CCPR

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Distr.
GENERAL

CCPR/C/1/Add.25
27 April 1978

ENGLISH
Original: SPANISH

Human Rights Committee
Fourth session

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

Initial reports of States parties due in 1977

Addendum

CHILE*/

[26 April 1978]

GENERAL

1. GENERAL LEGAL FRAMEWORK

Civil and political rights are protected within the Chilean legal order by constitutional and legal rules and regulations. The first category includes the Constitutional Acts, a number of Legislative Decrees promulgated by the Governing Junta in the exercise of its constituent power and those provisions of the Political Constitution of 1925 which are still in force; the second category, that of legal rules, consists of the laws promulgated prior to 11 September 1973, the Codes of the Republic, the decrees having the force of law promulgated by the President of the Republic by virtue of a delegation of powers by the National Congress, the Legislative Decrees promulgated by the Governing Junta in the exercise of its legislative power and the international treaties signed and ratified by the Government of Chile; the third category, that of regulations, includes regulations and decrees promulgated by the President of the Republic in the exercise of his regulatory power under the Political Constitution.

Rules of a lower category are subordinate to those of a higher category, both in their source and in their application.

Our law respects acquired rights, both in the letter and in the spirit, since such rights have always been entitled to the necessary and effective protection, whatever changes may occur in the legal and social structure of the country.

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*/ The present report has been prepared and compiled in accordance with the guidelines issued by the Committee. In accordance with the request of the Government of Chile, the present report is to replace the earlier one submitted by the Government and reproduced in document CCPR/C/1/Add.15.

Examination of the constitutional texts will be facilitated, if it is remembered that the Political Constitution of 1925 remains in force, albeit amended by the Constitutional Acts and Legislative Decrees of a constitutional character promulgated by the Governing Junta. It is the duty of the courts of justice to interpret and apply the constitutional rules, in order to decide whether those provisions of the Constitution of 1925 which have been repealed or amended either wholly or partly, by other measures promulgated in the exercise of the constituent power, remain in force. For example, the Supreme Court has declined to accept that a Legislative Decree which conflicts with the Constitution, and had not been promulgated expressly as a constitutional rule, can repeal or amend the provision of the Constitution.

The Supreme Government for its part, echoing this sound doctrine maintained by the highest Court of the Republic, promulgated on 2 December 1974 Legislative Decree No. 788, in which the above principle is formally recognized.

2. APPLICATION OF THE PROVISIONS OF THE COVENANT AND DEROGATIONS THEREFROM

To consider more specifically the general guidelines to be followed with regard to the form and content of this report submitted in accordance with article 40 of the Covenant, as agreed by the Human Rights Committee at its second session, it should be noted that all the provisions of the Covenant were already contained in Chilean positive law, which antedates the drafting of the Covenant. Nevertheless, on 11 September 1976, the Government of Chile promulgated Constitutional Act No. 3, which sets out systematically and organically the rights enjoyed by all inhabitants of the national territory without distinction of any kind or other limitation not based on the general interests of the State or the rights of the rest of the community. Furthermore, as will be noted in the second part of the report, Chilean law accords a wider protection to the civil and political rights set out in the Covenant than is provided by the Covenant itself.

There has therefore been no need for a separate "declaration of rights", to bring the Covenant into force within our legal order, since such rights can always be invoked before the court of justice, which are the only courts possessing jurisdiction in respect of human rights. Although it is true that various other administrative authorities, subordinate to other State organs, are entitled to intervene in such matters, the only ones empowered to take and enforce decisions regarding due protection of civil and political rights are the courts of justice, which perform their duties under the direct supervision, correctional and economic, of the Supreme Court of Justice, which is the highest judicial authority in the country. This is laid down in article 86 of the Political Constitution of the State and article 90 of the Organic Code of Tribunals.

The exceptional cases in which a temporary derogation from or any form of limitation of the exercise of civil and political rights is authorized are set out in constitutional and legal provisions which have been in force since long before the Covenant was drafted; these provisions have their roots in the historical, legal and political background of the nation. We may add in passing that such derogations, set out in the constitutional and legal order, are common to the majority of legal systems throughout the world and came into being as an answer to the need to protect citizens against situations of danger and furthermore may only be applied in practice by virtue of a constitutional rule.

To classify these derogations systematically with the same degree of precision as the rights to which they relate, the Government of Chile has promulgated Constitutional Act No. 4. At the same time it is preparing supplementary legislation to define and regulate precisely all emergency régimes which affect the enjoyment and exercise of civil and political rights, as well as the circumstances in which they may be instituted. Pending promulgation of this supplementary legislation, the Constitutional Act has not yet been brought into force, so that the provisions for derogations are to be found in a variety of constitutional or legal texts, accompanied in each case however by the appropriate restrictions as to scope and duration.

The following detailed information is given on the present situation in Chile as regards these derogations, which were communicated to the Secretary-General of the United Nations on 18 August 1976 in accordance with article 4, paragraph 3, of the Covenant. The said communication listed restrictions on the rights set out in articles 9, 12, 13, 19 and 25 (b). It should be noted that these restrictions are authorized by article 4 of the Covenant, seeing that none of the rights suspended is covered by paragraph 2 of the said article, which lists the rights from which no derogation may be made.

As was explained in the letter in question, the whole country had been in a state of siege, of the internal security degree, since 11 March 1976, but that came to an end through its not being extended within the specified period, whereupon the country returned to a state of emergency; this is limited to six months after which, and unless extended, it will then be automatically repealed.

The situation in regard to personal safety and freedom is that an action for enforcement of rights (amparo) is now just as effective as in completely normal times. Indeed, of the two conditions required for an action for enforcement of rights or habeas corpus, namely, insufficient grounds for detention and non-compliance with the procedural formalities (written warrant issued by a competent official and served in accordance with the law, place of detention other than a common prison etc.), only the second is allowable as grounds for an action for enforcement of rights in the case of a person detained by order of the President of the Republic while the state of siege was in force, since such action is a special privilege of the President. In the present state of emergency, grounds for an action for enforcement of rights include both insufficient grounds for detention and non-compliance with the procedural formalities.

This does not conflict with the traditional power set out in Legislative Decree No. 1877 (a constitutional rule) whereby the President of the Republic, during a state of emergency, may order the detention of any person for up to five days in his own home or in some place other than a prison. After five days, the detained person must be either released or brought before the courts to be dealt with. Consequently, any detention for a longer period than the above can only be authorized by a court of justice hearing a criminal case and possessing the necessary jurisdiction. At first instance, such courts can only be either a legally qualified judge, a judge of appeal or a judge-advocate in time of peace. During the state of emergency, there are no war-time military tribunals.

With regard to freedom of movement, the "curfew" has been repealed throughout the national territory, so that whereas its repeal previously applied only to a few zones it has now been extended to the whole country.

A further derogation to be noted is that relating to the right set out in article 13 of the Covenant concerning the expulsion of aliens from the territory of any of the States parties. This derogation is covered by Supreme Decree No. 1306 of 16 February 1976, whereby the Minister of the Interior may issue an order for the expulsion of an alien or a Chilean national only on stating his reasons, the expelled person retaining his right to take appropriate legal action and in any case to appeal to the Supreme Court of Justice, either in person or through a member of his family.

Freedom of expression, as explained in the aforementioned Note of 18 August 1976, is governed by the provisions of Law No. 12,927 of 1958, article 34 (b) and (c), of which restricts in general terms the exercise of this freedom, where its abuse may create unjustified alarm or in any way disturb public order. The form in which this power is exercised is through edicts issued during a state of emergency by the Head of Zone, who must always keep within the limits laid down by law.

The last of the derogations allowed by our legal order relates to the right set out in article 25 (b) of the Covenant to vote and to be elected at genuine periodic elections, by universal suffrage and by secret ballot. The restriction on this right derives from Legislative Decree No. 1697 of 11 March 1977 which declared a political recess and remains in force pending the institutional reform initiated by the Government of Chile with the collaboration of the citizens. The slow pace of the advance toward democracy does not yet permit the full re-establishment of party political activity, because the corrupt political practices, which undermined law and order and brought the nation to the verge of civil war, have not yet been finally eradicated.

Nevertheless, the Supreme Government is making every effort to provide the country with the machinery for sound political development which will benefit all sections of the community.

Specifically, as announced by the President of the Republic on 5 April last, the draft Constitution at present being prepared will be laid before the Council of State in the course of this year and will be open to public discussion by all sections of the community. As soon as discussion is over, the draft, both transitional and final provisions, and including the basic alternatives resulting from the discussion, will be submitted to a plebiscite.

In any event, the new draft Constitution is designed to provide an improved system for ensuring the full and rational exercise of electoral rights.

3. REMEDIES AVAILABLE FOR THE PROTECTION OF CIVIL AND POLITICAL RIGHTS

As part of the information provided in accordance with the general guidelines adopted by the Human Rights Committee at its second session, we give below a list of the available remedies, set out in constitutional or legal provisions, which have a direct bearing on civil and political rights.

(a) Action for enforcement of rights or habeas corpus

This remedy is provided for in the first paragraph of article 3 of Constitutional Act No. 3, and its practical application is regulated by articles 306 and 317 of the Code of Penal Procedure and by the Supreme Court decision (auto acordado) of 19 December 1932. It was also laid down in the 1925 Political Constitution and has been referred to earlier in this report. At this point, it is sufficient to recall that the remedy of habeas corpus retains its full force and effectiveness under the state of emergency.

It should be pointed out, however, that the Government of Chile has extended the scope of the action for enforcement of rights to situations other than arrest, detention or imprisonment, so that such an action may now be brought in the case of any deprivation of, interference with or threat to personal freedom or safety. This is a constitutional innovation of the Government, which is embodied in the second paragraph of article 3 of Constitutional Act No. 3, reading as follows:

> "Similar recourse in the same form may be had on behalf of any person who is unlawfully suffering any deprivation of, interference with or threat to his right to personal freedom and personal safety. The competent Court of Appeals shall in such cases prescribe such measures referred to in the foregoing paragraph as it considers necessary to restore the rule of law and ensure due protection of the individual concerned."

Actions of this kind are heard in first instance by the Court of Appeals of the place where the detention or interference occurred, and may be brought by the individual concerned or by some other person acting on his behalf who has capacity to appear in court, even though he may not have been given a special power of attorney to do so. The action may also be filed by cable, and the Court may request the documents in the case by cable as well or even, as has been done in the past, obtain information by telephone provided that a certified record is kept of the call and that the relevant official document is in all cases remitted subsequently.

The Court must rule on the application within 24 hours, but the time-limit may be extended if inquiries have to be made or further light needs to be thrown on the facts alleged in it.

The judgement of the Court of Appeals can be appealed against to the Supreme Court. If the Court of Appeals has ordered the prisoner to be released, he shall remain at liberty even if the appeal is lodged by a person who was a party to the action for enforcement of rights.

When the warrant of arrest is issued by a military tribunal, any action for enforcement of rights contesting such warrant will be heard by the Court Martial, which is equal in rank to the Courts of Appeals and whose membership is invariably formed by judges of appeal, apart from the military assessors, who are also legally qualified.

(b) Remedy of protection

This remedy is provided for in article 2 of Constitutional Act No. 3 and is regulated by the Supreme Court decision (auto acordado) of 26 January 1976, which was published in the Diario Oficial of 31 January 1976.

The formalities attaching to this remedy, which is also an innovation of the Governing Junta, are similar to those of the action for enforcement of rights, but its purpose is to see to it that the Court of Appeals adopts any measures necessary to restore the rule of law and ensure due protection of the person concerned if he has suffered any deprivation of, interference with or threat to the legitimate exercise of the guarantees provided in Constitutional Act No. 3 other than those relating to personal freedom (which are covered by the action for enforcement of rights). Application for the remedy of protection is compatible with any other judicial actions or claims which the person concerned may wish to bring before the competent authorities or courts.

Because of its breadth of scope, this remedy cannot be reconciled with emergency situations, precisely because an emergency presupposes the existence of an exceptional situation jeopardizing a more important legal interest, such as national security or public order. This is covered by article 14 of Constitutional Act No. 4. However, according to the judicial precedents established by the Supreme Court, this remedy is allowable even in emergency situations provided that the application submitted and the decision taken on it do not relate to a matter involving national security. For example, applications for this remedy have been allowed when the claim related to the payment of taxes.

(c) Remedy of inapplicability on grounds of unconstitutionality

This remedy is laid down in the second paragraph of article 86 of the 1925 Political Constitution and is regulated by the Supreme Court decision (auto acordado) of 22 March 1932.

Under this remedy, the Supreme Court of Justice may declare inapplicable to the case in respect of which it is invoked any legal provision that is contrary to the constitutional rules in force.

For this remedy to be granted, legal proceedings must have been instituted in an ordinary or special court of the Republic. Consequently, it is not applicable in an abstract or general situation, its validity being circumscribed to particular cases tried and judged by the Supreme Court itself or by some other court.

