CASE OF HANDYSIDE v[1]. THE UNITED KINGDOM

In the Handyside case,

The European Court of Human Rights, taking its decision in plenary session in application of Rule 48 of the Rules of Court and composed of the following judges:

Mr. G. BALLADORE PALLIERI, President,
Mr. H. MOSLER,
Mr. M. ZEKIA,
Mr. G. WIARDA,
Mrs. H. PEDERSEN,
Mr. THÓR VILHJÁLMSSON
Mr. S. PETRÉN,
Mr. R. RYSSDAL,
Mr. A. BOZER,
Mr. W. GANSHOF VAN DER MEERSCH,
Sir Gerald FITZMAURICE,
Mrs. D. BINDSCHEDLER-ROBERT,
Mr. D. EVRIGENIS,
Mr. H. DELVAUX,

and also Mr. M.-A. EISSEN, Registrar, and Mr. H. PETZOLD, Deputy Registrar,

Having deliberated in private on 8 and 9 June and from 2 to 4 November 1976,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The Handyside case was referred to the Court by the European Commission of Human Rights (hereinafter referred to as "the Commission"). The case originated in an application against the United Kingdom of Great Britain and Northern Ireland lodged with the Commission on 13 April 1972 under Article 25 (art. 25) of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the Convention") by a United Kingdom citizen, Mr. Richard Handyside.

2. The Commission's request, to which was attached the report provided for under Article 31 (art. 31) of the Convention, was lodged with the registry of the Court on 12 January 1976, within the period of three months laid down by Articles 32 para. 1 and 47 (art. 32-1, art. 47). The request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration made by the United Kingdom recognising the compulsory jurisdiction of the Court (Article 46) (art. 46). The purpose of the Commission's request is to obtain a decision from the Court as to whether or not the facts of the case disclose a breach by the respondent State of its obligations under Article 10 of the Convention and Article 1 of the Protocol (art. 10, P1-1) of 20 March 1952 (hereinafter referred to as "Protocol No. 1").

3. On 20 January 1976, the President of the Court drew by lot, in the presence of the Registrar, the names of five of the seven judges called upon to sit as members of the Chamber; Sir Gerald Fitzmaurice, the elected judge of British nationality, and Mr. G. Balladore Pallieri, the President of the Court, were ex officio members under Article 43 (art. 43) of the Convention and Rule 21 para. 3 (b) of the Rules of Court respectively. The five judges thus designated were Mr. H. Mosler, Mr. M. Zekia, Mr. G. Wiarda, Mrs. H. Pedersen and Mr. S. Petrén (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

Mr. Balladore Pallieri assumed the office of President of the Chamber in accordance with Rule 21 para. 5.

4. The President of the Chamber ascertained, through the Registrar, the views of the Agent of the Government of the United Kingdom (hereinafter called "the Government") and the delegates of the Commission regarding the procedure to be followed; having regard to their concurring statements, the President decided by an Order of 6 February 1976 that it was not necessary at that stage for memorials to be filed. He also instructed the Registrar to invite the Commission to produce certain documents and these were received at the registry on 11 February.

5. On 29 April 1976, the Chamber decided under Rule 48 to relinquish jurisdiction forthwith in favour of the plenary Court, "considering that the case raise[d] serious questions affecting the interpretation of the Convention ...".

6. On the same day, the Court held a preparatory meeting to consider the oral stage of the procedure. At this meeting it compiled a list of questions which it sent to the Commission and to the Government, requesting them to supply the required information in the course of their addresses.

7. After consulting, through the Registrar, the Agent of the Government and the delegates of the Commission, the President decided by an Order of 3 May 1976 that the oral hearings should open on 5 June.

8. The oral hearings were held in public at the Human Rights Building, Strasbourg, on 5 and 7 June 1976.

There appeared before the Court:

- for the Government:

- Mr. P. FIFOOT, Legal Counsellor, Foreign and Commonwealth Office, Barrister-at-Law, Agent and Counsel,

- Mr. G. SLYNN, Q.C., Recorder of Hereford,

- Mr. N. BRATZA, Barrister-at-Law, Counsel,

- Mr. A.H. HAMMOND, Assistant Legal Adviser, Home Office,

- Mr. J.C. DAVEY, Principal, Home Office, Advisers;

- for the Commission:

- Mr. G. SPERDUTI, Principal Delegate,

- Mr. S. TRECHSEL, Delegate,

- Mr. C. THORNBERRY, who had represented the applicant before the Commission, assisting the Delegates under Rule 29 para. 1, second sentence.

The Court heard the addresses and submissions of Mr. Fifoot and Mr. Slynn for the Government and of Mr. Sperduti, Mr. Trechsel and Mr. Thornberry for the Commission, as well as their replies to the questions put by the Court and several judges.

AS TO THE FACTS

Historical

9. The applicant, Mr. Richard Handyside, is proprietor of the publishing firm "Stage 1" in London which he opened in 1968. He has published, among other books, The Little Red Schoolbook (hereinafter called "the Schoolbook"), the original edition of which was the

subject of the present case and a revised edition of which appeared on 15 November 1971.

10. The applicant's firm had previously published Socialism and Man in Cuba, by Che Guevara, Major Speeches, by Fidel Castro, and Revolution in Guinea, by Amilcar Cabral. Since 1971 four further titles have appeared, namely Revolution in the Congo, by Eldridge Cleaver, a book of writings from the Women's Liberation Movement called Body Politic, China's Socialist Revolution, by John and Elsie Collier, and The Fine Tubes Strike, by Tony Beck.

11. The British rights of the Schoolbook, written by Søren Hansen and Jesper Jensen, two Danish authors, had been purchased by the applicant in September 1970. The book had first been published in Denmark in 1969 and subsequently, after translation and with certain adaptations, in Belgium, Finland, France, the Federal Republic of Germany, Greece, Iceland, Italy, the Netherlands, Norway, Sweden and Switzerland as well as several non-European countries. Furthermore it circulated freely in Austria and Luxembourg.

12. After having arranged for the translation of the book into English the applicant prepared an edition for the United Kingdom with the help of a group of children and teachers. He had previously consulted a variety of people about the value of the book and intended publication in the United Kingdom on 1 April 1971. As soon as printing was completed he sent out several hundred review copies of the book, together with a press release, to a selection of publications from national and local newspapers to educational and medical journals. He also placed advertisements for the book in various publications including The Bookseller, The Times Educational and Literary Supplements and Teachers World.

13. On 22 March 1971, the Daily Mirror published an account of the book's contents, and other accounts appeared in The Sunday Times and the Sunday Telegraph on 28 March. Further reports were carried by the Daily Telegraph on 29 and 30 March; they also indicated that representations would be made to the Director of Public Prosecutions demanding that action should be taken against the publication of the book. The Schoolbook was also the subject of further extensive press comment, some favourable and some not, immediately after and around the time of the seizure referred to below.

14. After receipt of a number of complaints, on 30 March 1971 the Director of Public Prosecutions asked the Metropolitan Police to undertake enquiries. As a result of these, on 31 March 1971, a successful application was made for a warrant under section 3 of the Obscene Publications Acts 1959/1964 to search the premises occupied by Stage 1 in London. The warrant was issued in the applicant's absence but in accordance with the procedure laid down by English law and a copy of the Schoolbook was before the judicial authority which issued the warrant. It was executed on the same day and 1,069 copies of the book were provisionally seized together with leaflets, posters, showcards and correspondence relating to its publication and sale.

15. Acting on the advice of his lawyers the applicant continued distributing copies of the book in the subsequent days. After the Director of Public Prosecutions had received information that further copies had been taken to Stage 1's premises after the search, further successful applications were made on 1 April 1971 (in conditions similar to those described above) to search again those premises and also the premises of the printers of the book. Later that day altogether 139 copies of the book were seized at Stage 1's premises and, at the printer's, 20 spoiled copies of the book, together with correspondence relating to it and the matrix with which the book was printed. About 18,800 copies of a total print of 20,000 copies were missed and subsequently sold, for example, to schools which had placed orders.

