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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Initial reports of States parties due in 1977

Addendum

CHILE*

[16 March 1979]

Since the time of the submission of the previous report, dated 26 April 1978, the institutional development of Chile has continued and nas been characterized by a constant and progressive improvement of the civil and political rights and of the economic, social and cultural rights laid down in the relevant International Covenants.

A description of the new legal provisions promulgated in the period from 26 April 1978 to 15 March 1979 follows. For this purpose, essentially the same procedure will be followed as in the report proper; thus, the new legal provisions with a bearing on the relevant articles of the Covenant concerned will be summarized.

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* This report supplements the initial report of Chile, dated 26 April 1978, which was issued as document CCPR/C/1/Add.25.

1. THE RIGHT TO LIFE (article 6 of the Covenant)

Decree-Law No. 2460, which was published in the Official Gazette of 24 January 1979, contains the new organic law on the Chilean Investigations Service (Civilian and Judicial State Police). This law provides for a reorganization of the administrative structure of the Civilian Police and also contains a series of provisions designed to guarantee immunity from physical injury and safeguard the right to due process of detainees. Specifically, in relation to the right to life, article 19 states: "Officials of the Chilean Investigations Service shall not perpetrate any act of violence designed to secure statements from detainees. Violation of this provision is punishable by: (1) minimum or medium periods of long-term imprisonment, if the act of violence causes death."

2. PROHIBITION OF TORTURE AND OF CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT (article 7 of the Covenant)

Article 19 of the above-mentioned organic law on the Investigations Service also provides for penalties of imprisonment for officials of the Service who perpetrate an act of violence designed to secure statements from a detained person and, in so doing, cause severe or relatively serious injuries (article 19, paras. 2 and 3) and short-term imprisonment if the injuries are minor or even if there are no injuries.

Furthermore, in order to prevent and if necessary punish any action which may cause physical harm to a detainee, article 20 of the organic law on the Investigations Service provides that: "As soon as the Investigations Police arrests a person, it must put him at the disposal of the competent judge. If, because of the time at which the arrest is made, it is not possible to comply with this rule immediately, any detainee who so requests personally or through another person, before entering the premises of the Chilean Investigations Service under arrest, shall be examined by a forensic pathologist, who shall issue a health certificate making special note of any lesions, lacerations, bruises or other internal or external signs indicating that the detainee has been subjected to beatings, mistreatment, blows or any other type of violence. Furthermore, if the detainee so requests, a similar examination shall be carried out at the time of his entry into prison and a certificate shall be issued. Both medical certificates shall be transmitted to the judge in the case, so that they may be added to the dossier.

3. PERSONAL LIBERTY (article 9 of the Covenant)

A new and important law has been enacted on this fundamental subject, and is designed to regulate and guarantee the right of a detainee or a person held in preventive custody to secure provisional release, except in the cases specified in article 1, paragraph 6 (d), of Constitutional Act No. 3 of 1976. Thus the right to request provisional release is the general rule, and an exception is made for cases in which the penalty applicable to the crime is serious.

In this respect, Decree-Law No. 2185, published in the Official Gazette in May 1978, modified various provisions of the Code of Penal Procedure with a view to making the procedure for granting provisional release more effective and more expeditious. Provisional release may be applied for and granted at any stage of the case, even if the penalty assigned to the offence is imprisonment for more than three years and one day. The limitations on the exercise of this right are set forth in the new text of article 363 of the Code of Penal Procedure, laid down by Decree-Law No. 2185, which, inter alia, specifies that the concept of "security of society" is one of the factors which a judge must take into account in deciding on appeals made by detainees or prisoners. The text of article 363 is reproduced below for greater clarity.

"Provisional release shall not be granted to a detainee or a prisoner when the judge rules, by an order stating the reasons, that detention or imprisonment is strictly necessary: (a) for the purposes of the judicial inquiry; (b) for the security of the victim, or (c) for the security of society, because there is reliable evidence to suggest that the person concerned may try to evade the course of justice or may continue to engage in criminal activity.

"In general, and for the purposes of part (c) of the preceding paragraph, the judge shall take into account the probable legal penalty, the number of offences alleged to have been committed, whether there has been a previous conviction of an unappealable nature, the type and seriousness of the offences and the time that has elapsed since they were committed, the criminal record of the person concerned, whether he had been granted provisional or conditional release or a conditional reprieve at the time of committing the offence, whether a previous sentence remains to be carried out, whether he has attempted to escape or has escaped or has been declared in contempt of court, whether he is without any fixed abode, and whether he is particularly dangerous.