Both substantive and procedural rules can be declared unconstitutional, but such a declaration has legal effect solely in respect of the particular lawsuit in progress in which it is sought to apply the unconstitutional provision.

In practice, however, a legal provision which the Supreme Court has declared to be unconstitutional ceases to be applied by the other courts, it being considered that the remedy of inapplicability sought by the party concerned would otherwise be granted.

This remedy is of obvious effectiveness in matters of human rights, since it ensures that the legislator does not disregard the fundamental guarantees offered by the Constitution.

(d) Remedy of review

This remedy is established in articles 810 to 816 of the Code of Civil Procedure and is designed to permit the annulment, either in whole or in part, of a definitive judgement rendered by any court of the Republic. Applications for the remedy of review are dealt with by the Supreme Court.

Such an application must be filed within one year from the date of the final notification of the judgement appealed against and must be founded on one of the four grounds allowed by article 810 of the Code of Civil Procedure, which are: that the judgement was rendered on the basis of false documents or testimony; that the case was won through bribery, duress or other fraudulent means; or that the decision given in the case contradicted an earlier judgement which has become a res judicata and was not pleaded in the proceedings that culminated in the judgement challenged in the application for review. Both the falsity of the documents or testimony and the bribery, duress or other fraudulent means which influenced the verdict must first be declared by definitive judgement. If the declaration in question is not made within one year, an application for review may be filed within the time indicated, but the matter will be left pending until the accuracy of the grounds cited for the review is verified.

It is worth mentioning that, as a general rule, an application for the remedy of review does not suspend the execution of the sentence contested, unless this imposes the death penalty or some other particularly severe form of punishment; moreover, suspension of sentence must be requested by the person concerned.

(e) Right of petition

Although this is not a procedural remedy as such, it is a juridical device of an administrative nature enabling anyone to petition the authorities on any matter of public or private interest, without any limitation other than the requirement to proceed in respectful and appropriate terms (1925 Constitution, article 10, paragraph 6, and Constitutional Act No. 3, article 1, paragraph 8).

The importance of this remedy lies in the fact that the authorities cannot refuse to pronounce on such petitions; should this happen, the official responsible can be prosecuted for committing a criminal offence of the kind described in article 256 of the Penal Code, without prejudice to the administrative penalties he may incur.

Moreover, the authorities are required to reply to all petitions submitted to them by individuals in the exercise of this right.

In concluding the general part of this report, we would point out that no other measures have been adopted to ensure the maintenance and protection of the civil and political rights laid down in the Covenant because, as can be seen from what was said earlier, such measures are obviously unnecessary.

ANALYSIS OF THE ARTICLES OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

PART I

Article 1

Paragraph 1: Comment

Chile recognizes the right of all peoples freely to determine their political, economic, social and cultural status, and considers respect for this principle to be essential for international peace and order.

At the national level, respect for this principle is reflected in the following provisions:

Article 1 of the Political Constitution of 1925, which states: "The State of Chile is unitary. Its Government is republican and democratically representative"; and article 2 of the 1925 Constitution, which states: "Sovereignty resides essentially in the nation, which delegates the exercise thereof to the authorities established by this Constitution".

Moreover, article 4 of Constitutional Act No. 2, dated 11 September 1976, states: "Sovereignty resides essentially in the nation and is exercised in accordance with the Act establishing the Governing Junta and with any provisions which have been issued or may be issued in pursuance of that Act". The authorities' intention of abiding by the constitutional principles enunciated is best illustrated by the words of His Excellency the President of the Republic, when he delivered an address on 5 April 1978 announcing the preparation of a new constitution to be approved by plebiscite.

At the international level, apart from the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, Chile endorsed the right in question by signing and ratifying the Charters of the United Nations and of the Organization of American States - both of them international instruments which, according to Chilean rules of law on international treaties and conventions, have the force of "Laws of the Republic and compel their signatories to respect the principle of 'self-determination'".

Paragraph 2: Comment

It is a basic right of all peoples to be able freely to dispose of their natural wealth and resources, since such free disposal enables the principle of self-determination to be applied to its full extent. In accordance with this concept, Chile's fundamental laws establish rules governing the right to own property, with the proviso that ownership must also fulfil a social function and must not be prejudicial to the general interests of the State.

Article 10, paragraph 10, of the 1925 Constitution establishes the right to own property in its various forms, and states in its second subparagraph that:

> "When the interest of the national community so requires, the law may nationalize or reserve to the State exclusive dominion over natural resources and producers, and other goods which are declared to be of

paramount importance for the economic, social or cultural life of the country. It shall also promote the appropriate distribution of property and the creation of family property."

The seventh subparagraph of article 10, paragraph 10, of the same instrument states that:

"No one may be deprived of his property except by virtue of a general or special law which authorizes expropriation on grounds of public utility or social interest, as determined by the legislature".

Constitutional Act No. 3 of 11 September 1976 reproduces, amends and supplements the Constitution of 1925. In article 1, paragraph 15, it guarantees to all persons:

"Freedom to acquire ownership of any type of property, except that which by its nature is common to all mankind or should belong to the nation as a whole and is so declared to belong by law.

"In specific cases and when the national interest so requires, the law may reserve to the State certain ownerless property and may also limit or establish requirements for the acquisition of ownership of certain property."

Paragraph 16 states that the law shall establish the limitations and obligations which make it possible to ensure the social function of property, which encompasses the requirements of the general interest of the State, national security, public utility and health and the optimum development of sources of productive energy. In guaranteeing the right to own property, the Constitution and the Acts also protect the right of the people as a whole because it is understood that there cannot exist what may be termed rights of a "social nature" unless the rights of individuals are also respected.

None of the provisions referred to are an obstacle to the fulfilment of obligations deriving from international economic co-operation agreements.

At the international level, Chile has ratified the right to own property in the Charters of the United Nations and of the Organization of American States and in the Covenant under consideration.

Paragraph 3: Comment

Chile has no responsibility for the administration of territories which have the status indicated in this paragraph, but shares the conviction that it is essential to promote the realization of the right of self-determination in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

Paragraph 1: Comment

As is clear from the comments made in part I of this report, respect for fundamental human rights in Chile derives not merely from the signature and ratification of the International Covenant on Civil and Political Rights but from the entire legal system in force there. This will be illustrated later when comments are made on the various constitutional, penal, civil and procedural provisions which safeguard these rights and penalize failure to observe them. It should be noted that the preamble to Constitutional Act No. 3 stipulates that, as human rights antedate the State and the formation of human society, they are the raison d'être of any legal order and hence "the protection and guarantee of the basic rights of the human person are of necessity the essential basis of any State organization". In this Act, which will be quoted throughout this report, Chile undertakes to respect human rights without distinction of any kind in accordance with article 1, which states that "Men are born free and equal in dignity" and article 1, paragraph 2, which, consistent with the foregoing, assures equality before the law: "In Chile there are no privileged individuals or groups".

Any restrictions placed on the rights enunciated in the Covenant are dictated solely by reasons of national security and the common good.

Paragraph 2: Comment

As indicated before, the legal order in Chile encompasses and protects rights of a broader scale than those embodied in the Covenant. Consequently, it has not been necessary to adopt any legislative or administrative provisions or regulations save in so far as the existing rules themselves so require.

Paragraph 3: Comment

Under the Chilean legal system, all inhabitants of the Republic or persons in transit through it, whether Chileans or aliens, whose rights or freedoms have been violated, have guaranteed access to judicial remedies in order to regain their rights and ensure that they are duly protected. To give just one example, since the different remedies will be described later, there is the remedy of action for enforcement of rights or habeas corpus, which is given effect by Constitutional Act No. 3, article 3. With regard to subparagraph (c), article 18 of the Organic Code of Tribunals states that: "the power to hear and decide civil and criminal cases and to ensure that the judgement rendered is enforced pertains exclusively to the courts established by law".

Article 3

Comment

The equality of men and women is a principle embodied in Chilean law at the highest level. The 1925 Constitution, in article 10, paragraph 1, provides for: "Equality before the law. In Chile there is no privileged class." Constitutional Act No. 3 of September 1976 supplements this provision in order, as is explained in one of its preambular clauses, to strengthen the guarantees afforded by the 1925 Constitution; article 1, paragraph 2, of the Act consequently assures for all individuals

"Equality before the law. In Chile there are no privileged individuals or groups.

"Men and women shall enjoy equal rights.

"Neither the law nor the authorities may establish arbitrary discriminations."

It will be seen that this constitutional rule makes no distinction between men and women, whether Chilean or foreign, resident or non-resident. This equality, guaranteed by the Constitution, is based on the idea of universality - in other words, men and women are subject to the same rules in respect of general rights and obligations.

Article 4

Paragraph 1: Comment

The internal legal order in Chile, considering that it is the natural and constitutional duty of the State to promote the common good, whose attainment is possible only through the creation of the conditions necessary for the economic and social development of the community and its concomitant, national security, in the sense of the ability of the State to guarantee such development by anticipating and overcoming emergency situations which endanger the attainment of national objectives, makes provision for the exceptional legal régimes required in such situations, consisting essentially of war, civil commotion, latent subversion and public disaster, in order to combat the threat or occurrence of such events. These exceptional legal régimes, which allow for the restriction or suspension of certain of the obligations prescribed by the Covenant, are in no case based on considerations of race, colour, sex, language, religion or social origin.

The 1925 Political Constitution of Chile, in article 72, paragraph 17, authorizes the President of the Republic:

"To declare in a state of assembly one or more provinces invaded or menaced in the event of foreign war, and in a state of siege one or more places in the Republic in the event of external attack.

"In the event of civil commotion, the declaration of the existence of a state of siege in one or more places pertains to Congress, but if it is not

in session, the President may make such a declaration in respect of a specified period. If the period in question has not expired when Congress reassembles, the declaration made by the President of the Republic shall be regarded as equivalent to a parliamentary bill.

"The declaration of a state of siege, shall confer on the President of the Republic only the authority to transfer persons from one department to another and to confine them to their homes or in places other than goals that are not intended for the confinement or imprisonment of ordinary criminals.

"Measures taken as a result of the state of siege shall not exceed it in duration, and may not violate the constitutional guarantees afforded to Deputies and Senators."

Legislative Decree No. 527, published in the Diario Oficial of 26 June 1974, reaffirms these constitutional powers in article 10, paragraph 14, which states that the President shall have special authority: "To declare in a state of assembly one or more provinces invaded or menaced in the event of foreign war, and in a state of siege one or more places in the Republic when there is a danger of external attack or invasion. In the event of civil commotion, the declaration of the existence of a state of siege in one or more places shall be made by Legislative Decree.

"The declaration of a state of siege shall confer on the President of the Governing Junta only the authority to transfer persons from one department to another and to confine them to their own homes or in places other than goals that are not intended for the confinement or imprisonment of ordinary criminals.

"Measures taken as a result of the state of siege shall not exceed it in duration."

Legislative Decree No. 640, which was enacted on 2 September 1974 and published in the Diario Oficial of 10 September 1974, systematizes the provisions relating to the different emergency régimes provided for by national laws. In article 1, it describes the following emergency régimes:

I. State of external or internal war

Its scope is defined in article 2 of this Decree: "A state of war or time of war shall be understood to exist in the situations referred to in article 418 of the Code of Military Justice" (a provision which relates to a declaration of war, mobilization and a de facto state of war). Law No. 12,927, concerning the internal security of the State, stipulates in article 31 that: "In the event of war, external attack or invasion, the President of the Republic may declare all or part of the national territory to be in a state of emergency, whether the attack or invasion has occurred or there are serious reasons for believing that it will occur." The scope of the concept of a state of emergency will be examined in the paragraphs which follow.

II. State of assembly

This régime is governed by the rule laid down in article 10, paragraph 14, of Legislative Decree No. 527. Whether such a state has been declared by reason of of an external attack or by reason of civil commotion, wartime military jurisdiction will apply (article 72 of the Code of Military Justice).

III. State of siege

Article 4 of Legislative Decree No. 640 states that the procedure should be as prescribed in article 10, paragraph 14, of Legislative Decree No. 527. In other words, it is the prerogative of the President of the Republic to declare a state of siege, which applies in the following cases:

(a) When there is a danger of external attack or invasion, whether the threat derives from aliens or from Chileans:

(b) In the event of civil commotion of any kind.

Article 6 of Legislative Decree No. 640 provides that a state of siege may be decreed in any of the following degrees:

(a) State of siege by reason of a situation of external or internal war;

(b) State of siege in the degree of internal defence, in the event of civil commotion caused by rebel or seditious forces organized, or about to be organized, either openly or clandestinely.