16. On 8 April 1971, a Magistrates' Court issued, under section 2 (1) of the Obscene Publications Act 1959, as amended by section 1 (1) of the Obscene Publications Act 1964, two summonses against the applicant for the following offences:

(a) on 31 March 1971 having in his possession 1,069 obscene books entitled "The Little Red Schoolbook" for publication for gain;

(b) on 1 April 1971, having in his possession 139 obscene books entitled "The Little Red Schoolbook" for publication for gain.

The summonses were served on the applicant on the same day. He thereupon ceased distribution of the book and advised bookshops accordingly but, by that time, some 17,000 copies were already in circulation.

17. The summonses were answerable on 28 May 1971 at Clerkenwell Magistrates' Court but, on the application of the Director of Public Prosecutions, the case was adjourned until 29 June. On that day the applicant appeared at Lambeth Magistrates' Court to which the case had been transferred, having consented to the case being heard and determined in summary proceedings by a magistrate rather than by a judge and a jury on indictment. He claims that this choice was dictated by his financial plight and the need to avoid the delays inherent in the indictment procedure although this is questioned by the Government. Having been granted legal aid, he was represented by counsel. On 1 July 1971, after witnesses had been called for both prosecution and defence, the applicant was found guilty of both offences and fined £25 on each summons and ordered to pay £110 costs. At the same time the court made a forfeiture order for the destruction of the books by the police.

18. On 10 July 1971 notices of appeal against both convictions were received by the Metropolitan Police from the applicant's solicitors. The grounds stated were "that the magistrate's decision was wrong and against the weight of the evidence". The appeal was heard before the Inner London Quarter Sessions on 20, 21, 22, 25 and 26 October 1971. At this hearing witnesses gave evidence on behalf of the prosecution and on behalf of the applicant. Judgment was delivered on 29 October 1971: the decision at first instance was upheld and the applicant was ordered to pay another £854 costs. The material seized as described above was then destroyed.

The applicant did not exercise his right of making a further appeal to the Court of Appeal since he did not dispute that the judgment of 29 October 1971 had correctly applied English law.

19. Whilst the Schoolbook was not the subject of proceedings in Northern Ireland, the Channel Islands or the Isle of Man, the same was not true of Scotland.

Indeed a Glasgow bookseller was charged under a local Act. However he was acquitted on 9 February 1972 by a stipendiary magistrate who considered that the book was not indecent or obscene within the meaning of that Act. It does not appear from the file whether the case concerned the original or the revised edition.

Further, a complaint was brought under Scottish law against Stage 1 in respect of the revised edition. It was dismissed on 8 December 1972 by an Edinburgh court solely on the ground that the accused could not have the necessary mens rea. In January 1973 the Procurator Fiscal announced that he would not appeal against this decision; he also did not avail himself of his right to initiate criminal proceedings against Mr. Handyside personally.

The Schoolbook

20. The original English language edition of the book, priced at

thirty pence a copy, had altogether 208 pages. It contained an introduction headed "All grown-ups are paper tigers", an "Introduction to the British edition", and chapters on the following subjects: Education, Learning, Teachers, Pupils and The System. The chapter on Pupils contained a twenty-six page section concerning "Sex" which included the following sub-sections: Masturbation, Orgasm, Intercourse and petting, Contraceptives, Wet dreams, Menstruation, Child-molesters or "dirty old men", Pornography, Impotence, Homosexuality, Normal and abnormal, Find out more, Venereal diseases, Abortion, Legal and illegal abortion, Remember, Methods of abortion, Addresses for help and advice on sexual matters. The Introduction stated: "This book is meant to be a reference book. The idea is not to read it straight through, but to use the list of contents to find and read about the things you're interested in or want to know more about. Even if you're at a particularly progressive school you should find a lot of ideas in the book for improving things."

21. The applicant had planned the distribution of the book through the ordinary book-selling channels although it was said at the appeal hearing to have been accepted that the work was intended for, and intended to be made available to, school-children of the age of twelve and upwards.

22. Pending the appeal hearing, the applicant consulted his legal advisers concerning a revision of the Schoolbook to avoid further prosecutions; apparently he tried to consult the Director of Public Prosecutions as well, but in vain. It was decided to eliminate or re-write the offending lines which had been attacked before the Magistrates' Court by the prosecution but to do so necessitated, in some cases, re-writing substantially more than these criticised sentences. There were other alterations made to the text by way of general improvement, for example in response to comments and suggestions from readers and the updating of changed data (addresses, etc.).

23. The revised edition was published on 15 November 1971. After consulting the Attorney General, the Director of Public Prosecutions announced on 6 December 1971 that the new edition would not be the subject of a prosecution. This publication took place after the Quarter Sessions judgment but the revision of the Schoolbook had been completed, and the printing of the new version was in train, well before.

Domestic law

24. The action against the Schoolbook was based on the Obscene Publications Act 1959, as amended by the Obscene Publications Act 1964 (hereinafter called "the 1959/1964 Acts").

25. The relevant extracts from the 1959/1964 Acts, read together, are as follows:

Section 1

"(1) For the purposes of this act an article shall be deemed to be obscene if its effect or (where the article comprises two or more distinct items) the effect of any one of its items is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

(2) In this Act 'article' means any description of article containing or embodying matter to be read or looked at or both, any sound record, and any film or other record of a picture or pictures.

..."

Section 2

"(1) Subject as hereinafter provided, any person who, whether for gain or not, publishes an obscene article or who has an obscene article for publication for gain (whether gain to himself or gain to another) shall be liable -

(a) on summary conviction to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding six months;

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding three years or both.

... A person shall be deemed to have an article for publication for gain if with a view to such publication he has the article in his ownership, possession or control.

...

(4) A person publishing an article shall not be proceeded against for an offence at common law consisting of the publication of any matter contained or embodied in the article where it is of the essence of the offence that the matter is obscene.

..."

Section 3

"(1) If a justice of the peace is satisfied by information on oath that there is reasonable ground for suspecting that, in any premises ... specified in the information, obscene articles are, or are from time to time, kept for publication for gain, the justice may issue a warrant ... empowering any constable to enter (if need be by force) and search the premises ... within fourteen days from the date of the warrant, and to seize and remove any articles found therein ... which the constable has reason to believe to be obscene articles and to be kept for publication for gain.

(2) A warrant under the foregoing subsection shall, if any obscene articles are seized under the warrant, also empower the seizure and removal of any documents found in the premises ... which relate to a trade or bussiness carried on at the premises ...

(3) Any articles seized ... shall be brought before a justice of the peace ... who ... may thereupon issue a summons to the occupier of the premises ... to appear ... before a magistrates' court ... to show cause why the articles or any of them should not be forfeited; and if the court is satisfied, as respects any of the articles, that at the time when they were seized they were obscene articles kept for publication for gain, the court shall order those articles to be forfeited.

...

(4) In addition to the person summoned, any other person being the owner, author or maker of any of the articles brought before the court, or any other person through whose hands they had passed before being seized, shall be entitled to appear before the court ... to show cause why they should not be forfeited.

(5) Where an order is made under this section for the forfeiture of any articles, any person who appeared, or was entitled to appear, to show cause against the making of the order may appeal to quarter sessions; and no such order shall take effect until the expiration of fourteen days after the day on which the order is made, or, if before the expiration thereof notice of appeal is duly given or application is made for the statement of a case for the opinion of the High Court, until the final determination or abandonment of the proceedings on the appeal or case.

...

(7) For the purposes of this section the question whether an article is obscene shall be determined on the assumption that copies of it would be published in any manner likely having regard to the circumstances in which it was found, but in no other manner.

...

... Where articles are seized under section 3 ... and a person is convicted under section 2 ... of having them for publication for gain, the court on his conviction shall order the forfeiture of those articles.

Provided that an order made by virtue of this subsection (including an order so made on appeal) shall not take effect until the expiration of the ordinary time within which an appeal in the matter of the proceedings in which the order was made may be instituted or, where such an appeal is duly instituted, until the appeal is finally decided or abandoned;

..."

Section 4

"(1) A person shall not be convicted of an offence against section 2 of this Act and an order for forfeiture shall not be made under the foregoing section if it is proved that publication of the article in question is justified as being for the public good on the ground that it is in the interests of science, literature, art of learning, or of other objects of general concern.

