiable, the Government is required to set the detainee at liberty: but the Eire Act gives the Commission full information about the activities of the person detained, whereas the Indian law authorises the withholding of information considered by the detaining authority "to be against the public interest to disclose". This restriction, says the Bulletin, "makes it impossible for the Advisory Boards in India to institute a searching inquiry into the causes of detention".

What Emergency?

We cannot but feel that it would be of the utmost value if our own Government, which has suggested before now the possibility of following the example of Ireland in other respects, would take to heart the principles laid down in this Eire legislation. The procedure which has been followed in our own emergency has been such as to raise the gravest suspicions throughout South Africa and the whole civilised world. To detain nearly two thousand citizens without trial for three months, to release them surreptitiously and under conditions which gravely limit their personal liberty and their right to ordinary living, when apparently no case can be preferred against them in a court of law; to arrest thousands more simply under the guise of "cleaning up the tsotsi element", again without any semblance of trial in open court, and to remove others from their homes without any charge being preferred against them or any opportunity for them to defend themselves; to seize journals and then release them after two or three days, with no explanation or, apparently, justification; all this, if it has to be done, should have the fullest explanation.

If adequate grounds cannot be shown, can the world be blamed for its suspicion that they do not exist?

Human Rights in the Commonwealth

It is interesting to note that in the British Parliament the suggestion of a Commonwealth Court of Human Rights has been put forward, and we hope that the British Government will not lightly dismiss it. Here again of course its operation would presumably have to depend on the various member states accepting its jurisdiction: but the moral pressure to do so would be considerable and could not but be valuable.

It pays to protest

We congratulate the American Civil Liberties Union on the result of its campaign against the operations of the Un-American Activities Committee. Leading American newspapers have joined in the attack, and such national groups as the National Council of Churches, the American Federation of Teachers, the Friends Committee on National Legislation, the California State Labor Federation AFL-CIO, and the Episcopal Diocese of California. Mr James Roosevelt has delivered a strong attack on the Committee in the American House of Representatives, and the United States Supreme Court has agreed to review a case which challenged the HUAC's violations of civil liberties.

Our own task is more difficult, perhaps, but equally worth doing. Let us go on arousing public opinion to injustice, in the conviction that sooner or later the public conscience must bring pressure to bear on the Government to remove the injustices that cause friction, tension and difficulty in South Africa. As Mr Roger Baldwin has said of the ACLU, perhaps we also "live even more in our unfulfilled purposes than in our contributions to a time gone by".

That "New Deal"

Details of the Government's proposed "new deal" for the Coloured people will be awaited with interest. The only proposal so far suggested (unofficially, by an up-country newspaper) seems to be that the Coloured people (? men) of the Northern Provinces might be given one (White) M.P. While any move whatsoever in the direction of extending Coloured citizen rights would be an improvement, we are not surprised that Coloured spokesmen have demanded restoration to the common voters' roll and the abolition of job reservation and group areas.

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