In both these cases, article 7 of Legislative Decree No. 640 provides for the entry into operation of the wartime Military Tribunals, vested with the military jurisdiction obtaining in time of war, and for the application of the procedure laid down in the Code of Military Justice, part II, title IV, and of the penalties specially prescribed for time of war;

(c) State of siege in the degree of internal security, which is applicable when the commotion is caused by rebel or seditious forces that are not organized; and

(d) State of siege in the degree of simple civil commotion, which is applicable in the other cases provided for in the legislation in force.

Article 8 of Legislative Decree No. 640 specifies that the two latter degrees will be deal with by the peacetime Military Tribunals, exercising their own jurisdiction, and will be subject to the rules laid down in part II, title II, of the Code of Military Justice, concerning criminal proceedings in time of peace, and to the penalties applicable in time of peace, augmented in one or two degrees. Article 9 states that, in such cases, the wartime Military Tribunals will also try the offences specified in articles 4, 5(a) and (b) and 6 (c), (d) and (e) of the Law on the Internal Security of the State.

Article 10, paragraph 14(2), of Legislative Decree No. 527 states that the declaration of a state of siege confers on the President of the Governing Junta only the authority to transfer persons from one department to another and to confine them to their own homes or in places other than goals that are not intended for the confinement or imprisonment of ordinary criminals.

With regard to the authority to transfer persons specified in this article, the Santiago Court of Appeals in January 1978 stated, on hearing an action for enforcement of rights brought by persons who had been transferred under that provision, that the expression "from one department to another" referred to a territorial and administrative unit which, under the present system of regionalization, should be taken to mean a province, since that would come close to the previous division, and that the object of moving someone from a part of the country where he might threaten to disrupt the tranquillity and normality of public life would be met by transferring him elsewhere and restricting but no totally denying his freedom of movement so that he could select his place of residence within the designated territorial unit while at the same time being subject to possible surveillance and domiciliary supervision.

Legislative Decree No. 1009, published in the Diario Oficial of 8 May 1975, states, in article 1, that: "While the state of siege is in force, the bodies vested with special responsibility for ensuring that national life proceeds normally and that the established institutional order is maintained shall be obliged, when remanding in custody, in exercise of their appointed powers, person who are believed to be guilty of endangering the security of the State, to give notice of the detention to the immediate family of the person concerned within 48 hours.

"The bodies referred to in the foregoing paragraph may not remand a person in custody for longer than five days, and by the end of that period t detainee must either be released or be brought before the appropriate court, or the Ministry of the Interior when the case involves the application of special powers or of those obtaining under the state of siege, as appropriat a written report being submitted on the facts of the case.

"The subjection of detainees to unlawful coercion shall be punished in accordance with article 150 of the Penal Code or article 330 of the Code of Military Justice, whichever is appropriate."

Article 150 of the Penal Code establishes that:

"The penalties of medium-term imprisonment, with or without compulsory work, and suspension in any degree shall be applied to:

1. Anyone who orders a prisoner to be held incommunicado for an unduly long period or ensures that he is so held, or who subjects him to torture or to unnecessarily harsh treatment.

If the administration of torture or of unnecessarily harsh treatment injures or results in the death of the subject, the person responsible shall incur the penalties prescribed for those offences, in their maximum degrees.

2. Anyone who is responsible for arbitrary imprisonment or detention in places other than those designated by law."

Article 220 of the Code of Military Justice states:

"Any member of the armed forces who, in carrying out an order from his superiors, or in the performance of his military duties, employs unnecessary violence or causes it to be employed, without any reasonable justification, in the execution of the acts he is required to perform, shall be liable to:

1. Long-term imprisonment with compulsory work in its minimum to intermediate degrees, if he has caused the death of the victim;

2. Medium-term imprisonment with compulsory work in its intermediate degree to long-term imprisonment with compulsory work in its minimum degree, if he has caused the victim serious injury;

3. Medium-term imprisonment with compulsory work in its minimum to intermediate degrees, if the injuries caused are less serious; and

4. Short-term imprisonment with compulsory work in its maximum degree to medium-term imprisonment with compulsory work in its minimum degree, if the victim has not been injured or if his injuries are slight.

If violence is used against detainees or prisoners for the purpose of obtaining data, information or documents or other objects bearing on inquiries into an unlawful act, the penalties shall be increased by one degree."

Legislative Decree No. 81 of November 1974 provides, in article 2, that:

"In the event of the declaration of a state of siege, as provided for in article 6 of the above-mentioned Legislative Decree No. 640 of 1974, and if the paramount interests of State security so require, the Government may order the expulsion or compulsory departure from the country of specified persons, whether aliens or nationals, by means of a decree, accompanied by a statement of reasons, which shall be signed by the Minister of the Interior and the Minister of National Defence.

"Persons who are subjected to measures of expulsion or compulsory departure from the country shall be free to choose their place of destination."

Article 6, paragraph 4, of the 1925 Constitution provides for the loss of Chilean nationality: "For engaging abroad in activities seriously detrimental to the vital interests of the State during the emergency situations envisaged in article 72, paragraph 17, of this Constitution". This provision should be understood to refer to the state of siege and the state of assembly.

IV. Special powers

Through its exercising legislative power, the Governing Junta is vested with the authority provided for by the 1925 Constitution in paragraph 12 of article 44, entitled "Powers of Congress". This provision specifies that only by virtue of a law is it possible: "To restrict personal freedom and freedom of the press, or to suspend or restrict the exercise of the right of assembly, when this is made necessary by the overriding requirements of the defence of the State, the preservation of the constitutional system or the maintenance of internal peace and then only for a period of not more than six months. Any penalties prescribed by such laws shall in all cases be imposed by the established courts. Other than in the circumstances stipulated in this paragraph, no law may be enacted to suspend or restrict the freedoms and rights guaranteed by the Constitution."

V. Zones or states of emergency

Articles 31 to 36 of Law No. 12,927 of August 1958 give effect to the declaration of a state of emergency. Article 31 states that "All or part of the territory may be declared to be in a state of emergency in the event of external attack or invasion, whether the attack has occurred or there are serious reasons for believing that it will occur". The second paragraph, supplemented by article 10(a) of Law No. 13,959 of 4 July 1960, provides that: "In the event of a public disaster, the President of the Republic may declare a state of emergency of up to six months' duration in the disaster area. Article 33 specifies that, once a state of emergency has been declared, the area in question will be placed under the immediate authority of the Chief of National Defence appointed by the Government, who will exercise military command with the powers and duties established by Law No. 12,927, while the administrative authorities will continue to discharge their functions and to perform their normal work.

The Chief of the area in a state of emergency is vested with the following special powers under article 34:

(a) To assume command of the land, sea, air, police and other forces which are situated in or reach the emergency area;

(b) To order measures to be taken to ensure that the existence or construction of military installations is kept secret;

(c) To prohibit the dissemination of news concerning military matters, and to impose such censorship as he may deem necessary on the press and on cable and radio communications;

(d) To suppress unpatriotic propaganda, whether made through the press, radio, cinema, theatre or any other medium;

(e) To establish regulations for the bearing, use and possession of arms and explosives by the civilian population;

(f) To maintain control over entry into, exit from and passage through the emergency area, and to keep persons who are considered to be dangerous under surveillance by the authorities;

(g) To make use, for as long as is required, of any premises and means of transport he considers to be needed, whether belonging to State, semi-State or autonomous bodies, or to State, municipal or private enterprises.

In making requisitions, the authorities must draw up an inventory of the items requisitioned and indicate each one's condition. A copy of this inventory must be given to the owner of the items or to the persons in possession of them at the time of their requisition, either immediately or not later than 48 hours afterwards.

The use referred to in the first subparagraph of paragraph (g) shall entitle the owner to request due compensation once the items in questions have been returned to him. If the parties disagree as to the amount of compensation,

it shall be determined in summary proceedings by the competent judge of the High Court sitting in civil cases. The time limitation for such proceedings shall be one year from the date on which the authorities order the items in question to be returned;

(h) To make arrangements for such total or partial evacuation of districts, towns or areas as is deemed necessary for the defence of the civilian population and the successful conduct of military operations within his jurisdiction;

(i) To order measures to be taken to protect works of art, public utilities such as drinking water, light and gas, and mining, industrial and other centres in order to prevent or punish sabotage; to keep a particularly close watch over arms, strongpoints, military equipment, installations and factories; and to prevent the dissemination of true or false information that might cause panic among the civilian population or demoralize the armed forces;

(j) To issue the necessary orders for the requisition, storage and distribution of all items needed for the assistance of the civilian population or of military value;

(k) To check on food, fuel and military supplies entering or leaving the emergency area;

(l) To arrange for an inventory to be kept of the military supplies in the area;

(ll) To issue edicts establishing regulations for the services under his command and rules to be observed by the civilian population;

(m) To give any orders or instructions he may deem necessary for the preservation of public order in the area; and

(n) To suspend the printing, distribution and sale of up to six issues of newspapers, magazines, leaflets and printed matter in general, and, up to six days of broadcasts by radio or television stations or any similar information medium disseminating opinions, news or communications which are liable to create alarm or disaffection among the population, which distort the true nature of the facts, which are manifestly false or which contravene the instructions given to such media for reasons of public order in compliance with paragraph (m). If the offence is repeated, he may arrange for the communications media concerned, together with their places of work and equipment, to be taken over and for censorship to be imposed.

"A complaint against any of these measures may be lodged by the party concerned, within 48 hours from notification of the measure, in the relevant military or naval court, which shall pronounce judgement on the basis of equity, having heard the Rapporteur's report.

The filing of a complaint shall not suspend the application of the measure taken, save as may be decided by definitive judgement of the court.

The powers conferred under (n) shall be exercised on the basis of a written order, which shall record the time of notification and indicate the period of the application of the said powers, which period may not, in any circumstances, exceed the duration of the state of emergency."

Legislative Decree No. 1877, published in the Diario Oficial of 13 August 1977, established the following in exercise of the constituent power:

Article 1. "By virtue of the declaration of a state of emergency, as regulated by the Law on the Security of the State, the President of the Republic shall be empowered to detain persons for up to five days in their own homes or in places other than goals".

Article 2. "It is hereby declared that the references to the state of siege contained in Legislative Decrees Nos. 81 and 198 of 1973 and No. 100, article 1, should also be understood to apply to the state of emergency, governed by Law No. 12,927 of 1958. Legislative Decree No. 81 specifies the penalties applicable to persons who disregard a public appeal made by the Government for reasons of security, and establishes in article 2 that: 'In the event of the declaration of a state of siege, as provided for in article 6 of Legislative Decree No. 640 of 1974, and when the paramount interests of State security so require, the Government may order the expulsion or compulsory departure from the country of specified persons, whether aliens or nationals, by means of a decree, accompanied by a statement of reasons, which shall be signed by the Minister of the Interior and the Minister of National Defence.'

'Persons who are subjected to measures of expulsion or compulsory departure from the country shall be free to choose their place of destination.'

"Legislative Decree No. 198, published in the Diario Oficial of 29 December 1973, establishes temporary rules governing trade union activities and, in transitional article 4, states: 'During the existence of the state of war or of siege now prevailing in the country, trade union organizations may only hold meetings which are of an informative nature or are concerned with the internal management of the organization in question.

'Such meetings must be held outside working hours, the provisions relating to the curfew being respected, and a written notice of the holding of the meeting, the place of assembly and the agenda must be submitted not less than two days beforehand to the police unit that is nearest the place of work or the headquarters of the organization, whichever is appropriate'."

The curfew was raised on 10 March 1978 by Decree No. 391 of the Ministry of Defence.

Legislative Decree No. 1009 was discussed on page 15 of this report. In that connexion, it is important to note article 1, paragraph 6, of Constitutional Act No.3, which governs the right to liberty and security of person and provides

that within 48 hours of the arrest or detention of any person by the authorities, the competent judge must be notified and the person in question placed at his disposal. Article 1 of Legislative Decree No. 1877, which has constitutional status, states: "By virtue of the declaration of a state of emergency, as regulated by the Law on the Security of the State, the President of the Republic shall be empowered to detain persons for up to five days in their own homes or in places other than goals".

As is evident from the provisions reproduced above, the exceptional legislation enacted in Chile is based on the occurrence of situations liable to endanger the security of the State or the rule of law and is not a mere whim of the authorities. Moreover, this exceptional legislation embodies procedural and administrative remedies to ensure that the powers granted by the legislation in question are exercised subject to the utmost respect for the laws that have established and govern them.

Paragraph 2: Comment

As is evident from the foregoing commentary, none of these exceptional provisions violates or enables to be violated the rights established in articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 of the Covenant.

Paragraph 3: Comment

Chile, by a communication of 18 August 1976, informed the Secretary-General of the United Nations that, as a result of the state of siege, the rights referred to in articles 9, 12, 13, 19 and 25 (b) were being restricted in Chile. By a communication of 6 April 1978, it informed the Secretary-General that the state of siege had been terminated and the curfew raised.