(2) It is hereby declared that the opinion of experts as to the literary, artistic, scientific or other merits of an article may be admitted in any proceedings under this Act either to establish or to negative the said ground."

Section 5

"...

(3) This Act shall not extend to Scotland or to Nothern Ireland."

26. At the time of the events under review, the authorities frequently adopted a non-contentious procedure ("disclaimer/caution procedure") rather than instituting, as in this case, criminal proceedings. However it could only be used when the individual admitted that the article was obscene and consented to its destruction. The procedure constituted no more than a matter of practice and was abandoned in 1973 following criticisms expressed in a judicial decision.

The judgment of the Inner London Quarter Sessions

27. At the appeal hearing two principal issues were examined by the court, namely, first, whether or not the Crown had proved beyond reasonable doubt that the Schoolbook was an obscene article within the meaning of the 1959/1964 Acts; and secondly, if so, whether or not the applicant had established the defence under section 4 of the 1959/1964 Acts to the effect that he had shown, on a balance of probabilities, that publication of the book was justified as being for the public good.

28. The court first dealt with the issue of obscenity. Following a decision in another case the court noted that it had to be satisfied that the persons who it was alleged were likely to read the article would constitute a significant proportion. It also accepted the

meaning of the words "deprave and corrupt" as it had been explained in that other case and about which there had been no dispute between the parties.

29. Following further previous case-law, the court had decided that expert evidence should be admitted on the question of whether the Schoolbook was obscene. Such evidence, though not normally admissible for this purpose but only in connection with the defence under section 4 of the 1959/1964 Acts, could be heard in the present case which was concerned with the effect of the article upon children.

The court had therefore heard seven witnesses on behalf of the prosecution and nine on behalf of the applicant, being experts in various fields, in particular those of psychiatry and teaching; the views they had expressed were very different. After they had been heard, the applicant had argued that, when one had the sincere opinion of many highly-qualified experts against the prosecution's case, it was impossible to say that the tendency to deprave and corrupt had been established with certainty. The court was unable to accept this submission: in its judgment of 29 October 1971 it pointed out that there was an almost infinite variation in the relevant background of the children who would be in one way or another affected by the book, so that it was difficult to speak of "true facts" in this case. The views of the applicant's witnesses had been those approaching the extreme of one wing of the more broadly varied outlook on the education and upbringing of children, whereas the evidence given on behalf of the prosecution tended to cover the views of those who, although clearly tending in the opposite direction, were less radical. Particularly, when looking at the evidence on behalf of the applicant, the court had been driven to the conclusion that most of the witnesses were so uncritical of the book looked at as a whole, and so unrestrained in their praise of it, as to make them at times less convincing than otherwise they might have been. In summary the court considered that a good deal of the witnesses had been so single-minded in an extreme point of view as to forfeit in a large measure the power to judge with that degree of responsibility which makes the evidence of any great value on a matter of this sort.

30. Concerning the Schoolbook itself, the court first stressed that it was intended for children passing through a highly critical stage of their development. At such a time a very high degree of responsibility ought to be exercised by the courts. In the present case, they had before them, as something said to be a perfectly responsible adult opinion, a work of an extreme kind, unrelieved by any indication that there were any alternative views; this was something which detracted from the opportunity for children to form a balanced view on some of the very strong advice given therein.

31. The court then briefly examined the background. For example, looking at the book as a whole, marriage was very largely ignored. Mixing a very one-sided opinion with fact and purporting to be a book of reference, it would tend to undermine, for a very considerable proportion of children, many of the influences, such as those of parents, the Churches and youth organisations, which might otherwise provide the restraint and sense of responsibility for oneself which found inadequate expression in the book.

The court reached the conclusion that, on the whole, and quite clearly through the mind of the child, the Schoolbook was inimical to good teacher/child relationships; in particular, there were numerous passages that it found to be subversive, not only to the authority but to the influence of the trust between children and teachers.

32. Passing to the tendency to deprave and corrupt, the court considered the atmosphere of the book looked at as a whole, noting that the sense of some responsibility for the community as well as to oneself, if not wholly absent, was completely subordinated to the development of the expression of itself by the child. As indications

of what it considered to result in a tendency to deprave and corrupt, the court quoted or referred to the following:

A. Passage headed "Be yourself" (p. 77):

"Maybe you smoke pot or go to bed with your boyfriend or girlfriend - and don't tell your parents or teachers, either because you don't dare to or just because you want to keep it secret.

Don't feel ashamed or guilty about doing things you really want to do and think are right just because your parents or teachers might disapprove. A lot of these things will be more important to you later in life than the things that are 'approved of'."

The objectionable point was that there was no reference there to the illegality of smoking pot which was only to be found many pages further on in an entirely different part of the book. Similarly there was no specific mention at all in the book of the illegality of sexual intercourse by a boy who has attained the age of fourteen and a girl who has not yet attained sixteen. It had to be remembered that the Schoolbook was indicated as a work of reference and that one looked up the part which one wanted rather than read it as a whole book.

B. The passage (pp. 97-98) headed "Intercourse and petting" under the main heading "Sex": to lay this before children as young as many of those who the court considered would read the book, without any injunction about restraint or unwisdom, was to produce a tendency to deprave and corrupt.

C. The passage - (pp. 103 to 105) - under the heading of "Pornography" and particularly the following:

"Porn is a harmless pleasure if it isn't taken seriously and believed to be real life. Anybody who mistakes it for reality will be greatly disappointed.

But it's quite possible that you may get some good ideas from it and you may find something which looks interesting and that you haven't tried before."

Unfortunately, the sane and sensible first paragraph quoted above was immediately followed by a passage suggesting to children that in pornography they might find some good ideas which they might adopt. This was to raise the real likelihood that a substantial number of children would feel it incumbent upon them to look for and practise such things. Moreover, just on the previous page there was the following passage: "But there are other kinds - for example pictures of intercourse with animals or pictures of people hurting each other in various ways. Pornographic stories describe the same sort of thing." The court considered that, although it was improbable that young people would be likely to commit sexual offences with animals as a result of this, the possibility that they should practise some other forms of cruelty to one another, for sexual satisfaction, was a real likelihood in the case of a significant number of children if this got into the hands of children at a disturbed, unsettled and sexually excited stage of their lives. Such acts might very well be criminal offences just like smoking pot and sexual intercourse between a boy of at least fourteen and a girl not yet sixteen. The expression "to deprave and corrupt" must include the admission of or the encouragement to commit criminal offences of that kind.

33. The court concluded "in the light of the whole of the book, that this book or this article on sex or this section or chapter on pupils, whichever one chooses as an article, looked at as a whole does tend to deprave and corrupt a significant number, significant proportion, of the children likely to read it". Such children would, it was satisfied, include a very substantial number aged under sixteen.

34. The court finally dealt with the issue of the defence under section 4 of the 1959/1964 Acts. It stated that no doubt there were many features about the book which, taken by themselves, were good. The unfortunate thing was that so frequently the good was intermixed with things that were bad and detracted from it.

For example, much of the information about contraceptives (pp. 98-102) was very relevant and desirable which should be laid before very many children who might not otherwise readily have access to it. But it was damaged by the suggestion, backed by the recommendation to take direct action if the school authorities would not give way, that every school should have at least one contraceptive vending machine (p. 101).

Similarly, the treatment of the subject of homosexuality (pp. 105-107) was a factual, very compassionate, understanding and valuable statement. But again, no matter how good one assessed the value of this section, it was hopelessly damning by its setting and context, and the fact that it, only, contained any suggestion of a stable relationship in relation to sex and that marriage received no such treatment at all. Moreover, there was a very real danger that this passage would create in the minds of children a conclusion that that kind of relationship was something permanent.

Again, there were passages with regard to venereal diseases (pp. 110-111), contraception (pp. 98-102) and abortion (pp. 111-116), containing dispassionately and sensibly, and on the whole completely accurately, a great deal of advice which ought not to be denied to young children. However, on the balance of probabilities, these matters could not outweigh what the court was convinced had a tendency to deprave and corrupt. The court asked itself whether, granted the degree of indecency which it found, the good likely to result from the Schoolbook was such that it ought, nevertheless, to be published in the public interest; it regretfully came to the conclusion that the burden on the appellant to show that "publication of the article in question is justified as being for the public good" had not been discharged.