"If it is considered that the provisional release of the accused person or the defendant constitutes a specific danger for the security of society, namely in the following circumstances:

"1. The crime or one of the crimes committed is punishable under the law by the maximum period of long-term imprisonment or any other severe penalty,

"2. The prisoner has been sentenced to one or more penalties which, separately or together, amount to more than five years of imprisonment with or without compulsory work, unless, after he has been sentenced in this manner by a court of first instance, a higher court imposes a sentence of less than three years and one day of imprisonment or a penalty not involving deprivation of liberty,

"3. The accused person or defendant has absconded or escaped and is reapprehended, or

"4. The number or frequency of crimes, previous sentences and other information about the past record of the person under trial or detainee show that he is an habitual offender or a professional criminal, the judge may grant release from imprisonment by an order stating the grounds, provided that he has fully valid reasons for doing so.

"The provisions of the third paragraph of this article shall not apply to offences in respect of which provisional release without bail may be granted. Nor shall they apply from the time that the defendant has been acquitted or the case against him has been dismissed, or when a penalty imposed by a court of first instance has been served or is conditionally waived, or when a term of deprivation of liberty has been served which is equal to or longer than the minimum corresponding to the crime or crimes alleged to have been committed, in accordance with the rules of concurso real."

4. FREEDOM OF EXPRESSION AND OF INFORMATION (article 19 of the Covenant)

Significant reforms have also been introduced in this area. Paragraph 2 of bando No. 107 of 11 March 1977, issued by the Directorate of the emergency zone of Santiago, established that the import and sale of all types of books, newspapers, magazines and printed matter in general were subject to prior authorization by the Directorate.

In view of the growing normalization of life in Chile, the continuation of this restriction has been deemed unnecessary.

Thus the Directorate issued bando No. 122, dated 20 November 1978, which repeals bando No. 107 and thus re-establishes broad freedom to import books, newspapers, magazines and every type of printed matter.

In this connexion, anyone who visits Chile can see the degree of freedom of expression prevailing in the country, as has been recognized both by international bodies and by all the individuals who freely enter national territory.

5. FREEDOM OF ASSOCIATION AND, IN PARTICULAR, TRADE-UNION FREEDOM (article 22 of the Covenant)

The report already in the Committee's possession covers the period up to March 1978. The following developments in the intervening period are significant:

(a) The progressive re-establishment of freedom of association and all its corollaries is continuing as the country returns to normality. The mere fact that inflation, although not yet entirely under control, has reverted to past levels in the order of 30 per cent, and is tending to decline even further, is facilitating the resumption of collective bargaining, which, in turn, is bringing about a slow but genuine normalization of trade-union life;

(b) The first step was taken with the promulgation of Decree-Law No. 2200, of 15 June 1978, which, while it specifically refers to individual labour relations, contains an innovation of paramount importance, namely the abolition of the distinction in labour legislation between obreros (manual workers) and empleados (intellectual or non-manual workers). This distinction has prevailed in Chile for more than 50 years, and it specifically envisaged a certain type of trade-union organization exclusively for manual workers: the so-called industrial trade union. This type of trade union had been sharply criticized by ILO and by legal experts because it was the sole trade union of an enterprise, and any worker who signed a labour contract with the enterprise was required, ipso jure, to join the industrial union, and trade-union dues were deducted from his pay. This type of trade union became predominant and was favoured by the vast majority of manual workers, so that they grew accustomed to a system which was incompatible with trade-union freedom and therefore contrary to article 22, paragraph 1 of the Covenant. Non-manual and agricultural workers were not subject to that system. With the promulgation of Decree-Law No. 2200, the industrial trade unions would have been automatically abolished, and at the same time the discriminatory and socially derogatory term of "obrero" would have disappeared. It was therefore specified in the Decree-Law that no change would be made in the trade-union situation until specific legislation was enacted on the subject;

(c) Decree-Law No. 2376, published in the Official Gazette of 28 October 1978, laid the foundations for trade-union organization at the first level and was designed to encourage the creation of non-professional trade unions in enterprises, in keeping with Chilean tradition. At the same time, provision was made for industrial trade unions and the trade unions for private employees in enterprises to merge in a single type of trade union, known as workers' trade unions. It specified that, subsequently, they could either continue to function separately or unify but that they would be subject to the same norms, without any distinctions between manual and non-manual workers. In conformity with universal standards, and specifically with the provisions of the Covenant, freedom to join or not to join trade unions was guaranteed. Moreover, for six years the members of the governing trade-union bodies who had been serving at the time of the change of Government, in September 1973, had had their terms of office automatically renewed, or had been replaced in accordance with the procedure already explained, which consists in designating the most senior worker of each enterprise. Accordingly, arrangements were made to hold trade-union elections by free, secret and uninominal ballot in all trade unions in enterprises (Supreme Decree No. 159 of 28 October 1978).