Article 5

Paragraphs 1 and 2: Comment

As has been pointed out in the first part of the present report and as can be inferred from the analysis of individual articles, the rights set forth in the Covenant were provided for in the Chilean legal order prior to the drafting of the Covenant. The Chilean legal system affords constitutional and legal protection for each of these rights and attaches severe penalties to their violation. It must be stated once again that Chile's respect for the rights embodied in the Covenant does not derive from its signature and ratification of that instrument but has its origin in the concept of humanism which permeates and is given expression in the various provisions which together constitute its body of law and which, for the most part, have been applicable since the time of independence.

Constitutional Act No. 3, of September 1976, lays down constitutional rights and guarantees which match, and go beyond, the rights and guarantees set forth in the Covenant. Preambular paragraph 11 stipulates that

> "No one may invoke any constitutional or legal precept in order to infringe the rights and freedoms recognized in this Act or to impair the integrity or functioning of the State or of the constituted regime;

"Any act by individuals or groups committed for the purpose of disseminating doctrines detrimental to the family, advocating violence or a concept of society based on class struggle or inimical to the established regime or the integrity or functioning of the State is unlawful and contrary to the institutional order of the Republic."

Apart from the fact that the Covenant is part of the legal order of Chile, "respect for treaties" and "good faith" in their performance are and have always been principles observed by Chile in its international relations.

Article 6

Paragraph 1: Comment

Chile considers that the right to life, being the inherent attribute of every human being to preserve his existence and, by extension, his physical integrity, not only involves the proclamation and protection of this concept in constitutional or legal texts or in the punishment of anyone who makes an attempt on the life of another, but also requires to be complemented by provisions which make it possible to develop the natural capacities and attributes of the human being. The Constitution of 1925 did not make express provision for this right, but many of its clauses guarantee rights which are fundamental to the existence and development of the individual: the right to property, the right to work and its protection, the right to social security, the right to participate in the social, cultural, civic, political and economic life of the nation, and other rights of no lesser importance. The provisions of the 1925 Constitution have been supplemented by Constitutional Act No. 3 which, in its article 1, paragraph 1, stipulates "the right to life and integrity of person, without prejudice to the applicability of penalties established by law".

"The law protects the life of the unborn".

In fulfilment of this provision, the constitutional text concerned includes stipulations covering: the right of ownership, the right to health, the right to live in a pollution-free environment, freedom of work and its protection, and the right to social security.

Furthermore, the Penal Code, in part II, title VIII, provides for the punishment of "crimes and offences against the person", while article 390 stipulates that: "anyone who, knowing the relationships which bind them, kills his father, mother, or child, whether legitimate or illegitimate, or any other of his legitimate ascendants or descendants, or his spouse, shall be punished as a parricide and sentenced to long-term imprisonment with compulsory work in the maximum degree or to death". Article 391 states that: "Anyone not covered by the previous article who kills another person shall be punished", while article 393 provides that "anyone who knowingly assists another to commit suicide, shall be sentenced to medium-term imprisonment with compulsory work in its intermediate to maximum degrees, should death result".

Articles 342 to 345 of the same legal text provide for the punishment of anyone who performs, or assists in the performance of abortion. Article 394 penalizes anyone committing infanticide.

The provisions regarding the death penalty are examined in the following section.

Paragraph 2: Comment

The death penalty or capital punishment is retained in our Penal Code, article 21 of which makes provision for the scale of punishment. Crimes punishable by this sentence are those of the utmost seriousness, such as homicide committed in the circumstances specified by the Penal Code, parricide, treason, terrorism and other crimes of similar gravity, but in no case is it the only penalty that can be applied, and the court always has the power to select one from a number of penalties of varying degrees of severity, depending on the motives and circumstances of the crime. Furthermore, article 77, paragraph 2, of the Penal Code stipulates that "the death penalty cannot be imposed only in consequence of a combination of aggravating circumstances which may have contributed to increasing the penalty, if that penalty is not explicitly indicated as applicable to the crime being penalized".

In regard to the fact that crimes must be punished only in accordance with a law in force at the time when the crime is committed, it should be pointed out that article 1, paragraph 3, of Constitutional Act No. 3 of September 1976, in its final subparagraph, stipulates that: "In criminal cases, no offence shall be punishable by a penalty other than that specified in a law promulgated prior to the commission of the offence, unless a new law is more favourable to the accused". This same provision is repeated in similar terms in article 18 of the Penal Code, which came into force in 1974; furthermore, under our legal order, the non-retroactivity of the criminal law has always been guaranteed in the Constitution. Furthermore, pursuant to article 79 of the Penal Code, no punishment can be imposed except in accordance with a final judgement. Nor can any penalty be carried out other than as prescribed by the law, or in circumstances other than those stipulated in its text (Penal Code, article 80).

With regard to the imposition of the death penalty by a Collegiate Court, title V (2) of the Organic Code of Tribunals, concerning decisions of the Courts of Appeals, stipulates in its article 75:

> "The death penalty cannot be passed in the second instance except by the unanimous vote of the Court. When only a simple majority votes for the imposition of the death penalty, the penalty immediately inferior in degree shall apply.
>
> "If the Court of Appeals pronounces sentence of death, it shall immediately proceed to consider whether the condemned person appears to merit clemency and what punishment proportionate to his culpability might be substituted for the death penalty. The result of such consideration shall be incorporated in an opinion which the Court shall in due course submit to the Ministry of Justice, together with a copy of the judgements of first and second instance. The Ministry shall submit the file relating to the case to the President of the Republic for a decision as to whether or not there are grounds for commuting the sentence or for pardon."

Furthermore, it should be pointed out that article 74 of this legal text states that

"If in a criminal matter half of the votes are cast in favour of the accused, either for his acquittal or for the imposition of a lesser penalty than that for which the other judges have voted, that opinion shall form the judgement.

"If there is a deadlock as to which opinion is the more favourable to the accused, that for which the senior member of the court has voted shall prevail."

The present Regulations regarding the enforcement of the death penalty have been in force since 2 June 1965; they provide for the measures necessary to ensure that the execution is carried out in a humanitarian manner.

Paragraph 3: Comment

On 3 June 1953, Chile ratified the Convention on the Prevention and Punishment of the Crime of Genocide, which accordingly became a law of the Republic with binding force in respect of all its provisions.

Paragraph 4: Comment

Chilean law grants the right to seek pardon or commutation of sentence not only to individuals under sentence of death but also to anyone sentenced for any crime by any court, whether ordinary or extraordinary, always provided that the legal requirements are met.

Pardon may be granted in general or individual form. Pardons of the first type, applicable to persons, not named individually, who have committed particular offences, lie within the authority of the Governing Junta, acting in exercise of the legislative power, and, together with amnesty, are covered by article 44, paragraph 13, of the 1925 Constitution. As regards personal pardons - i.e., the pardoning of one or more persons named individually - Legislative Decree No. 527, dated 17 June 1974, which ratified the Statute of the Governing Junta, stipulates in its article 10, paragraph 10, that the President of the Republic has special authority "to grant individual pardons in consultation with the Governing Junta". This prerogative was among those referred to in the 1925 Constitution.

The Regulations regarding pardons were issued on 21 July 1969 and published in the Diario Oficial on 12 August 1969; article 1 stipulates that any accused person on whom sentence has been passed may petition the President of the Republic for the remission, commutation or reduction of his sentence, provided that he meets the requirements laid down in these Regulations, of which a copy is annexed. Article 11 provides that "in certain specified cases, the President of the Republic may dispense with the requirements and procedures established in the present Regulations. In such circumstances, the decree of pardon must include a statement of reasons". Furthermore, article 12 provides that the pardon will override any decision concerning the conditional release of an offender.

As regards the effects of the pardon, article 93 of the Penal Code provides that a pardon extinguishes criminal responsibility but does not rid its beneficiary of the status of convicted person for the purposes of repetition of the same offence or commission of a different offence and otherwise as determined by law. Articles 43 and 44 of the Penal Code stipulate that, when deprivation of the right to hold public posts and offices and to engage in a profession is an accessory penalty, the pardon relating to the principal penalty does not cover such deprivation unless expressly extended thereto. When the pardon refers to

such deprivation, whether as principal or as accessory penalty, it restores the convicted person in the exercise of the profession which he held at the time of sentencing, but not to the honours, posts, appointments or offices of which he may have been deprived.

Amnesty, as explained above, is a prerogative of the Governing Junta and is the broadest pardon available under our criminal law in respect of criminal responsibility since, according to article 93 of the Penal Code, it completely extinguishes the penalty and all its effects.

Paragraph 5: Comment

Article 10, paragraphs 2 and 3 of the Penal Code includes among those exempt from criminal responsibility persons below 16 years of age and persons above 16 but below 18 years of age, unless they are found to have acted with knowledge of the wrongful nature of their deed. The appropriate Juvenile Court must make a prior declaration on this point so as to be able to try the person concerned. Law No. 16,618, published in the Diario Oficial of 8 March 1967 stipulates in article 28, paragraph 2, that the prior declaration as to whether or not the person concerned acted with such knowledge must be made by the legally qualified judge for Juveniles, after hearing the Expert Council of the House of Minors or one of its members in the form established by the Regulations. If there is no House of Minors, the official specified in article 3, paragraph 1, must be heard. Article 72 of the Penal Code states that:

> "A person below 18 and above 16 years of age who has been declared by the relevant court to have acted with knowledge of the wrongful nature of his deed and hence is not exempt from responsibility, shall be liable to the penalty inferior in degree to the minimum of those specified by law for the offence of which he is guilty.
>
> "In cases in which persons above 18 years of age and persons below 18 years of age are responsible for a particular offence, the former shall be liable to the penalty that would have been applicable to them without this circumstance, increased by one degree if they have prevailed upon the minors to commit the offence, a matter which will be assessed by the judge on the basis of equity."

It will be seen from the various provisions cited and reproduced that a person below 18 years of age is fully protected in regard to criminal responsibility and in that he can never be sentenced to death. Moreover, it should be emphasized once more that there is no offence which is punishable solely by the death penalty in Chile. Furthermore, persons below 16 years of age and above 16 but below 18 years of age who have acted without knowledge of the wrongful nature of their deed will be judged by a legally qualified judge for juveniles, who cannot adopt in their regard measures other than those stipulated in the Law on Minors (article 28, paragraph 1 of the law concerned).

Pregnant women are protected by the following provisions: article 75 of the Civil Code, paragraph 20: "any punishment of a mother which would have the effect of endangering the life or health of the infant in her womb must be postponed until after the birth". Furthermore, article 85 of the Penal Code stipulates: "The death penalty shall not be carried out on a pregnant woman, nor shall she be informed of the sentence which has been imposed on her until 40 days have

elapsed following childbirth". The provisions which have been quoted not only protect the life of the unborn child but also prevent the mother from undergoing a shock which might affect the child or drive her to commit suicide.

Paragraph 6: Comment

The Government of Chile has taken due note of the contents of this paragraph.

Article 7

Comment

Chilean constitutional, criminal and military legislation categorically prohibits the use of torture and cruel and degrading punishment. The philosophy underlying our legal system is based on respect for, and full development of, the human person, to which end his physical, moral and spiritual integrity are guaranteed. Accordingly, the 1925 Constitution provides in article 18:

> "In criminal cases, the accused cannot be required to testify under oath about his own actions, nor can his ascendants, descendants, spouse, or relations up to and including the third degree of consanguinity or second of affinity, be required so to testify.
>
> "Torture cannot be administered, nor can the penalty of confiscation of property in any case be imposed, always excepting seizure in the cases established by law."

Constitutional Act No. 3, in article 1, ensures for all individuals the right to life and integrity of person and prohibits "the application of any unlawful coercion".

In Chile, torture is treated as a criminal act which, for example, is punishable under the Penal Code. Article 150 of the Code states:

> "The penalties of medium-term imprisonment, with or without compulsory work and suspension in any degree, shall be applied to:
>
> 1. Anyone who orders a prisoner to be held incommunicado for an unduly long period or ensures that he is so held, or subjects him to torture or to unnecessarily harsh treatment. If the administration of torture or of unnecessarily harsh treatment injures or results in the death of the subject, the person responsible shall incur the penalties prescribed for those offences in their maximum degrees.
>
> 2. Anyone who is responsible for arbitrary imprisonment or detention in places other than those designated by law."

Article 285 stipulates that: "Any public employee who, in the course of his duties, wrongfully harasses anyone or uses unlawful or unnecessary coercion in the performance of such duties, shall be liable to the penalty of suspension from office in any degree and to a fine of between 60 and 600 escudos." Furthermore, the Code of Penal Procedure, part II, title VI, regulates the form in which statements are to be taken from an accused person and makes the following provision in article 525: "It is strictly forbidden to employ promises, coercion or threats to induce the accused to tell the truth, or to put any deceitful or suggestive

question, such as would assume recognition of a fact which the accused has not actually admitted." Law No. 5180, published in the Diario Oficial of 17 February 1938, which regulates the activities of the Directorate-General of Investigation and Detection stipulates in article 6:

> "Officials of the Service of Investigation are prohibited from committing any act of violence deliberately designed to elicit particular statements from the person in custody.
>
> "Infringement of this provision shall be punished by the penalties established in article 255 of the Penal Code."