Further details concerning the revised edition

35. The passages from the original edition of the Schoolbook whose "extreme" tone or "subversive" aspects had been emphasised by the judgment of 29 October 1971 (paragraphs 30 and 31 above) are repeated either with no, or with no important, changes in the revised edition which was prepared before that date but published on 15 November 1971 (paragraphs 22-23 above).

Of the passages cited by Quarter Sessions as striking examples of the tendency to deprave and corrupt (paragraph 32 above), one was not altered (p. 77, "Be yourself"). On the other hand, the others were fairly extensively softened (pp. 97-98, "Intercourse and petting", and pp. 103-105, "Pornography") and on page 95 of the work there is now a mention of the illegality of sexual intercourse with a girl under sixteen.

Furthermore, the revised edition no longer has any reference to the installation in schools of contraceptive vending machines and points out, on page 106, that homosexual tendencies are often temporary.

PROCEEDINGS BEFORE THE COMMISSION

36. In his application, lodged with the Commission on 13 April 1972, Mr. Handyside complained that the action in the United Kingdom against himself and the Schoolbook was in breach of his right to freedom of thought, conscience and belief under Article 9 (art. 9) of the Convention, his right to freedom of expression under Article 10 (art. 10) of the Convention and his right to the peaceful enjoyment of possessions under Article 1 of Protocol No. 1 (P1-1). He also

maintained that, contrary to Article 14 (art. 14) of the Convention, the United Kingdom had failed to secure to him the above rights without discrimination on the ground of political or other opinion; that the proceedings brought against him had been contrary to Article 7 (art. 7) of the Convention; and finally that the respondent Government were also in breach of Articles 1 and 13 (art. 1, art. 13) of the Convention. He also itemised the losses he had incurred as a result of the action in question, which included £14,184 in quantified damages and further unquantified items.

37. In its decision of 4 April 1974, the Commission accepted the application insofar as it concerned allegations under Article 10 of the Convention and Article 1 of Protocol No. 1 (art. 10, P1-1), but declared it inadmissible insofar as it concerned Articles 1, 7, 9, 13 and 14 (art. 1, art. 7, art. 9, art. 13, art. 14) of the Convention. It decided on the same date to consider, ex officio, any issue which might arise from the circumstances of the case under Articles 17 and 18 (art. 17, art. 18) of the Convention and notified the parties of this a few days later.

38. In its report of 30 September 1975, the Commission expressed the opinion:

- by eight votes to five, with one abstention, that there had been no violation of Article 10 (art. 10) of the Convention;

- that neither the provisional seizure (eleven votes) nor the forfeiture and destruction of the Schoolbook (nine votes to four, with one abstention) had violated Article 1 of Protocol No. 1 (P1-1);

- by twelve votes in favour, with two abstentions, that further discussion under Article 17 (art. 17) of the Convention was unnecessary;

- unanimously, that no breach of Article 18 (art. 18) of the Convention had been established.

The report contains various separate opinions.

FINAL SUBMISSIONS MADE TO THE COURT

39. The following final submissions were made to the Court at the oral hearing on 7 June 1976:

- for the Commission:

"May it please the Court to say and to judge

(1) whether, in consequence of the legal proceedings instituted in the United Kingdom against the applicant as publisher of The Little Red Schoolbook, proceedings which led to the seizure and confiscation of that publication and the sentencing of the applicant to payment of a fine and costs, there was or was not a violation of the Convention, in particular of Article 10 and of Article 1 of Protocol No. 1 (art. 10, P1-1);

(2) if so, whether the applicant should be afforded just satisfaction in accordance with Article 50 (art. 50) of the Convention, of a nature and amount to be determined by the Court."

- for the Government:

"... the United Kingdom Government have noted the submissions made by the delegates, and as to the first of them we would ask the Court to say that in this matter there was no violation.

As to the second matter ..., I think I should say this, that this Court has not been addressed at this stage on any matter with regard

to satisfaction and it is wholly premature for that issue to be one that is to be considered by the Court at this stage. If it is to be considered - if our submission is right on the first issue, it will not be -, then there is an occasion for further argument on that matter."

40. In reply to an observation by the Agent of the Government, the Commission's principal delegate stated that, when using the words "in particular", he had meant to indicate the two Articles which were to be taken into consideration by the Court.

AS TO THE LAW

41. On 4 April 1974, following a hearing in the presence of the parties on both merits and admissibility, the Commission accepted the application insofar as it concerned Article 10 of the Convention and Article 1 of Protocol No. 1 (art. 10, P1-1), but declared it inadmissible to the extent that Mr. Handyside invoked Articles 1, 7, 9, 13 and 14 (art. 1, art. 7, art. 9, art. 13, art. 14) of the Convention. A few days later, the Commission advised the parties that it would take into consideration Articles 17 and 18 (art. 17, art. 18) as well. However, in its report of 30 September 1975 (paragraphs 170 and 176), it expressed the opinion, in agreement with the applicant and the Government (paragraphs 92 and 128), that Article 17 (art. 17) is of no application in this case.

In reply to a question from the Court, the delegates of the Commission specified that the allegations not retained on 4 April 1974 (Articles 1, 7, 9, 13 and 14 of the Convention) (art. 1, art. 7, art. 9, art. 13, art. 14) related to the same facts as did those based on Article 10 of the Convention and Article 1 of Protocol No. 1 (art. 10, P1-1). They were accordingly not separate complaints but mere legal submissions or arguments that had been put forward along with others. However, the provisions of the Convention and of the Protocol form a whole; once a case is duly referred to it, the Court may take cognisance of every question of law arising in the course of the proceedings and concerning facts submitted to its examination by a Contracting State or by the Commission. Master of the characterisation to be given in law to these facts, the Court is empowered to examine them, if it deems it necessary and if need be ex officio, in the light of the Convention and the Protocol as a whole (see, inter alia, the judgment of 23 July 1968 on the merits of the "Belgian Linguistic" case, Series A no. 6, p. 30, para. 1, and the De Wilde, Ooms and Versyp judgment of 18 June 1971, Series A no. 12, p. 29, para. 49).

The Court, bearing in mind Mr. Handyside's original application as well as certain statements made before the Court (see, inter alia, paragraphs 52 and 56 below), finds that it should have regard to Article 14 (art. 14) of the Convention in addition to Articles 10 and 18 and Article 1 of Protocol No. 1 (art. 10, art. 18, P1-1). It shares the opinion of the Commisson that Articles 1, 7, 9, 13 and 17 (art. 1, art. 7, art. 9, art. 13, art. 17) are not relevant in this case.

I. ON THE ALLEGED VIOLATION OF ARTICLE 10 (art. 10) OF THE CONVENTION

42. The applicant claims to be the victim of a violation of Article 10 (art. 10) of the Convention which provides:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article (art. 10) shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties

and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

43. The various measures challenged - the applicant's criminal conviction, the seizure and subsequent forfeiture and destruction of the matrix and of hundreds of copies of the Schoolbook - were without any doubt, and the Government did not deny it, "interferences by public authority" in the exercise of his freedom of expression which is guaranteed by paragraph 1 (art. 10-1) of the text cited above. Such interferences entail a "violation" of Article 10 if they do not fall within one of the exceptions provided for in paragraph 2 (art. 10-2), which is accordingly of decisive importance in this case.

44. If the "restrictions" and "penalties" complained of by Mr. Handyside are not to infringe Article 10 (art. 10), they must, according to paragraph 2 (art. 10-2), in the first place have been "prescribed by law". The Court finds that this was the case. In the United Kingdom legal system, the basis in law for the measures in question was the 1959/1964 Acts (paragraphs 14-18, 24-25 and 27-34 above). Besides, this was not contested by the applicant who further admitted that the competent authorities had correctly applied those Acts.

45. Having thus ascertained that the interferences complained of satisfied the first of the conditions in paragraph 2 of Article 10 (art. 10-2), the Court then investigated whether they also complied with the others. According to the Government and the majority of the Commission, the interferences were "necessary in a democratic society", "for the protection of ... morals".

