

THE DEVELOPING EUROPEAN LAW OF HUMAN RIGHTS. By Clovis C. Morrison, Jr. 1967. Leiden: Sijthoff. Pp. 247. Dfl. 24.

HUMAN RIGHTS IN NATIONAL AND INTERNATIONAL LAW. By A. H. Robertson. 1968. Manchester: Manchester University Press; Dobbs Ferry, N.Y.: Oceana. Pp. xvi and 396. \$12.00

In this Human Rights Year there is a danger that celebration of the anniversary of the non-authoritative Universal Declaration of Human Rights may lead us to forget that if we wish to see the enforcement of respect for human rights we must look to regional rather than universal arrangements. Of such regional pacts, the most important is undoubtedly the European Convention on Human Rights, backed as it is by the Commission and Court.

Professor Morrison has provided an analysis of the *Developing European Law of Human Rights* giving a careful statement of the work of the various organs concerned with its practice, drawing attention in chapter XII to the impact of the Convention on such issues as the people of Europe and domestic law, showing how the Convention operates as domestic law and is applied by domestic tribunals. Perhaps most interesting is not the account of the Commission or the Court, or the analysis of the Convention as it is worked, but the final assessment of the Convention itself. Professor Morrison points out that one of the purposes of the Convention was to prevent the rise of anti-democratic forces that would destroy human rights, but he does not think that the Convention or its organs possess enough force for this purpose, although it provides the means for making other States aware of such tendencies in time for them to take the necessary preventive action should they so desire. "If the nations of Western Europe do not form some kind of meaningful union in the foreseeable future, the Convention system will likely remain in force as an effective means for the regional protection of human rights. If such a union is effected, the apparatus of the system would be altered and replaced with a more conventional internal system"<sup>1</sup>

As a complementary study to Professor Morrison's book one might refer to the record of the Conference on the European Convention organized in 1965 by the Council of Europe and the University of Vienna, and published under the title *Human Rights in National and International Law*. Among the matters discussed were the general problem of the obligations of a State party to a treaty as regards its municipal law, and it was pointed out that many of the Parties to the European Convention, rather than giving the Convention the force of law, adjusted their municipal legislation to avoid conflicts.<sup>2</sup> This problem has added importance in view of the fact that some States recognize the right of individual petition which tends to give the Convention a hierarchic status, and Professor Verdross called for efforts to ensure that this became general by persuading members to grant the right and accept the jurisdiction of the Court.<sup>3</sup> A problem that has been highlighted by the establishment of the Organization of African Unity is that of incompatible treaty obligations, and this issue was also discussed. Professor

<sup>1</sup> Morrison, *Developing European Law of Human Rights* (1967), at p. 206.

<sup>2</sup> Robertson, *Human Rights in National and International Law* (1968), at p. 46.

<sup>3</sup> *Id.*, at 56.

Capotorti pointed out how important it was, because of the existence of the Commission and the Court, that the new United Nations Covenants on Human Rights should not be considered as abrogating the European Convention or rendering it redundant.<sup>4</sup> During the discussion on the Convention and *ordre public*, Dr. Egon Schwelb warned against this concept: "If it were not for the reference to a 'democratic society' the Republic of South Africa could very well become a party to a provision couched in these terms without having to change one *iota* of its policy of *apartheid*, because the separation of the races, the segregation of various groups in specified areas and restrictions on the right of the African population to travel abroad is part and parcel and the very heart of the public policy, of the *ordre public*, of South Africa".<sup>5</sup> This denial that South Africa is a democratic society indicates a change from the 1948 view of human rights on behalf of individuals to a present attitude which tends to be more concerned with the rights of groups than of men—an attitude that is found in both the United Nations Covenants which are predicated upon the fundamental right of self-determination. Reflecting a matter which was considered by Professor Morrison, a lengthy discussion took place on a comparison of the jurisprudence of national courts with organs of the Convention, and it was contended that "if the particular method does not *in practice* measure up to the standard set by the Convention, the fact that it is a cherished and long-established principle or institution of national law is not enough to justify its continued existence".<sup>6</sup> Professor Scheuner made the point, which is of general validity, that the real issue in this as in other matters depends "to a large extent on the rules of national constitutional law which determine whether the clauses of the Convention are directly applicable to municipal law and decide their status in relation to the other laws of the land".<sup>7</sup>

This collection is a veritable mine of information on the European Convention and its effects. It is unfortunate, therefore, that there is no attempt to give the names of municipal cases and no bibliography. There are, however, written statements from lawyers in Eastern Europe. These indicate a fundamentally different approach. While, "legal science in these countries has now discovered the lack of any socialist doctrine on human rights and freedoms, [the] first attempts have been made to develop the concept of law in such a way as to include basic rights of the citizens. . . . The constitutional development of Eastern European countries shows signs that human rights are receiving growing emphasis. . . . The Soviet Union and other States of Eastern Europe have adopted a stand concerning international cooperation in the field of human rights according to which national sovereignty excludes any kind of international importance," a view which was accepted by Yugoslavia until 1953<sup>8</sup>—and is now being questioned in Czechoslovakia.

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<sup>4</sup> *Id.*, at p. 93.

<sup>5</sup> *Id.*, at p. 144.

<sup>6</sup> Morrison, *Developing European Law*, at p. 213.

<sup>7</sup> *Id.*, at pp. 263-4.

<sup>8</sup> *Id.*, at pp. 300-3.

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