We believe it appropriate to mention that the penalties applicable in Chile are as follows: Criminal penalties: death, life imprisonment with compulsory work, long-term imprisonment with compulsory work, long-term imprisonment without compulsory work, forced residence in perpetuity, long-term banishment to a specified place, long-term exile in a place of the offender's choosing, long-term forced residence, absolute and perpetual deprivation of the right to hold public posts and offices, of political rights and of the right to exercise a profession, special and perpetual deprivation of the right to hold a particular public post or office or to exercise a particular profession, absolute and temporary deprivation of the right to hold public posts and offices or to exercise a profession, special and temporary deprivation of the right to hold a particular public post or office or to exercise a particular profession. Penalties for offences: medium-term imprisonment with compulsory work, medium-term imprisonment without compulsory work, medium-term banishment to a specified place, medium-term exile in a place of the offender's choosing, medium-term forced residence, local banishment, suspension of the right to hold a public post or office or to exercise a profession, perpetual deprivation of the right to drive mechanically propelled or animal-drawn vehicles, suspension of the right to drive mechanically propelled or animal-drawn vehicles. Penalties for minor offences: detention, perpetual deprivation of the right to drive mechanically propelled or animal-drawn vehicles, suspension of the right to drive mechanically propelled or animal-drawn vehicles. Penalties common to the foregoing: fine, loss or confiscation of the instruments or effects of the offence. Accessory penalties for crimes and offences: solitary confinement, deprivation of communication with persons outside the penal institution. Suspension or deprivation of the right to hold public posts and offices, of political rights and of the right to exercise a profession are also accessory penalties in cases in which, although not specifically prescribed by law, such penalties are by law a concomitant of other penalties. To these should be added loss of nationality on grounds indicated in preceding articles.

Finally, as may be discerned from the guarantees relating to integrity of person and personal freedom, no one can be subjected without his free consent to medical or scientific experimentation.

Article 8

Paragraph 1: Comment

Chile was one of the first countries to adopt measures condemning slavery and the slave-trade. In 1811 the National Congress proclaimed the so-called "liberty of the womb", namely freedom for all children born to slaves in Chile after that date. Later, a senatus consultum of 1823 proclaimed the "total abolition" of slavery in the Republic. This principle was embodied in the different Constitutions in force in Chile during the nineteenth century. Slavery and the slave-trade were roundly and vigorously condemned in the 1925 Constitution, article 10, paragraph 1, of which provided for:

"Equality before the law. In Chile there is no privileged class.

"In Chile there are no slaves, and anyone who sets foot on its territory is at liberty. Chileans cannot engage in the slave-traffic. No alien who has engaged in it can live in Chile or become naturalized in the Republic."

The latter provision is the only one of its kind in the Constitution of 1925, and it has been taken into account in considering the issue of letters of naturalization. Furthermore, Constitutional Act No. 3, in its article 1, states that "men are born free and equal in dignity", and in paragraph 2 of that article assures:

"Equality before the law. In Chile there are no privileged individuals or groups.

"Men and women shall enjoy equal rights.

"Neither the law nor the authorities may establish arbitrary discriminations."

It should be pointed out that Chile's policy regarding slavery and personal freedom has been implemented at the international level through its signature and ratification of conventions condemning the practices concerned.

Paragraph 2: Comment

The contents of this paragraph are closely related to the previous point. In Chile there is no personal servitude and, as can be seen from the constitutional and legal rules regarding personal freedom, equality before the law, equality of origin and dignity and the non-existence of privileged classes or groups, which have been cited throughout this report, the possibility of its occurrence is altogether precluded. The last vestiges of personal servitude, which found their most characteristic expression in the "encomienda" system, were eliminated when Chile became a democratic Republic.

Paragraph 3: Comment

Freedom of work and its protection were guaranteed for the first time in Chile in the Political Constitution of 1925. The framers of the Constitution, conscious of the need to enhance the dignity of the working classes, provided in article 10, paragraph 14 for:

"Freedom of work and its protection. Everyone has the right to work, to free choice of employment, to remuneration adequate to ensure him and his family a standard of living compatible with human dignity, and to a fair share of the profits derived from his labour.

"The right to join a trade union within the framework of his activities or of the industry or occupation concerned, and the right to strike, in accordance with the law.

"Trade-union organizations, federations and confederations shall enjoy legal personality merely by virtue of registering their statutes and constituent instruments in the form and under the conditions determined by law.

"Trade unions are free to accomplish their own objectives.

"No type of work or industry may be prohibited unless it is incompatible with public morality, safety or health or with the requirements of the national interest and is defined as such by the law."

Constitutional Act No. 3, in article 1, paragraph 20, amended and supplemented the foregoing provisions, ensuring:

"Freedom of work and its protection.

"Everyone has the right to work. Any discrimination not based on ability or personal qualifications shall be prohibited, save that the law may require Chilean nationality in specified cases.

"Everyone shall also have the right to free choice of employment and to just remuneration ensuring him and his family at least a standard of living compatible with human dignity.

"The law shall establish machinery providing for various forms of participation by the worker in the working human community constituted by the enterprise.

"No type of work or industry may be prohibited unless it is incompatible with public morality, safety or health or with the requirements of the national interest and is defined as such by the law.

"The law shall specify the professions requiring degrees and the conditions that must be fulfilled in order to exercise them.

"Membership in professional associations shall be compulsory in the cases expressly required by the law, which may only require it for the exercise of a university profession.

"Membership in a trade-union organization may not be stipulated as a requirement for engaging in a particular type of work.

"The law shall establish suitable machinery for the equitable and peaceful settlement of labour disputes, which must involve conciliation procedures and compulsory arbitration.

"Decisions regarding the dispute, in the case of arbitration, shall be taken by special expert tribunals, whose decisions shall be binding, and which shall ensure that justice is done between the parties and that the interests of the community are upheld.

"In no circumstances may a strike be declared by State or municipal employees or by persons working in enterprises providing public services or whose paralysation could cause serious damage to health, to the provision of supplies to the population, to the economy of the country or to national security."

(b) In Chile, the penalty of forced labour does not exist. Law No. 11,625, published in the Diario Oficial of 4 October 1954, makes stipulations regarding anti-social conduct in its article 3, paragraph 2, which provides that, as a security measure, anti-social individuals can be committed to a work-house or agricultural colony for an unspecified period not exceeding five years. This Law classifies as anti-social individuals, inter alia, drug addicts, habitual drunkards, habitual unlicensed beggars, and persons presumed to be habitual criminals by reason of their repetition of punishable offences. In no case, however, would such a measure represent hard labour, but only a measure of social rehabilitation. Article 9 of this Law stipulates that work done in a work-house or agricultural colony will be remunerated, that 50 per cent of the proceeds will be applied to the formation of a reserve fund which will be handed over to the individual when he leaves the institution and that the other 50 per cent will be applied to meeting expenses occasioned by him, furnishing any maintenance which he may be required to pay, providing items which will improve or ease his lot and paying the costs of legal proceedings. In no case can the hours of work exceed those stipulated by the law and the weekly rest-period must be respected.

(c)(i) In connexion with work to be performed by persons sentenced to imprisonment or detention, article 89 of the Penal Code stipulates that, as a general rule, such individuals can perform work of their own choice and for their own benefit, provided that it is compatible with the discipline of the penal institution. The exception arises when a prisoner has incurred civil liability as a result of the offence committed or has a responsibility to compensate the penal institution for expenses occasioned by him and lacks the necessary means to discharge the obligations deriving from those responsibilities or has no known honest employment or livelihood; in such a case, the prisoner is required to perform work in the institution until he has fulfilled those responsibilities with the proceeds from his labour and is able to cover his subsistence.

(ii) Service of a military character is regulated by Law No. 11,170, dated 30 April 1953, which was published in the Diario Oficial of 12 June 1953; a copy of the Law is attached.

(iii) and (iv) The situation in the former case is regulated by the provisions of Law No. 12,927, concerning the internal security of the State, to which we have referred previously. This Law grants the Chief of the emergency area powers to adopt appropriate measures. The second point does not require further comment.

Article 9

Comment

Among the most important values upheld by the political and legal system of Chile is the safeguarding of personal freedom and security. The Constitution of 1925 did not expressly stipulate this right, which is to be inferred from article 10, paragraph 12, among other provisions. Under this paragraph, the Constitution ensures to all inhabitants of the Republic:

"Inviolability of the home.

"The house of any person living in Chilean territory can be forcibly entered only for a special purpose, determined by law, and by virtue of a warrant from the competent authority."

Articles 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 of our Fundamental Charter, which laid down the constitutional rules on this matter, were modified by article 2 of Constitutional Act No. 2, which stipulates:

"The State shall promote the common good, creating social conditions which enable each and every member of the national community to achieve his or her greatest spiritual and material potential, in full respect for the safety, freedom and dignity of the human person and of the people's right to participate in national life on a basis of equal opportunity."

Furthermore, Constitutional Act No. 3, in its article 1, paragraph 6, establishes the right to liberty and security of person and, consequently, the right to reside and remain at any place in the Republic, to move from one place to another and to enter or depart from the national territory, provided that legal requirements are observed and always excepting any prejudice to third parties. Sub-paragraphs (a), (b), (c), (d), (e) and (f) of this article regulate this matter in the following terms:

"(a) No one shall be deprived of or restricted in his personal liberty, except in the cases and in the manner laid down by the Constitutional Acts, the Constitution and the laws.

"(b) No one shall be arrested or detained except by order of a public officer expressly empowered thereto by law and after the person concerned has been notified of such order in due legal form. However, a person taken in flagrante delicto may be detained solely for the purpose of placing him at the disposal of a competent judge within the following 24 hours.

"If the authorities cause any person to be arrested or detained, they shall, within the following 48 hours, notify the competent judge and place the person concerned at his disposal. The judge may, by an order stating the reasons, extend that time-limit to not more than five days.

"(c) No one shall be arrested or detained, or held in custody or committed to prison pending trial, except in his home or in public places intended for that purpose.

"The prison authorities shall not admit anyone to prison as an arrested or detained person or a person committed pending trial without recording the order for his admission, issued by the legally empowered authority, in a register which shall be public.

"The fact that a person arrested or detained, or committed to prison pending trial, is being held incommunicado shall not prevent the officer in charge of the house of detention from visiting him. The said official shall be required, whenever so requested by the arrested or detained person, to transmit to the competent judge a copy of the detention order, or to demand that a copy thereof should be given to him, or to give him a certificate evidencing that the person in question is under detention, if at the time of his detention this requirement was not complied with.

"(d) Provisional release is a right of the person detained or placed in custody pending trial. It shall in all cases be granted, unless detention or custody pending trial is considered by the judge to be strictly necessary for the purpose of the preliminary examination or for the safety of the victim of the offence or of society. The requirements and procedures for obtaining provisional release shall be established by law.

"(e) In criminal cases, the accused shall not be obliged to testify under oath concerning his own act; the same shall apply to his ascendants, his descendants, his spouse and such other persons as may, according to the case and the circumstances, be specified by law.

"There shall not be imposed as punishment the loss of acquired rights or the penalty of confiscation of property, without prejudice to the attachment of property in cases specified by law.

"However, the penalty of confiscation of property shall be permissible in the case of unlawful associations.

"(f) In the event of the definitive termination of proceedings (sobreseimiento) or acquittal, a person who has been tried or convicted in any court as a result of a judicial decision which the Supreme Court declares to have been unjustifiably in error or arbitrary shall be entitled to compensation from the State for any material and moral damage suffered by him. The amount of compensation shall be judicially determined in brief summary proceedings at which the evidence shall be appraised on the basis of equity."

In addition to the constitutional rules which, in Chile, guarantee the matters covered by article 9 of the Covenant, the Penal Code, in articles 141 to 143, provides for the punishment of "Anyone who unlawfully confines or detains another person, depriving him of his liberty", and "Anyone who, other than as permitted by law, apprehends a person in order to hand him over to the authorities".

Furthermore, the Code of Penal Procedure, in the third paragraph of part II, title IV, lays down regulations covering "Custody pending Trial".

Finally, it is important to emphasize that article 16 of the 1925 Constitution made provision for the action for enforcement of rights or habeas corpus, a remedy now embodied in chapter II of Constitutional Act No. 3 and regulated by other legal provisions to which we have already referred in the general section.

Article 10

Comment

The provisions regarding procedural guarantees which have been analysed protect individuals deprived of their liberty and ensure due respect for the human person. It is hard to imagine how loss of dignity could occur when the basic principle of the Chilean criminal order is to rehabilitate the convicted person and to equip him to play a dignified role in society.