46. Sharing the view of the Government and the unanimous opinion of the Commission, the Court first finds that the 1959/1964 Acts have an aim that is legitimate under Article 10 para. 2 (art. 10-2), namely, the protection of morals in a domocratic society. Only this latter purpose is relevant in this case since the object of the said Acts - to wage war on "obscene" publications, defined by their tendency to "deprave and corrupt" - is linked far more closely to the protection of morals than to any of the further purposes permitted by Article 10 para. 2 (art. 10-2).

47. The Court must also investigate whether the protection of morals in a democratic society necessitated the various measures taken against the applicant and the Schoolbook under the 1959/1964 Acts. Mr. Handyside does not restrict himself to criticising these Acts as such: he also makes - from the viewpoint of the Convention and not of English law - several complaints concerning their application in his case.

The Commission's report and the subsequent hearings before the Court in June 1976 brought to light clear-cut differences of opinion on a crucial problem, namely, how to determine whether the actual "restrictions" and "penalties" complained of by the applicant were "necessary in a democratic society", "for the protection of morals". According to the Government and the majority of the Commission, the Court has only to ensure that the English courts acted reasonably, in good faith and within the limits of the margin of appreciation left to the Contracting States by Article 10 para. 2 (art. 10-2). On the other hand, the minority of the Commission sees the Court's task as being not to review the Inner London Quarter Sessions judgment but to examine the Schoolbook directly in the light of the Convention and of nothing but the Convention.

48. The Court points out that the machinery of protection established by the Convention is subsidiary to the national systems safeguarding human rights (judgment of 23 July 1968 on the merits of the "Belgian Linguistic" case, Series A no. 6, p. 35, para. 10 in fine). The Convention leaves to each Contracting State, in the first place, the task of securing the rights and liberties it enshrines. The institutions created by it make their own contribution to this task but they become involved only through contentious proceedings and once all domestic remedies have been exhausted (Article 26) (art. 26).

These observations apply, notably, to Article 10 para. 2 (art. 10-2). In particular, it is not possible to find in the domestic law of the various Contracting States a uniform European conception of morals. The view taken by their respective laws of the requirements of morals varies from time to time and from place to place, especially in our era which is characterised by a rapid and far-reaching evolution of opinions on the subject. By reason of their direct and continuous contact with the vital forces of their countries, State authorities are in principle in a better position than the international judge to give an opinion on the exact content of these requirements as well as on the "necessity" of a "restriction" or "penalty" intended to meet them. The Court notes at this juncture that, whilst the adjective "necessary", within the meaning of Article 10 para. 2 (art. 10-2), is not synonymous with "indispensable" (cf., in Articles 2 para. 2 (art. 2-2) and 6 para. 1 (art. 6-1), the words "absolutely necessary" and "strictly necessary" and, in Article 15 para. 1 (art. 15-1), the phrase "to the extent strictly required by the exigencies of the situation"), neither has it the flexibility of such expressions as "admissible", "ordinary" (cf. Article 4 para. 3) (art. 4-3), "useful" (cf. the French text of the first paragraph of Article 1 of Protocol No. 1) (P1-1), "reasonable" (cf. Articles 5 para. 3 and 6 para. 1) (art. 5-3, art. 6-1) or "desirable". Nevertheless, it is for the national authorities to make the initial assessment of the reality of the pressing social need implied by the notion of "necessity" in this context.

Consequently, Article 10 para. 2 (art. 10-2) leaves to the Contracting States a margin of appreciation. This margin is given both to the domestic legislator ("prescribed by law") and to the bodies, judicial amongst others, that are called upon to interpret and apply the laws in force (Engel and others judgment of 8 June 1976, Series A no. 22, pp. 41-42, para. 100; cf., for Article 8 para. 2 (art. 8-2), De Wilde, Ooms and Versyp judgment of 18 June 1971, Series A no. 12, pp. 45-46, para. 93, and the Golder judgment of 21 February 1975, Series A no. 18, pp. 21-22, para. 45).

49. Nevertheless, Article 10 para. 2 (art. 10-2) does not give the Contracting States an unlimited power of appreciation. The Court, which, with the Commission, is responsible for ensuring the observance of those States' engagements (Article 19) (art. 19), is empowered to give the final ruling on whether a "restriction" or "penalty" is reconcilable with freedom of expression as protected by Article 10 (art. 10). The domestic margin of appreciation thus goes hand in hand with a European supervision. Such supervision concerns both the aim of the measure challenged and its "necessity"; it covers not only the basic legislation but also the decision applying it, even one given by an independent court. In this respect, the Court refers to Article 50 (art. 50) of the Convention ("decision or ... measure taken by a legal authority or any other authority") as well as to its own case-law (Engel and others judgment of 8 June 1976, Series A no. 22, pp. 41-42, para. 100).

The Court's supervisory functions oblige it to pay the utmost attention to the principles characterising a "democratic society". Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to paragraph 2 of Article 10 (art. 10-2), it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter

of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society". This means, amongst other things, that every "formality", "condition", "restriction" or "penalty" imposed in this sphere must be proportionate to the legitimate aim pursued.

From another standpoint, whoever exercises his freedom of expression undertakes "duties and responsibilities" the scope of which depends on his situation and the technical means he uses. The Court cannot overlook such a person's "duties" and "responsibilities" when it enquires, as in this case, whether "restrictions" or "penalties" were conducive to the "protection of morals" which made them "necessary" in a "democratic society".

50. It follows from this that it is in no way the Court's task to take the place of the competent national courts but rather to review under Article 10 (art. 10) the decisions they delivered in the exercise of their power of appreciation.

However, the Court's supervision would generally prove illusory if it did no more than examine these decisions in isolation; it must view them in the light of the case as a whole, including the publication in question and the arguments and evidence adduced by the applicant in the domestic legal system and then at the international level. The Court must decide, on the basis of the different data available to it, whether the reasons given by the national authorities to justify the actual measures of "interference" they take are relevant and sufficient under Article 10 para. 2 (art. 10-2) (cf., for Article 5 para. 3 (art. 5-3), the Wemhoff judgment of 27 June 1968, Series A no. 7, pp. 24-25, para. 12, the Neumeister judgment of 27 June 1968, Series A no. 8, p. 37, para. 5, the Stögmüller judgment of 10 November 1969, Series A no. 9, p. 39, para. 3, the Matznetter judgment of 10 November 1969, Series A no. 10, p. 31, para. 3, and the Ringeisen judgment of 16 July 1971, Series A no. 13, p. 42, para. 104).

51. Following the method set out above, the Court scrutinized under Article 10 para. 2 (art. 10-2) the individual decisions complained of, in particular, the judgment of the Inner London Quarter Sessions.

The said judgment is summarised in paragraphs 27-34 above. The Court reviewed it in the light of the case as a whole; in addition to the pleadings before the Court and the Commission's report, the memorials and oral explanations presented to the Commission between June 1973 and August 1974 and the transcript of the proceedings before the Quarter Sessions were, inter alia, taken into consideration.

52. The Court attaches particular importance to a factor to which the judgment of 29 October 1971 did not fail to draw attention, that is, the intended readership of the Schoolbook. It was aimed above all at children and adolescents aged from twelve to eighteen. Being direct, factual and reduced to essentials in style, it was easily within the comprehension of even the youngest of such readers. The applicant had made it clear that he planned a widespread circulation. He had sent the book, with a press release, to numerous daily papers and periodicals for review or for advertising purposes. What is more, he had set a modest sale price (thirty pence), arranged for a reprint of 50,000 copies shortly after the first impression of 20,000 and chosen a title suggesting that the work was some kind of handbook for use in schools.

Basically the book contained purely factual information that was generally correct and often useful, as the Quarter Sessions recognised. However, it also included, above all in the section on sex and in the passage headed "Be yourself" in the chapter on pupils (paragraph 32 above), sentences or paragraphs that young people at a critical stage of their development could have interpreted as an encouragement to indulge in precocious activities harmful for them or

even to commit certain criminal offences. In these circumstances, despite the variety and the constant evolution in the United Kingdom of views on ethics and education, the competent English judges were entitled, in the exercise of their discretion, to think at the relevant time that the Schoolbook would have pernicious effects on the morals of many of the children and adolescents who would read it.

