Protest and the Law

This article is the second of two written by a Johannesburg attorney whose name may not be published for professional reasons.

IN the first article in this series the writer sought to demonstrate that by reason of penalties — judicial and extra judicial — which the civil rights protestor has to face, no meaningful protest is possible in South Africa. Consequences which may follow from lawful conduct, and presumptions which operate against an individual in certain criminal trials are not found in any 'western' country purporting to be democratic. The individual is thus in constant jeopardy if he chooses not to be a mere spectator in a society founded on discrimination and injustice.

SINCE THE FIRST ARTICLE APPEARED, the already notorious Sections 10 and 29 of the General Law Amendment Act No. 101 of 1969 have become part of the law.

The effect of Section 10 is that a person who writes about any matter relating to the security of the Republic or "any matter dealt with by . . . the Bureau for State Security" may find himself subject to a seven year prison sentence. The consequence must be a self-imposed censorship, of necessity far worse than any official censorship.

Section 29, as is well known, could be used to prevent a person defending himself in court or proceeding with a civil action if the Prime Minister or a person authorised by him or any Cabinet Minister expresses the opinion that certain information *affects* the interests of the State or public security.

It had been the writer's intention to examine the ethical question which people in democratic states have to face, namely, the question of civil disobedience and the deliberate breaking of laws, either in protest against the actual law broken (for example the segregation laws in the southern states of the United States of America) or against a system or aspect of governmental policy (for example the Vietnam war). It is of course, not possible in South Africa to advocate such conduct — the legal penalties of Act 8 of 1953 effectively prevent this, as they caused the collapse of the passive resistance campaign of 1952/1953.

The background to laws like Act 8 of 1953, the Sabotage Act and the Terrorism Act is a philosophy of the maintenance of law and order above all other considerations, and which will destroy the system of justice if justice stands in the way of the attainment of its objects. No responsible member of society objects to law and order if what is meant by that phrase is safety in the streets and in one's home and the security of one's property. That is substantially what it means in the United States of America.

In South Africa it is essentially a matter of preserving white supremacy at all costs and ensuring the continuing domination of the Nationalist party and policy. The suppression of meaningful expression of opposition is a fundamental aspect of that policy, even if it has to be done under the disguise of laws dealing with other topics. It is for this reason that acts which in the wildest stretches of the imagination cannot be described as sabotage or terrorism, are by presumption, deemed to constitute acts of sabotage or terrorism and are made subject to the death penalty prescribed for treason. The passing of the Boss Law must be seen in this context.

The article which was to have been written cannot now appear because of that law. If an act of trespass, or the holding of an unlawful demonstration which causes embarrassment to the government in the administration of the affairs of state is deemed to be an act of terrorism, then a critical examination of the deliberate breach of the law in protest against that or another law or its administration, or against a social system could well fall into the sphere of matters dealt in by the Bureau for State Security.

Perhaps in this one short amendment to the law as contained in Section 10, the government has made the most extensive incursion into the sphere of written opposition to its policies. It will be interesting to see what prosecutions follow.