The Chilean Penal Code, in part I, title III, regulates the legal situations covered by article 10, paragraphs 2(a) and 2(b), of the Covenant. Thus article 87 of the Code stipulates that:

> "Persons sentenced to medium-term imprisonment with compulsory work shall serve their sentences in penitentiaries; persons sentenced to detention shall serve them in prisons. In both types of establishment offenders below 20 years of age shall be duly separated, so long as no special establishment has been built in which they can serve their sentences."

This article was amended by Law No. 4447 of 25 October 1928, regarding the protection of minors, and subsequently by Law No. 16,618, which established the definitive text of the Law on Minors, dated 3 February 1967. The latter Law created a legal person under public law, entitled the National Juvenile Council, and entrusted it with the task of planning, supervising, co-ordinating and promoting the functioning and organization of public or private bodies and services affording assistance and protection to minors who find themselves in an irregular situation.

It is of great interest to point out that, as the result of the enactment of the 1928 Law on Minors, the Juvenile Courts were created in Chile as part of the Chilean judicial power.

Law No. 16,618 further stipulates that, at the seat of every juvenile court, there shall be an establishment known as the House of Minors, intended for the reception of the latter when they are detained or are to appear before the judge. Such establishment shall also fulfil the functions of a centre of observation, transit and distribution.

The House of Minors shall have two completely separate sections. Minors believed to have committed acts which constitute crimes, offences or minor offences shall be admitted to one such section and shall remain there until the judge determines whether they acted with knowledge of the wrongful nature of their deed or takes a decision on their case. Minors who only require assistance and protection shall be admitted to the other such section, known as the Centre for Observation, Transit and Distribution, and shall remain there pending the adoption of measures in their regard.

Finally, we must state that our prison system grants anyone sentenced to imprisonment or detention freedom to perform work of his choosing for his own advantage, always provided that such work is compatible with the disciplinary rules of the penal establishment.

Article 11

Comment

In our country there are no legal rules under which a person can be imprisoned merely on the ground of inability to fulfil a contractual obligation, save that, on an exceptional basis, it is permitted to detain a person guilty of fraudulent bankruptcy, which constitutes a criminal offence.

Article 12

Paragraphs 1, 2, 3 and 4: Comment

The 1925 Political Constitution of the State, in its article 10, paragraph 15, guarantees "Freedom to reside at any place in the Republic, to move from one place to another, or to depart from the national territory without being subject, other than as determined by law, to arrest, prosecution, imprisonment or local banishment, provided that the police regulations are complied with and always excepting any damage to third parties".

As was stated in connexion with article 9 of the Covenant, our constitutional rules, as set forth in article 1, paragraph 6, of Constitutional Act No. 3, also guarantee the right to liberty and security of person and, consequently, the right to reside and remain at any place in the Republic, to move from one place to another, and to enter or depart from the national territory, provided that legal requirements are observed and always excepting any prejudice to third parties.

Article 1, paragraph 6 (a), of Constitutional Act No. 3 provides that no one shall be deprived of or restricted in his personal liberty, except in the cases and in the manner laid down by the Constitutional Acts, the Constitution and the laws.

In laying down the rules mentioned above, the constituent power made provisions for three specific rights under the guarantee of personal liberty:

1. Freedom of movement, by virtue of which all inhabitants may move from or to any place in the national territory, and depart from and return to it;

2. Freedom of residence, under which any person can become domiciled or reside in the place of his choice, change his domicile or residence and establish another; and

3. Protection against arbitrary acts, according to which no one can be subjected to arrest, prosecution, imprisonment or local banishment except in the cases and in the manner laid down by law.

Restrictions on the above-mentioned rights can be imposed only for reasons of national security, in emergency situations which endanger the attainment of national objectives. Under article 2 of Constitutional Act No. 4, the following are cases of emergency: situation of external or internal war, civil commotion, latent subversion and public disaster.

Since this question has been dealt with in the general part of this report, reference should be made to the contents of that section for the purposes of analysing these states of emergency.

Article 13

Comment

Law No. 12,927, concerning the security of the State, published in the Diario Oficial of 6 August 1958 lays down regulations in article 3 of title I ("Offences against National Sovereignty and the External Security of the State"), covering the legal status of an alien convicted of any of the offences referred to in that title. This article provides as follows: "The President of the Republic shall order any alien convicted of any of the offences referred to in this title to be expelled from the national territory, once his sentence has been served. Expulsion shall not, however, be effected in the case of aliens who have a Chilean spouse or children."

Subject to the exception mentioned, Chilean criminal law makes no distinction between Chileans and aliens as regards punishment for criminal acts or omissions.

Article 14

Comment

As mentioned earlier, the Political Constitution of the State of 1925, in its article 10, paragraph 1, laid down the principle of equality before the law, and in its articles 11 to 20 prescribed the form in which a person should or could be arrested, on the basis of the principle that no person may be convicted except by due legal process and pursuant to a law promulgated before the commission of the act forming the subject of the judicial proceedings.

Constitutional Act No. 3, in article 1, paragraphs 2 and 3 proclaims these principles by ensuring to all persons:

"2. Equality before the law. In Chile there are no privileged individuals or groups.

"Men and women shall enjoy equal rights.

"Neither the law nor the authorities may establish arbitrary discriminations."

"3. Equal protection of the law in the exercise of their rights.

"Everyone has the right to legal defence and no authority or individual may prevent, restrict or interfere with the due intervention of counsel if it has been requested. In the case of members of the armed forces, the forces of order and the public security forces, this right shall be governed, as regards administration and discipline, by the relevant norms of their respective regulations.

"The law shall make provision for legal advice and defence in the case those who are unable to obtain it for themselves.

"No one shall be tried by special commissions, but only by the tribunal assigned to the person concerned by law and pre-established by law.

"Any judgement of an organ exercising jurisdiction must be based on a lawfully conducted prior trial. The legislator shall in all cases establisl guarantees of a reasonable and just proceeding.

"In criminal cases, no offence shall be punishable by a penalty other than that specified in a law promulgated prior to the omission of the offence unless a new law is more favourable to the accused".

The Chilean Code of Penal Procedure provides in its article 1 that the courts of the Republic have jurisdiction over Chileans and over aliens for the purpose of trying offences committed in Chilean territory, save in the cases excepted under the generally recognized rules of international law.

Article 14, paragraph 1, second sentence of the Covenant states: "In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

The Chilean legislation regarding procedure lays down the principle of the publicity of judicial proceedings. Article 9 of the Code of Organization of the Courts provides that judicial proceedings are public, except as otherwise provided by law. So far as criminal procedure is concerned, one of these exceptions is the preliminary investigation or examination which is conducted in secret; this precedes the trial and its object is to gather the necessary evidence for the purpose of bringing a charge against the accused or of declaring that there is no case to answer. On the completion of the secret preliminary investigation, the accused is formally charged and statements for the defence are submitted; neither this nor any subsequent stage of the proceedings is covered by any exception whatsoever to the publicity of judicial proceedings.

As regards the other procedural guarantees contained in article 14, paragraph 1, of the Covenant, Chilean legislation lays down clear, precise and easily applicable rules for determining which is the competent court to deal with a civil or criminal case, and so avoids any unnecessary delay which might prejudice the defendant.

A further requirement of the provision under comment is that the judicial body must be independent and impartial. In this respect, the Code of Organization of the Courts, in its articles 194 to 221, makes full and elaborate provision for a whole series of objections, and challenges by means of which any person who has to appear in court may apply for the exclusion from his case of a judge whom he considers to be lacking the necessary impartiality for trying him. In addition, in certain circumstances the judge himself is required - because personally implicated - to renounce his participation in the proceedings, without waiting for the objection of the interested party; in any such case the judge communicates the reasons for his renunciation to the judge designated by law to act in his stead.

The independence of the courts of justice is laid down in general terms in article 80 of the Political Constitution of 1925 and in Legislative Decree No. 1 of 1973 and has been developed in a number of provisions regarding the structure and functioning of the judicial power which guarantee their complete independence in making the decisions within their competence.

The requirement that the court must have been established by law is one of the constitutional bases of the judicial power in the Chilean procedural system; it is laid down in article 80 of the Political Constitution of 1925 and repeated in a number of other legislative provisions.

Regarding the power of the courts of justice to restrict the disclosure by the Press of judicial proceedings in cases where such disclosure might prejudice the interests of justice Chilean legislation contains rules that show how conscientiously this delicate matter has been regulated. For example, the stage of the trial referred to as the investigation is secret, as has been mentioned earlier. In addition, the judges have the power to place in confidential safe-keeping any records concerning a trial in process which, by their nature, might affect the honour of the persons or other interests that deserve protection. The fact that a record is placed in confidential safe-keeping does not mean that it is secret stricto-sensu; it means, rather, that knowledge of the proceedings is limited strictly to the officials, interested parties and advocates or counsel directly concerned.

The requirement in the Covenant that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law is the subject of a peremptory provision in the Chilean Penal Code, article 79 of which states that no penalty may be enforced except pursuant to a final judgement, which means a judgement against which there is no appeal.

Judicial decisions become operative only upon being notified according to law, subject to certain express statutory exceptions. This is the general rule of procedure for the purpose of obtaining notice of decisions made in judicial proceedings; the rule is laid down in article 38 of the Code of Civil Procedure.

Criminal proceedings are governed by an express provision in articles 276 and 277 of the Code of Penal Procedure, under which the order directing that the accused is to stand trial or is to be released must be notified to the director of the detention centre where the accused person is held in custody and to that person himself; that person, if ordered to stand trial, will indicate in writing the names of the advocate and counsel whom he appoints to defend and represent him. Failing such appointment, the advocate and counsel will be appointed for him by the court from among those on the duty roster; counsel's fees are payable by the accused unless he is eligible for the benefit of legal aid on grounds of poverty.

Under articles 392, 214 and 215 of the Code of Penal Procedure, if the accused does not know Spanish, or is deaf, mute or deaf-mute, an interpreter will be appointed who will be remunerated from public funds.

(b) With reference to the provision under which a person awaiting trial is to have adequate time and facilities for the preparation of his defence, it is pointed out that under article 447 of the Chilean Code of Penal Procedure the

accused has six days' time (excluding holidays) in which to reply to the charge. If there are several accused, and their defences are incompatible, they use this period successively, a rule which in procedural practice is applied in any case. As regards the facilities which the accused may use in his defence, pursuant to article 450 of the said Code he may request the court to take any measures relating to evidence and may produce whatever evidence he considers substantiates his case. Under a number of procedural rules the court may not refuse to receive such evidence; it will weigh the evidence in accordance with specific rules regarding the comparative assessment of evidentiary material. Consequently, under the Chilean rules of procedure the system in force is that of "graded" evidence, although exceptionally the free judgement of the court or its appraisal on the basis of equity is accepted.

(c) The rule in article 14, paragraph 3 (c), of the Covenant is fully satisfied by the Chilean Code of Penal Procedure, article 356 of which states: "Detention pending trial shall last for so long only as the circumstances which occasioned the detention subsist. The person held in custody or detained shall be released at any stage of the case at which his innocence becomes apparent." The article goes on to provide that all the officials concerned in proceedings must prolong for the shortest possible time the custody or detention of untried prisoners or of persons held pending trial.

(d) This requirement is fully recognized in Chile, as explained in the earlier comments on article 14, paragraph 1 of the Covenant.

(e), (f) and (g) The procedural rules in force in Chile fully guarantee these rights, as stated in the earlier comments on paragraph 1 of this article.

4. Under the procedure applicable to juveniles in Chile they qualify for special treatment under article 72 of the Penal Code, which provides that a person under the age of 18 and over the age of 16 years who is not exempt from responsibili in as much as the competent court has held that he acted with discernment is liable to the penalty inferior in degree to the least severe of the penalties prescribed by law for the offence for which he is responsible.

5. Chilean legislation complies throughout with the letter and spirit of article 14, paragraph 5, of the Covenant. Under article 54 of the Code of Penal Procedure, an appeal lies against a final judgement of first instance in a criminal case. An appeal lies also against other judgements which cause irreparable harm.

Furthermore, articles 533 and 534 of the said Code establish the institution of the advisory opinion. Under these provisions, final judgements of first instance, if not reviewed by the next higher court on appeal, are reviewable through the process of the advisory opinion in the following cases:

(1) Where the judgement orders a penalty of imprisonment with hard labour, imprisonment, forced residence, banishment or exile for a term exceeding one year or any more severe penalty;

(2) Where the trial concerns an offence for which the law prescribes a very severe penalty.