However, the applicant maintained, in substance, that the demands of the "protection of morals" or, to use the wording of the 1959/1964 Acts, of the war against publications likely to "deprave and corrupt", were but a pretext in his case. The truth of the matter, he alleged, was that an attempt had been made to muzzle a small-scale publisher whose political leanings met with the disapproval of a fragment of public opinion. Proceedings were set in motion, said he, in an atmosphere little short of "hysteria", stirred up and kept alive by ultra-conservative elements. The accent in the judgment of 29 October 1971 on the anti-authoritarian aspects of the Schoolbook (paragraph 31 above) showed, according to the applicant, exactly what lay behind the case.

The information supplied by Mr. Handyside seems, in fact, to show that letters from members of the public, articles in the press and action by Members of Parliament were not without some influence in the decision to seize the Schoolbook and to take criminal proceedings against its publisher. However, the Government drew attention to the fact that such initiatives could well have been explained not by some dark plot but by the genuine emotion felt by citizens faithful to traditional moral values when, towards the end of March 1971, they read in certain newspapers extracts from the book which was due to appear on 1 April. The Government also emphasised that the proceedings ended several months after the "campaign" denounced by the applicant and that he did not claim that it had continued in the intervening period. From this the Government concluded that the "campaign" in no way impaired dispassionate deliberation at the Quarter Sessions.

For its part the Court finds that the anti-authoritarian aspects of the Schoolbook as such were not held in the judgment of 29 October 1971 to fall foul of the 1959/1964 Acts. Those aspects were taken into account only insofar as the appeal court considered that, by undermining the moderating influence of parents, teachers, the Churches and youth organisations, they aggravated the tendency to "deprave and corrupt" which in its opinion resulted from other parts of the work. It should be added that the revised edition was allowed to circulate freely by the British authorities despite the fact that the anti-authoritarian passages again appeared there in full and even, in some cases, in stronger terms (paragraph 35 above). As the Government noted, this is hard to reconcile with the theory of a political intrigue.

The Court thus allows that the fundamental aim of the judgment of 29 October 1971, applying the 1959/1964 Acts, was the protection of the morals of the young, a legitimate purpose under Article 10 para. 2 (art. 10-2). Consequently, the seizures effected on 31 March and 1 April 1971, pending the outcome of the proceedings that were about to open, also had this aim.

53. It remains to examine the "necessity" of the measures in dispute, beginning with the said seizures.

If the applicant is right, their object should have been at the most one or a few copies of the book to be used as exhibits in the criminal proceedings. The Court does not share this view since the police had good reasons for trying to lay their hands on all the stock as a temporary means of protecting the young against a danger to morals on whose existence it was for the trial court to decide. The legislation of many Contracting States provides for a seizure analogous to that envisaged by section 3 of the English 1959/1964 Acts.

54. A series of arguments which merit reflection was advanced by the applicant and the minority of the Commission concerning the "necessity" of the sentence and the forfeiture at issue.

Firstly, they drew attention to the fact that the original edition of the Schoolbook was the object of no proceedings in Northern Ireland, the Isle of Man and the Channel Islands and of no conviction in Scotland and that, even in England and Wales, thousands of copies circulated without impediment despite the judgment of 29 October 1971.

The Court recalls that section 5 (3) of the 1959/1964 Acts provides that they shall not extend to Scotland or to Northern Ireland (paragraph 25 in fine above). Above all, it must not be forgotten that the Convention, as is shown especially by its Article 60 (art. 60), never puts the various organs of the Contracting States under an obligation to limit the rights and freedoms it guarantees. In particular, in no case does Article 10 para. 2 (art. 10-2) compel them to impose "restrictions" or "penalties" in the field of freedom of expression; it in no way prevents them from not availing themselves of the expedients it provides for them (cf. the words "may be subject"). The competent authorities in Northern Ireland, the Isle of Man and the Channel Islands may, in the light of local conditions, have had plausible reasons for not taking action against the book and its publisher, as may the Scottish Procurator Fiscal for not summonsing Mr. Handyside to appear in person in Edinburgh after the dismissal of the complaint under Scottish law against Stage 1 in respect of the revised edition (paragraph 19 above). Their failure to act - into which the Court does not have to enquire and which did not prevent the measures taken in England from leading to revision of the Schoolbook - does not prove that the judgment of 29 October 1971 was not a response to a real necessity, bearing in mind the national authorities' margin of appreciation.

These remarks also apply, mutatis mutandis, to the circulation of many copies in England and Wales.

55. The applicant and the minority of the Commission also stressed that the revised edition, albeit little different in their view from the first, was not the object of proceedings in England and Wales.

The Government charged them with minimising the extent of the changes made to the original text of the Schoolbook: although the changes were made between the conviction at first instance on 1 July 1971 and the appeal judgment of 29 October 1971, they were said to relate to the main passages cited by the Quarter Sessions as showing particularly clearly a tendency to "deprave and corrupt". The Government claimed that the Director of Public Prosecutions must have taken the view that the changes dispensed him from invoking the 1959/1964 Acts again.

In the Court's view, the absence of proceedings against the revised edition, which differed fairly extensively from the original edition on the points at issue (paragraphs 22-23 and 35 above), rather suggests that the competent authorities wished to limit themselves to what was strictly necessary, an attitude in conformity with Article 10 (art. 10) of the Convention.

56. The treatment meted out to the Schoolbook and its publisher in 1971 was, according to the applicant and the minority of the Commission, all the less "necessary" in that a host of publications dedicated to hard core pornography and devoid of intellectual or artistic merit allegedly profit by an extreme degree of tolerance in the United Kingdom. They are exposed to the gaze of passers-by and especially of young people and are said generally to enjoy complete impunity, the rare criminal prosecutions launched against them proving, it was asserted, more often than not abortive due to the great liberalism shown by juries. The same was claimed to apply to sex shops and much public entertainment.

The Government countered this by the remark, supported by figures, that the Director of Public Prosecutions does not remain inactive nor does the police, despite the scanty manpower resources of the squad specialising in this field. Moreover, they claim that, in addition to proceedings properly so called, seizures were frequently made at the relevant time under the "disclaimer/caution procedure" (paragraph 26 above).

In principle it is not the Court's function to compare different decisions taken, even in apparently similar circumstances, by prosecuting authorities and courts; and it must, just like the respondent Government, respect the independence of the courts. Furthermore and above all, the Court is not faced with really analogous situations: as the Government pointed out, the documents in the file do not show that the publications and entertainment in question were aimed, to the same extent as the Schoolbook (paragraph 52 above), at children and adolescents having ready access thereto.

57. The applicant and the minority of the Commission laid stress on the further point that, in addition to the original Danish edition, translations of the "Little Book" appeared and circulated freely in the majority of the member States of the Council of Europe.

Here again, the national margin of appreciation and the optional nature of the "restrictions" and "penalties" referred to in Article 10 para. 2 (art. 10-2) prevent the Court from accepting the argument. The Contracting States have each fashioned their approach in the light of the situation obtaining in their respective territories; they have had regard, inter alia, to the different views prevailing there about the demands of the protection of morals in a democratic society. The fact that most of them decided to allow the work to be distributed does not mean that the contrary decision of the Inner London Quarter Sessions was a breach of Article 10 (art. 10). Besides, some of the editions published outside the United Kingdom do not include the passages, or at least not all the passages, cited in the judgment of 29 October 1971 as striking examples of a tendency to "deprave and corrupt".

58. Finally, at the hearing on 5 June 1976, the delegate expounding the opinion of the minority of the Commission maintained that in any event the respondent State need not have taken measures as Draconian as the initiation of criminal proceedings leading to the conviction of Mr. Handyside and to the forfeiture and subsequent destruction of the Schoolbook. The United Kingdom was said to have violated the principle of proportionality, inherent in the adjective "necessary", by not limiting itself either to a request to the applicant to expurgate the book or to restrictions on its sale and advertisement.