The re-election of existing leaders was not permitted, since their terms of office had already been renewed five or six times and it was necessary to provide opportunities to other workers. In exceptional cases, strict norms were laid down to avoid politicization and persons who had previously been particularly militant politically were disqualified. The elections took place without mishap, except in a very few cases, despite the natural objections of existing leaders who felt that they had the right to be re-elected once again. It must be stressed that this action by the Government corresponded to the particular circumstances and was essential to put an end to a situation which had prevailed

for many years and which forced the Government to favour either the existing leaders, many of whom had been designated in accordance with the norms of Decree-Law No. 198, or the new generation.

(d) Since there were criticisms in some sectors to the effect that the elections had been held in too much haste, having been announced on 27 October and held on 31 October, the Government declared, on 2 January 1979, when it announced the new labour plan, that when the trade-union regulations were issued, on 30 June 1979, the members of any trade union, if there was a quorum, could decide to replace any of the leaders elected on 31 October, so that any abnormal situation which did not represent the democratic will of the assemblies would be remedied. (Statement by the Minister of Labour concerning the new labour plan, 2 January 1979, p. 8). All this was naturally without prejudice to full trade-union freedom, which is to be confirmed in the permanent regulations to be announced in June of this year.

(e) On 9 February 1979, Decree-Laws Nos. 2544 and 2545 were promulgated; they complement, modify and improve upon the earlier provisions. Decree-Law No. 2544 re-establishes full freedom to hold trade-union meetings and abolishes the prohibitions which were temporarily imposed in that respect by Decree-Law No. 198. Thus, the tempo of trade-union activities in Chile has returned to normal, even though the regulations concerning the over-all structure of the trade-union system and collective bargaining will not be announced until June, and there is naturally active discussion between the trade unions, the employers, the universities and the Government, acting chiefly through the Ministry of Labour and Social Security. As was to be expected, a trade-union system which has been organized for 50 years on the basis of different trade unions for manual and non-manual workers, and has been subject to the statutory prohibition of trade-union federations and confederations, with few exceptions, and consequently has a very partisan outlook cannot easily accept the idea of participating in a process of reform which threatens traditional practices, even though these are incompatible with the autonomy, freedom and proper functioning of trade-union associations at any level. Decree-Law No. 2545 regulates the system of trade-union contributions on the basis of compulsory trade-union payments by all trade-union members and compulsory deductions from pay-cheques if required by the majority of members and, in any case, if one member so requests. Similar norms have been established for associations of civil servants, whose right to join or not to join a trade union are expressly recognized. In view of the need to establish a suitable period of time to adjust to the new regulations, Decree-Law No. 2545 provides that during the transitional stage the previously established systems of deduction will remain in force. This corrects a serious omission in Decree-Law No. 2376 which had given rise to problems and complaints;

(f) Other provisions have been promulgated which directly or indirectly affect labour activities. Some of these norms have already been modified by the decree-laws already mentioned, which are the most important ones. The following decree-laws are of particular interest because they have given rise to discussions. Decree-Laws Nos. 2345, 2346 and 2347, all of 20 October 1978, respectively: confer special powers on the Government to reorganize the civil service; provide for the dissolution of seven trade-union federations which are

considered contrary to public order and alien to the purposes of the trade-union system; and declare that associations or groups which claim to represent labour sectors without being competent to do so are contrary to public order and national security. These three laws have been the subject of much wide-ranging and freely expressed criticism. In this respect, the Government's position may be described as follows:

(a) Decree-Law No. 2345 relates exclusively to the reorganization of the civil service, regarding which there have been no complaints of improper use or abuse of powers on the part of the authorities, although complaints could have been lodged in accordance with the remedy envisaged in Constitutional Act No. 3. Throughout the history of Chile, Governments have exercised the right to reorganize the civil service, and this is not in contradiction with any labour agreement. Furthermore, in the context of Chile, this measure has coincided with the broad re-establishment of the right to trade-union assembly and discussion and the right of the workers' associations in this sector to function freely. It is obvious that if the objective of the Government had been different, or if it had abused its powers, the measures of liberalization would have been postponed, or judicial remedies would have been sought;

(b) Decree-Law No. 2346 was vitiated by an obvious flaw: it provided for the dissolution of trade-union organizations affiliated to entities which had been dissolved by a special decree law of constitutional scope. The Government realized this and has not applied the decree-law, thus permitting such trade unions to function freely and to exercise their right to federate in accordance with the general norms. As to the justification for the exceptional measure affecting seven federations, legal appeals are pending. At all events, this is a measure which did not affect federated trade unions or their right to reorganize as federations in accordance with the law, as has been explained;

(c) Decree-Law No. 2347 will not be implemented until the new regulations on the trade-union system have been promulgated. Thus associations without legal status, including some which are sympathetic to the Government, are continuing to operate and they will all continue to be treated with consideration and respect, as long as they observe the norms of trade-union activity.