6. The right to compensation in cases where a conviction is subsequently reversed is guaranteed by the Constitution. Article 1, paragraph 6 (f), of Constitutional Act No. 3 provides:

> "In the event of the definitive termination of proceedings (sobreseimiento) or acquittal, a person who has been tried or convicted in any court as a result of a judicial decision which the Supreme Court declares to have been unjustifiably in error or arbitrary shall be entitled to compensation from the State for any material and moral damage suffered by him. The amount of compensation shall be judicially determined in brief summary proceedings at which the evidence shall be appraised on the basis of equity".

7. The right guaranteed in this paragraph is fully recognized by Chilean law. The Code of Civil Procedure, in its articles 175, 176 and 177, provides that definitive rulings or final interlocutory decisions have the effect of closing the case. Chilean criminal law applies these provisions by analogy and pursuant to them no person may be tried or convicted for an offence for which he has previously been convicted.

Article 15

Comment

As indicated in the comments on the preceding articles, positive Chilean law complies fully with the rule in article 15 of the Covenant. The Chilean Constitutional Act No. 3 lays down expressly the principle of non-retroactivity in criminal proceedings, except in so far as a new law provides for more favourable treatment for the person concerned.

Article 1, paragraph 3, final subparagraph, states that in criminal cases no offence shall be punishable by a penalty other than that specified in a law promulgated prior to the commission of the offence, unless a new law is more favourable to the accused.

Consequently, the provisions of the Chilean Constitution expressly lay down the principle of the non-retroactivity of the criminal law, and by virtue of this principle a conviction must be consistent with the law as promulgated before the commission of the offence. Accordingly, nobody may be sentenced to a penalty imposed under a law enacted after the commission of the criminal offence, unless it is more favourable to the accused (for example, a law abolishing or reducing the penalty).

Article 16

Comment

The first point to note is that under Chilean law, "juridical personality" is an attribute of juridical persons, such as corporations, companies and the like. */

Not only the Political Constitution of the State and the Constitutional Acts of Chile but also Chilean civil law recognize the right of "juridical personality".

Article 54 of the Civil Code distinguishes between natural and juridical persons. The former are defined in article 55 as follows: "The term 'persons' means any individuals of the human race, irrespective of their age, sex, lineage, or status. They are divided into Chileans and aliens".

Article 56 provides that the term "Chilean" means any person so described in the Constitution; any person not so described is an alien. Article 57 lays down the principle that the law does not recognize any differences between a Chilean and an alien in regard to the acquisition and enjoyment of the civil rights regulated by the Code.

Book I, Title 33, of the Civil Code lays down regulations for juridical persons; article 545 contains the following definition: "A juridical person is a fictitious person, capable of exercising rights and contracting civil obligations and of being represented in court and otherwise. Juridical persons are of two kinds: corporations and philanthropic foundations".

Pursuant to article 72, paragraph 11, of the Political Constitution of the State, it is an attribute of the President of the Republic to approve a grant of juridical personality.

The subject is governed by the regulation regarding the grant of juridical personality, currently in force, which was published in the Diario Oficial No. 26,467 of 18 June 1976.

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*/ Translator's note: The comment relates to the Spanish text of art. 16 of the Covenant which speaks of personalidad jurídica; the English text speaks of "a person before the law".

Article 17

Paragraphs 1 and 2: Comment

The rules in article 17 of the Covenant had their counterpart in article 10, paragraphs 12 and 13, of the Chilean Political Constitution of 1925. The principles are now embodied in article 1, paragraph 10, of Constitutional Act No. 3, which guarantees respect for and protection of the private life and honour of the individual and his family. The inviolability of the home and all forms of private communication is also guaranteed. Homes may be entered and private communications and documents intercepted, opened or searched only in the cases and according to the formalities prescribed by law.

Exceptionally, these rights are not protected in the following cases:

(1) Where the courts order entries for the purpose of investigating an offence or pursuing offenders. Similarly, the retention, inspection or seizure of private correspondence and documents may be ordered by:

(i) The courts, in connexion with the investigation of an ordinary offence or tax offence, in commercial proceedings or when a bankruptcy is declared;

(ii) The customs authorities, for the purpose of determining the amount of taxes and duties chargeable.

Unlawful attacks on a person's honour and good repute are punishable under the positive law in force, not only under the Penal Code but also under Act No. 16,643 concerning abuses of publicity, Act No. 12,927 concerning State security and Act No. 12,045 which established the Association of Journalists.

Three paragraphs of Book II, Title 8, of the Penal Code deal with the punishment of offences against honour, the offence of slander being dealt with in article 412 and that of insult in article 416.

Article 18

Paragraphs 1, 2, 3, 4: Comment

The rights established by this article were embodied in article 10, paragraph 2, of the Political Constitution of 1925. For its part, Constitutional Act No. 3, in article 1, paragraph 11, provides for freedom of conscience, the manifestation of all beliefs and the free exercise of all religions that are not contrary to morality, decency or public order; consequently the various religious faiths may build and maintain places of worship and their appurtenances, provided they meet the safety and health conditions prescribed by law.

As is clear from the provisions cited, the only limitation on this right is that its exercise must not be repugnant to morality, decency or public order.

The present Government, considering that there is a spiritual dimension to human existence and that one of the fundamental objectives of education is to

achieve the full development of the human being, published in the Diario Oficial of 9 March 1978, Decree No. 776 of the Ministry of Public Education to regulate religious instruction in educational establishments.

The Decree provides, in article 3, that religious instruction shall be optional in all educational establishments. At the transitional levels of kindergarten and basic general education, the curriculum shall include two hours of religious instruction a week. At the level of intermediate education the curriculum shall include one hour of religious instruction a week.

Article 19

Paragraphs 1, 2, 3 (a) and (b): Comment

Article 1, paragraph 12, of Constitutional Act No. 3 contains the following provisions: All inhabitants of Chile are free to express opinions and to disseminate information without prior censorship, in any form and through any medium, without prejudice to the responsibility that may be incurred for offences and abuses committed in the exercise of these freedoms, in conformity with the law. However, the courts may prohibit the publication or dissemination of opinions or information affecting morality, public order, national security or the private life of individuals.

The law shall establish a censorship system for the exhibition of cinematographic productions and the advertising therefor.

Similarly, this Constitutional Act guarantees the right to receive truthful, timely and objective information on national and international affairs, with no limitations other than those set forth in the first subparagraph of this paragraph.

Any natural or legal person offended or unjustly referred to by any social communication medium is entitled to have his explanation or correction disseminated free of charge in the conditions prescribed by law by that same social communication medium.

Every natural or legal person shall have the right to establish and publish newspapers, magazines and periodicals in the conditions prescribed by law.

To give effect to these constitutional provisions, the National Radio and Television Council was established to ensure that radio and television broadcasts fulfil the purposes of disseminating information and promoting the educational objectives set forth in Constitutional Act No. 3.

The provisions quoted above guarantee the freedom of the press, radio and television and go beyond the obligations laid down in article 19, paragraphs 1 and 2, of the Covenant.

Exceptionally, freedom of expression is restricted in cases covered by the Act on abuses of publicity and Act No. 12,927 of 1958 concerning State security. The latter Act provides, in article 16, that if any of the offences punishable

under the Act are committed through the medium of the press or radio, the competent court may suspend publication of the offending newspaper or periodical for a period equivalent to six issues thereof or may suspend the broadcasts of the offending broadcasting station for a period of not more than six days. Without prejudice to the foregoing provision, the court may, in serious cases, order the immediate seizure of any issue containing a flagrant abuse of publicity punishable under the Act. The persons affected by a court decision as aforesaid may lodge an appeal with the competent Court of Appeal in any form or manner, and the Court shall briefly and summarily decide the case, after hearing both parties, and shall render its decision within 24 hours of the lodging of the appeal. If the person affected is acquitted, he shall be entitled to compensation from the Treasury.

Article 17 of the Act No. 12,927 provides that, where an offence punishable by the Act (offences against national sovereignty, the external security of the State, the internal security of the State, public order and the normal operation of national activities) is committed by means of the press, the following persons shall be held liable and regarded as principal offenders:

(a) The authors of the published material, unless they can prove that it was published without their consent.

In the case of an article published in exercise of the right of reply and of published material, such as contributions, insertions, manifestos or the like, that is signed, the author shall be liable if he can be clearly identified;

(b) In the case of any newspaper, review or periodical, the editor or his representative;

(c) In default of the author, the editor or the editor's representative, the owner of the newspaper, review or periodical.

If the owner is an incorporated company, liability shall rest with the persons by whom the company is legally represented, and if some other kind of company, with the administering members;

(d) In default of all the persons aforesaid, the printer.

From the particulars given regarding the law in force in Chile concerning the right of freedom of expression it can be seen that the Chilean laws are fully consistent with the provisions of article 19 of the Covenant.

Article 20

Paragraphs 1 and 2: Comment

As stated in the comments on article 19 of the Covenant, both the Political Constitution of Chile and Constitutional Act No. 3 proclaim the right to express opinions and to disseminate information without prior censorship, in any form and through any medium, without prejudice to the responsibility that may be incurred for offences and abuses committed in the exercise of these freedoms, in conformity with the law. The constitutional provision in question adds that the courts may prohibit the publication or dissemination of opinions or information affecting morality, public order, national security or the private life of individuals.

The Penal Code, in Book II, Title I - Crimes and Offences against the External Security and Sovereignty of the State - provides in article 106 that "Any person present in the territory of the Republic who conspires against its external security by inducing a foreign Power to declare war against Chile, shall be punishable by imprisonment for life with compulsory labour at the maximum degree. If hostilities ensued, he shall be liable to the death penalty".

The provisions of that article are applicable to Chileans, even if the machinations to induce a declaration of war against the Republic took place outside the territory of the Republic.

In addition to the Penal Code, Book III, Title II of the Code of Military Justice and Act No. 12,927 on State Security of 6 August 1958, contain provisions declaring such conduct punishable.

Title II of Act No. 12,927 provides in article 4 that, without prejudice to the provisions of Book II, Title II of the Penal Code, an offence against the internal security of the State is deemed to have been committed by any person who, in any form or manner, rebels against the established Government or provokes civil war, and in particular by any person:

(f) Who, in speech or writing or by any other means, propagates or fosters any teaching aimed at the destruction or violent overthrow of the social order or of the republican and democratic form of Government.

Article 6, subparagraph (d) of the said Act provides that an offence against law and order is deemed to have been committed by any person who openly defends or publicizes any teaching, system or method advocating crime or violence in any form as a means of bringing about political, economic or social changes or reforms.

The penalty for the offences mentioned above is imprisonment, forced residence or exile (for varying terms and in varying degrees of severity), without prejudice to whatever additional penalties may be applicable under the general rules of the Penal Code. It will be gathered from the forgoing description that there is no one single provision which textually reproduces the terms of article 20 of the Covenant; nevertheless, incitement to commit an unlawful aggression against any country would be an act committed for an unlawful purpose according to the general rules of law, without prejudice to the application in that case of the aforementioned provisions. Self-defence in the case of external aggression is a different matter.

Article 21

Comment

In article 10, paragraph 4, the Chilean Political Constitution of the State guarantees to all inhabitants of the Republic the right of unarmed assembly without prior authorization. In public squares, streets and other public places, assemblies are governed by municipal regulations.

This constitutional guarantee was introduced into article 1, paragraph 7, of Constitutional Act No. 3 in the same terms as those used in the Constitution.

As was stated in the comments on article 4 of the Covenant, since the country is in a state of emergency, permission for meetings must be requested from the chief of the State of Emergency Zone.

Article 22

Paragraphs 1, 2 and 3: Comment

Mindful of the fact that the right of association is one of those inherent in man's social nature, article 12, paragraph 6, of the Constitution of 1833 established this guarantee. Subsequently, the Constitution of 1925 embodied it in article 10, paragraphs 10 and 14, and on 11 September 1976 it was introduced in article 1, paragraph 9, of Constitutional Act No. 3.

Article 1, paragraph 9, of Constitutional Act No. 3, guarantees to all persons "the right to form associations without prior authorization. Associations must be constituted in accordance with the law in order to enjoy legal personality. No one may be compelled to belong to an association, save as provided in paragraph 20, sixth sub-paragraph, of this article. Associations contrary to morality, public order and the security of the State are prohibited".

These constitutional provisions fully recognize the right laid down in article 22 of the Covenant, namely the right to freedom of association with others, and in addition guarantees that this right may be exercised without the prior authorization of any authority.

The legislation now in force in Chile distinguishes between two types of association: those having an ethical (non-economic) object and those constituted for gainful purposes. The former are known as corporations or foundations and the latter by the generic term "companies".

An association may exercise rights and enter into obligations on its own behalf, in a manner different from that of its members, if it possesses juridical personality. As was indicated in the comments on article 16 of the Covenant, private corporations acquire juridical personality by decree of the President of the Republic; companies, with certain exceptions (such as the limited company), acquire juridical personality by the mere operation of the law on compliance with certain formalities regarding their formation. Corporations created or recognized by the Constitution (e.g. municipalities) or by the law (Social Security Fund, University of Chile, etc.) possess juridical personality

in public law. Nevertheless, there are also exceptions, particularly where bodies which originated as private corporations become statutory entities (e.g. Southern University of Chile).