With regard to the first solution, the Government argued that the applicant would never have agreed to modify the Schoolbook if he had been ordered or asked to do so before 1 April 1971: was he not strenuously disputing its "obscenity"? The Court for its part confines itself to finding that Article 10 (art. 10) of the Convention certainly does not oblige the Contracting States to introduce such prior censorship.

The Government did not indicate whether the second solution was feasible under English law. Neither does it appear that it would have been appropriate in this case. There would scarcely have been any sense in restricting to adults sales of a work destined above all for the young; the Schoolbook would thereby have lost the substance of what the applicant considered to be its raison d'être. Moreover, he did not advert to this question.

59. On the strength of the data before it, the Court thus reaches the conclusion that no breach of the requirements of Article 10 (art. 10)

has been established in the circumstances of the present case.

II. ON THE ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 (P1-1)

60. The applicant in the second place alleges the violation of Article 1 of Protocol No. 1 (P1-1) which provides:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems 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."

61. The complaint concerns two distinct measures, namely, the seizure on 31 March and 1 April 1971 of the matrix and of hundreds of copies of the Schoolbook, on the one hand, and their forfeiture and subsequent destruction following the judgment of 29 October 1971, on the other. Both measures interfered with Mr. Handyside's right "to the peaceful enjoyment of his possessions". The Government do not contest this but, in agreement with the majority of the Commission, maintain that justification for the measures is to be found in the exceptions attached by Article 1 of the Protocol (P1-1) to the principle enunciated in its first sentence.

62. The seizure complained of was provisional. It did no more than prevent the applicant, for a period, from enjoying and using as he pleased possessions of which he remained the owner and which he would have recovered had the proceedings against him resulted in an acquittal.

In these circumstances, the Court thinks that the second sentence of the first paragraph of Article 1 (P1-1) does not come into play in this case. Admittedly the expression "deprived of his possessions", in the English text, could lead one to think otherwise but the structure of Article 1 (P1-1) shows that that sentence, which originated moreover in a Belgian amendment drafted in French (Collected Edition of the "travaux préparatoires", document H (61) 4, pp. 1083, 1084, 1086, 1090, 1099, 1105, 1110-1111 and 1113-1114), applies only to someone who is "deprived of ownership" ("privé de sa propriété").

On the other hand the seizure did relate to "the use of property" and thus falls within the ambit of the second paragraph. Unlike Article 10 para. 2 (art. 10-2) of the Convention, this paragraph sets the Contracting States up as sole judges of the "necessity" for an interference. Consequently, the Court must restrict itself to supervising the lawfulness and the purpose of the restriction in question. It finds that the contested measure was ordered pursuant to section 3 of the 1959/1964 Acts and following proceedings which it was not contested were in accordance with the law. Again, the aim of the seizure was "the protection of morals" as understood by the competent British authorities in the exercise of their power of appreciation (paragraph 52 above). And the concept of "protection of morals", used in Article 10 para. 2 (art. 10-2) of the Convention, is encompassed in the much wider notion of the "general interest" within the meaning of the second paragraph of Article 1 of the Protocol (P1-1).

On this point the Court thus accepts the argument of the Government and the opinion of the majority of the Commission.

63. The forfeiture and destruction of the Schoolbook, on the other hand, permanently deprived the applicant of the ownership of certain possessions. However, these measures were authorised by the second paragraph of Article 1 of Protocol No. 1 (P1-1), interpreted in the

light of the principle of law, common to the Contracting States, whereunder items whose use has been lawfully adjudged illicit and dangerous to the general interest are forfeited with a view to destruction.

III. ON THE ALLEGED VIOLATION OF ARTICLE 18 (art. 18) OF THE CONVENTION

64. Mr. Handyside is of the opinion that, contrary to Article 18 (art. 18), he underwent "restrictions" pursuing a "purpose" mentioned neither by Article 10 (art. 10) of the Convention nor by Article 1 of Protocol No. 1 (P1-1).

This complaint does not support examination since the Court has already concluded that the said restrictions concerned aims that were legitimate under these two last-mentioned Articles (art. 10, P1-1) (paragraphs 52, 62 and 63 above).

IV. ON THE ALLEGED VIOLATION OF ARTICLE 14 (art. 14) OF THE CONVENTION

65. In the early stages of the proceedings initiated before the Commission by the applicant, he claimed to be the victim of a violation of Article 14 (art. 14) of the Convention which provides:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

66. On 4 April 1974 the Commission rejected the application on this point as being manifestly ill-founded. However, the Court was of the opinion that it should also have regard to Article 14, taken together with Article 10 (art. 14+10) of the Convention and Article 1 of Protocol No. 1 (art. 14+P1-1) (paragraph 41 above): some of Mr. Handyside's complaints, made after as well as before the decision of 4 April 1974 and with or without express reference to Article 14 (art. 14), raise the question of an arbitrary difference in treatment.

However, the data before the Court do not show that he suffered discrimination in the enjoyment of his freedom of expression and his property rights. In particular, they do not reveal that he was persecuted on account of his political leanings (paragraph 52 above). Neither does it appear that the pornographic publications and entertainment which he said profited by an extreme degree of tolerance in the United Kingdom were aimed, to the same extent as the Schoolbook, at children and adolescents having ready access thereto (paragraph 56 above). Finally, the documents in the file do not disclose that the measures taken against the applicant and the book departed from other decisions, taken in similar cases, to the point of constituting a denial of justice or a manifest abuse (Engel and others judgment of 8 June 1976, Series A no. 22, p. 42, para. 103).

V. ON THE APPLICATION OF ARTICLE 50 (art. 50) OF THE CONVENTION

67. Having found no violation of Protocol No. 1 (P1) or of the Convention, the Court concludes that the question of the application of Article 50 (art. 50) does not arise in this case.

FOR THESE REASONS, THE COURT

1. Holds by thirteen votes to one that there has been no breach of Article 10 (art. 10) of the Convention;

2. Holds unanimously that there has been no breach either of Article 1 of Protocol No. 1 (P1-1) or of Articles 14 and 18 (art. 14, art. 18) of the Convention.

Done in French and in English, the French text being authentic, at the Human Rights Building, Strasbourg, this seventh day of December, one thousand nine hundred and seventy-six.

Signed: Giorgio BALLADORE PALLIERI

Signed: Marc-André EISSEN

Judges Mosler and Zekia have annexed their separate opinions to the present judgment, in accordance with Article 51 para. 2 (art. 51-2) of the Convention and Rule 50 para. 2 of the Rules of Court.

Initialled: G. B.P.

Initialled: M.-A.E.

SEPARATE OPINION OF JUDGE MOSLER

(Translation)

1. I differ from the Court's reasoning on one point only. However, it is so decisive for the question of whether or not there has been a violation in this case that my view on this point of detail has compelled me to vote against paragraph 1 of the operative provisions of the judgment. I am not convinced that the measures taken by the British authorities, including the judgment of the Inner London Quarter Sessions, were "necessary", within the meaning of Article 10 para. 2 (art. 10-2), for the achievement of their aim, namely the protection of morals. Paragraph 2 of Article 10 (art. 10-2) allows the States to subject the exercise of everyone's right to freedom of expression to restrictions and penalties only if they are measures necessary, in a democratic society, for certain aims considered to be legitimate exceptions to the right guaranteed by paragraph 1 (art. 10-1). These aims include the protection of morals which is relied on by the Government. In the absence of one of the factors which, when found in combination, entitle the State to avail itself of the exception to the right to freedom of expression, paragraph 2 (art. 10-2) does not apply and the individual's right must be respected without any interference. However, my interpretation of the word "necessary" and my conception of its application to the impugned measures do not, in part, coincide with the Court's view. They have thus led to my contrary vote although I entirely approve the other reasons contained in the judgment and, inter alia, the opinions expressed on certain questions of principle concerning the scope of the Convention in relation to the States' domestic legal systems and the definition of certain elements of the rights guaranteed and the exceptions permitted.

In order to leave no doubt about my agreement with the opinion of the Court insofar as it follows and develops more precisely existing case-law or adopts new and well-defined standpoints, I should like to emphasise that I accept in particular the passages on the Court's independence in the characterisation of facts (paragraph 41), on the respective powers of the Court and of the national authorities (problem of the "margin of appreciation" - cf., inter alia, paragraph 50) and on the examination of measures intended to protect morals in a democratic society (cf., inter alia, paragraph 48).

2. The measures inflicted on the applicant thus had a legitimate aim. They were taken pursuant to legislation that cannot be criticised under Article 10 para. 2 (art. 10-2). Nobody disputes their conformity with this legislation. They were "prescribed by law" within the meaning of the Convention.

However, the Court's supervision cannot stop there. Since the criteria in Article 10 para. 2 (art. 10-2) are autonomous concepts (cf. most recently, mutatis mutandis, the Engel and others judgment of 8 June 1976, Series A no. 22, p. 34, para. 81), the Court must investigate

both whether it was "necessary", for the domestic authorities, to have recourse to the means they employed to achieve the aim and whether they overstepped the national margin of appreciation with a resultant violation of the common standard guaranteed by an autonomous concept.

What is "necessary" is not the same as what is indispensable (paragraph 48 of the judgment). Such a definition would be too narrow and would not correspond to the usage of this word in domestic law. On the other hand, it is beyond question that the measure must be appropriate for achieving the aim. However, a measure cannot be regarded as inappropriate, and hence not "necessary", just because it proves ineffectual by not achieving its aim. A measure likely to be effectual under normal conditions cannot be deprived of its legal basis after the event by failure to attain the success which it might have had in more favourable circumstances.

The greater part of the first edition of the book circulated without impediment. The measures taken by the competent authorities and confirmed by the Inner London Quarter Sessions prevented merely the distribution of under 10 per cent of the impression. The remainder, that is about 90 per cent, reached the public including probably, to a large extent, the adolescents meant to be protected (cf. the address of Mr. Thornberry at the hearing on 7 June 1976). The measures in respect of the applicant thus had so little success that they must be taken as ineffectual in relation to the aim pursued. In fact young people were not protected against the influence of the book that had been qualified as likely to "deprave and corrupt" them by the authorities, acting within their legitimate margin of appreciation.

The ineffectualness of the measures would in no way prevent their being considered appropriate if it had been due to circumstances beyond the influence and control of the authorities. However, that was not the case. Certainly it cannot be presumed that the measures were not taken in good faith and with the genuine intention of preventing the book's circulation. Above all, the carefully reasoned judgment of the Inner London Quarter Sessions excludes such a presumption. Nevertheless, from an objective point of view, the measures actually taken against the book's circulation could never have achieved their aim without being accompanied by other measures against the 90 per cent of the impression. Yet nothing in the case file, in particular in the adresses of those appearing before the Court, shows that action of this kind was attempted.

Under Article 10 para. 2 (art. 10-2), the authorities' action in certain respects and their lack of action in others must be viewed as a whole. The aim, legitimate under Article 10 para. 2 (art. 10-2), of restricting freedom of expression in order to protect the morals of the young against The Little Red Schoolbook, is one and indivisible. The result of the authorities' action as well as of their inaction must be attributed to the British State. It is responsible for the application of measures that were not appropriate with regard to the aim pursued because they covered only one small part of the object of the prosecution without taking the others into account.

Accordingly the measures chosen by the authorities were, by their very nature, inappropriate.

Furthermore some attendant facts must be reviewed.

I leave aside the fact, apparently not disputed between the State, the Commission and the applicant, that publications far more "obscene" than The Little Red Schoolbook were readily accessible to anyone in the United Kingdom. Assuming this to be correct, it does not prevent the authorities from having recourse to measures of prohibition against a book intended in particular for schoolchildren.

On the other hand, the diversity of the approaches adopted in different regions of the United Kingdom (paragraph 19 of the judgment)

raises doubts about the necessity of the measures taken in London. Undoubtedly the Convention does not compel the Contracting States to pass uniform legislation for all the territory under their jurisdiction. Nevertheless, it does oblige them to act in such a way that the level of protection guaranteed by the Convention is maintained throughout the whole of that territory. In this case it is difficult to understand why a measure that was not thought necessary outside England and Wales was deemed to be so in London.

There remains the question whether the application of the contested measures, which were inappropriate from an objective point of view, fell within the margin left to the domestic institutions to choose between different measures having a legitimate aim and to assess their potential effectualness. In my view, the reply must be negative because of the clear lack of proportion between that part of the impression subjected to the said measures and that part whose circulation was not impeded. Admittedly the result of the action taken was the punishment of Mr. Handyside in accordance with the law, but this result does not by itself justify measures that were not apt to protect the young against the consequences of reading the book.

3. It must follow that the action complained of was not "necessary", within the meaning of Article 10 para. 2 (art. 10-2), with regard to the aim pursued. Such a measure is not covered by the exceptions to which freedom of expression can be subjected, even if the aim is perfectly legitimate and if the qualification of what is moral in a democratic society remained within the framework of the State's margin of appreciation.

The right enshrined in Article 10 para. 1 (art. 10-1) is so valuable for every democratic society that the criterion of necessity, which, when combined with other criteria, justifies an exception to the principle, must be examined from every aspect suggested by the circumstances.

It is only for this reason that I have regretfully voted against paragraph 1 of the operative provisions. As for paragraph 2, concerning Article 1 of Protocol No. 1 (P1-1) and two other Articles, I have rejoined the majority as I was bound by the prior decision on Article 10 (art. 10) and, on this basis, was quite able to accept the Court's reasons.

SEPARATE OPINION OF JUDGE ZEKIA

The Court, in arriving at the conclusion that Article 1 of Protocol No. 1 (P1-1) has not been contravened by the forfeiture and destruction of the matrix and copies of the "Little Red Schoolbook", in paragraph 63 stated the following:

"63. The forfeiture and destruction of the Schoolbook, on the other hand, permanently deprived the applicant of the ownership of certain possessions. However, these measures were authorised by the second paragraph of Article 1 of Protocol No. 1 (P1-1), interpreted in the light of the principle of law, common to the Contracting States, whereunder items whose use has been lawfully adjudged illicit and dangerous to the general interest are forfeited with a view to destruction."

In considering the legality of the seizure of the matrix and of hundreds of copies of the Schoolbook, which took place on 31 March and 1 April 1971, I concede that the second paragraph of Article 1 of Protocol No. 1 (P1-1) is relevant. The said paragraph (P1-1) speaks of the right of a State if necessary for the general interest to control the use of the property. It deals with the right of a State, provided the conditions stated therein have been complied with, to interfere with the possessory rights of the owner who is at liberty to make use of his property in any way he likes as long as such usage does not go against the law.

The seizure under review was made in pursuance of a warrant issued by a judge under section 3 of the "Obscene Publications Acts 1959/1964". The object of a seizure might very well be to prevent the commission or the furtherance of an offence connected with the protection of morals; it might also be to secure an article for its being produced before the court as an exhibit or even as "corpus delicti". Such an article may constitute the subject-matter of the prosecution and therefore there is nothing wrong in its seizure by an authorised person.

The English court on 1 July 1971, applying the relevant provision of the aforesaid Acts after the completion of the trial, ordered the forfeiture of the matrix and books already seized. The order was confirmed by the appeal court on 29 October 1971 and the books and articles already forfeited were destroyed.

In ascertaining the legality of the order of forfeiture and the destruction of the items involved, in my view, the first paragraph of Article 1 of Protocol No. 1 (P1-1) fits in more precisely than any other paragraph of the Protocol. The first paragraph relates to deprivation of possession. Surely the forfeiture and destruction of an article owned by somebody else amount to deprivation of possession of such owner. Coming to the other requirements prescribed for the legality of such deprivation; the enabling Acts empowering forfeiture and destruction are admittedly not incompatible with relevant provisions of the Convention. Protection of morals is undoubtedly of public interest and the conditions set out in the aforesaid Acts for ordering forfeiture and destruction have been observed.

I consider it more appropriate therefore to base the legality of the order of forfeiture and destruction complained of on the first paragraph of Article 1 of Protocol No. 1 (P1-1). I am content in rendering my interpretation to confine myself to the wording of the text of the first paragraph and to attach the ordinary meaning to the words used therein.