Although it is true that the Political Constitution of 1925 did not, until 1971, expressly embody the right of trade union association, it is no less true that this right must have been understood as merely one of the rights covered by the generality of the terms of the Constitution.

Regulations governing trade union organization were made under an Act which entered into force on 8 September 1924, later incorporated in the 1931 Labour Code (Decree with the Force of Law, No.178, of 20 May 1931).

It is important to note that under article 1, paragraph 9, of Constitutional Act No. 3, no one may be compelled to belong to an association, except for the exercise of a university profession; advocates, for instance, are required by the organic law of the Association of Advocates to belong to that Association.

The Penal Code provides, in article 292, that "The mere fact of forming an association for the purpose of committing an offence against the social order, decency, persons or property constitutes an offence".

Under article 293 of the Penal Code, the leaders of an association, any persons in a position of authority in the association and persons promoting it are liable to punishment if the object of the association is to commit crimes or offences; under article 294, any other individuals who have taken part in the association, and any persons who deliberately and voluntarily have provided it with forces, weapons, ammunition, instruments for committing the crimes or offences, accommodation, hiding places or meeting places are liable to punishment.

Under article 1, subparagraph (f) of Act No. 12,927 of 6 August 1958, concerning the internal security of the State, any person who joins with other persons in a political party, movement or group in order to commit any of the offences listed in the preceding subparagraphs is deemed to have committed an offence.

On 13 October 1973, the Government, for reasons of national unity and security, issued Legislative Decree No. 77 dissolving Marxist political parties.

It should be explained, with respect to the present state of party political activities under prevailing conditions in Chile, that the legislative provisions relating to the present suspension of political activities are, in addition to the aforementioned decree, Legislative Decrees Nos. 78 and 1697 of 1977.

By Legislative Decree No. 77, the political parties that had a major share in the Marxist-inspired revolutionary activities under the previous Government were dissolved. For reasons of national security, all those parties were declared unlawful associations whose purpose - as demonstrated by their activities - was precisely to destroy the Republican system and to establish a totalitarian dictatorship.

By Legislative Decree No. 78 of 1973 [sic. ? 1977], the other political parties were suspended because it was considered inappropriate to agree to party political activities that would manifestly involve discrimination against the parties that had been dissolved.

The approach of the Supreme Government to the task of national reconstruction was governed by the objective of restoring and reorientating all the country's life forces - the trade unions, the student body, labour and management. The activities of political parties could not be included among such forces since there was ample proof that they were a source of disunity among Chileans.

Lastly, in order to prevent the suspended parties from conspiring against the unity that had spontaneously formed around the image of the fatherland, Legislative Decree No. 1697 of 1977 declared all political parties dissolved until such time as the process of institution-building in the country makes it possible to issue another statute for political parties viewed as currents of opinion rather than as power groups.

It is noteworthy that, in the absence of any specific rule on freedom of trade-union association in the Political Constitution of 1925, the general legislation treated trade unions as on a par with corporations not having a gainful purpose, and only allowed them, like such corporations, to acquire juridical personality by Presidential decree.

In 1967, Act No. 16,625 on rural workers' trade unions referred to this in connexion with associations in the agricultural sector and provided that such associations would acquire juridical personality by merely registering their statutes and constituent instruments with the Department of Labour.

In 1971, the Constitutional reform known as the "Covenant of Constitutional Guarantees" came into force; the Christian Democrat Party linked its support for the reform to its vote for Mr. Allende in both houses of Congress. The reform added to the original paragraph 14 of article 10 of the Political Constitution various clauses expressly protecting trade union freedom, extending the right to acquire juridical personality by the mere registration of a union's constituent instruments and statutes in the manner prescribed by law.

Constitutional Act No. 3 maintained the same rule, improving it in the sense that the body with which the instruments were to be registered was to be "autonomous", in order to avoid any unlawful interference by the administrative authority that might impede the free exercise of the right.

As has been stated elsewhere in this report, Legislative Decree No. 198 of 29 December 1973, temporarily suspended various trade-union activities, in particular the right of collective bargaining and the right to strike, but did not affect the formation of trade unions.

At the time of the drafting of this report (April 1978), the opinion of the Council of State on the new draft Labour Code, which should shortly be made public and brought into force after thorough discussion of the preliminary draft of 1 May 1975 by all trade union, managerial, technical and university bodies, is not known.

A detailed report, dated 27 March 1978, covering the situation in Chile up to March 1978 has been submitted to the International Labour Organisation.

Article 23

Paragraphs 1, 2, 3 and 4 Comment

Recognition of the family as the natural and fundamental unit of the State is the subject of article 23 of the Covenant. In Chile, express provisions to the same effect occur both in the Government's Declaration of Principles of 11 March 1974 and in preambular paragraph 4 of Constitutional Act No. 2 of 11 September 1976.

Preambular paragraph 4 provides that among the essential values on which the nation is founded, emphasis must be given to: "The Christian humanist concept of man and of society which considers man as a being endowed with spiritual dignity and a transcendent vocation, whence spring natural personal rights which are previous and superior to the State and which impose on the State the duty to serve man and to promote the common good. Within this concept, the family is the basic nucleus of society and it is the duty of the State to protect the family and help to strengthen it, just as it is the duty of the State to recognize the intermediary groups between man and the State, in accordance with the principle of subsidiarity".

For its part, Constitutional Act No. 3 states, in preambular paragraph 5, that in view of the absence of any consideration and respect for the private life of individuals and their families, and for their honour, which characterized the political period preceding the present Government, it is necessary to consider this constitutional guarantee as being subject to the appropriate protective mechanisms established by the Act. Thus, article 1, paragraph 10 of the Act guarantees to all persons respect for and protection of their private life and honour and those of their families and the inviolability of the home and all forms of private communication. Homes may be entered and private communications and documents intercepted, opened or searched only in the cases and according to the formalities prescribed by law.

Provisions regarding family law are laid down not only in the Civil Code of 1855 but also in the Civil Marriage Act of 10 January 1884, Act No. 4808 of 10 February 1930 on Civil Registration and Act No. 7613 which contains provisions on adoption, etc.

Article 102 of Title 4 of the Civil Code defines marriage as a solemn contract whereby a man and a woman are united actually and indissolubly for life, in order to live together, procreate and support each other.

According to the provisions of article 106 of the Civil Code, persons over the age of 21 years are not obliged to obtain the consent of anyone. Article 107 adds that a person under the age of 21 years may not marry without the express consent of his (her) legitimate father or, in the absence of a legitimate father, of his (her) legitimate mother, or in the absence of both, of the legitimate ascendant or ascendants next in degree.

Title 6 of Book I of the Civil Code specifies the obligations and rights between spouses. Among the main obligations and rights is that specified in article 131, which states that the spouses are under a duty to remain faithful to each other, to help and support each other in all circumstances of life. Paragraph 2 adds that the husband owes protection to the wife and the wife obedience to the husband.

Article 135 states that the husband has the right to oblige his wife to live with him and to follow him wherever he may wish to move his residence within the territory of the Republic. This right lapses if its exercise should place the life of the wife in imminent danger. Paragraph 3 provides that the wife has the right to be received in the home of her husband.

While under Chilean civil law, a woman married according to the system of conjugal community is under certain disabilities, it is no less true that under article 150 a married woman of any age may freely engage in any form of employment, occupation, profession or business unless the judge, in summary proceedings and on the husband's application, forbids her to do so. A married woman of any age who is in employment or who engages in any profession, occupation or business distinct from her husband's is deemed to come under the system of separation of property so far as the exercise of such employment, profession or business, and the earnings therefrom, are concerned, notwithstanding any stipulation to the contrary; if, however, she is under the age of 21 years, she will need the authorization of the court, with a statement of reasons, in order to mortgage or dispose of real estate.

Title 9 of Book I of the Civil Code regulates the rights and obligations as between parents and legitimate children. Article 219 of the Title provides that legitimate children owe respect and obedience to their father and their mother; but they are subject in particular to their father.

It is important to note the rule in article 222: "Both parents, or the surviving father or mother, are personally responsible for the upbringing and education of their legitimate children".

In the event of divorce between the spouses, under article 225 of the Civil Code custody of the children under the age of 14 years, irrespective of sex, and of daughters of any age, is awarded to the divorced mother whether or not she provided grounds for the divorce. Nevertheless, custody of the children of any age or sex will not be awarded to the mother if there should be reason to fear that they will be corrupted through her depravity. In other cases, or if the mother is incapacitated for some other reason, custody of all the children of either sex may be awarded to the father.

Under article 224 of the Civil Code, during the divorce proceedings the custody of male children over the age of 14 years is awarded to the father unless, because of the depravity of the father or because of his incapacity for other reasons, the judge prefers to award custody to the mother.

Article 24

Paragraph 1: Comment

The right to life and integrity of person and the protection of the life of the unborn are the subject of a constitutional guarantee in accordance with the provisions of article 1, paragraph 1, of Constitutional Act No. 3.

Article 74 of the Civil Code states that the legal existence of a person begins at birth, that is to say on being completely separated from the mother. By virtue of the right to protection of the life of the unborn, the judge may, on the application of any person or ex officio, order whatever measures he considers

appropriate for the protection of the existence of the unborn child in any case where he believes that the child's life is in some way in danger. Paragraph 2 of article 75 of the same Code states that any punishment of the mother that might endanger the life or health of the child she is carrying in her womb must be deferred until after the birth.

Title 10 of Book I of the Civil Code defines, in article 240, patria potestas as the aggregate of the rights which the law gives to the legitimate father or mother in the property of their unemancipated children. Paragraph 2 adds that patria potestas is applicable also with respect to the contingent rights of the child in the womb and that, if born alive, the child is presumed legitimate.

Unemancipated children are called family children and with respect to them, the father and mother are described, respectively, as paterfamilias and materfamilias. In the absence of the father, the rights which would be exercisable by him are vested in the mother, unless she is deprived of the custody of the child because of her misconduct.

With respect to rights and obligations as between parents and legitimate children, article 219 of the Civil Code states that legitimate children owe respect and obedience to their father and their mother but that they are subject in particular to their father. Article 222 of the same Code adds that both parents, or the surviving father or mother, are personally responsible for the upbringing and custody of legitimate children.

As regards the obligations and rights as between parents and natural children, article 219 of the Civil Code provides that the costs of the upbringing and education of natural children shall be defrayed by the father or by the mother and shall cover at least primary education and training for a profession or occupation.

For the safeguard and protection of the life and property of children who, on account of their age, are unable to manage their own affairs or to administer their affairs competently, and who are not under the authority of father or mother who could give them the proper protection, the Civil Code, in Title 19, has established the institution of wardship or guardianship.

Paragraph 2: Comment

In accordance with Act No. 4808 on Civil Registration, published in the Diario Oficial of 10 February 1930, there was established the Civil Register, a legal entity, in which there shall be recorded, in addition to marriages and deaths, any births which occur in the territory of Chile, births which occur on a journey within the territory of the Republic or at sea, in the commune in which the journey ends or in the first port of arrival; the births abroad of children of Chileans.

Title II, article 28, of the Act states that, within a period of 60 days from the date of birth, the infant's birth shall be registered at the verbal or written request of the persons specified in the Act. Article 31 of the Act states that, in addition to the particulars common to all registrations, birth certificates shall indicate:

(a) The hour, day, month, year and place of birth;

(b) Sex of the infant;

(c) The name and surname of the infant, to be indicated by the person requesting the registration; and,

(d) The names, surnames, nationality, profession or occupation and domicile of the parents if the infant is legitimate; if the infant is illegitimate, the particulars of the father or mother who may recognize or has recognized the child.

Article 6 of Act No. 17,344 of 22 September 1970 added the following third paragraph to the article cited above: "The infant may not be given a name that is absurd, ridiculous, unsuitable for persons, misleading with respect to sex or at variance with good language".

Paragraph 3: Comment

The Political Constitution of the State of 1925 specifies the sources of Chilean nationality in article 5.

In accordance with that constitutional provision, the following are Chileans:

(1) Those born in the territory of Chile, with the exception of the children of foreigners who happen to be in Chile in the service of their Government, and children of transient foreigners, all of whom may choose between the nationality of their parents and that of Chile;

(2) Children of a Chilean father or mother, born in foreign territory, by the sole act of becoming resident in Chile. The children of Chileans born abroad, the father or mother being at that time in the service of the Republic, are Chileans even for those purposes for which the Constitution, or other laws, may require birth within Chilean territory;

(3) Foreigners who obtain certificates of naturalization in conformity with the law, upon express renunciation of their former nationality. Persons born in Spain who have resided in Chile for more than 10 years shall not be required to renounce Spanish nationality, provided that this same privilege is extended to Chileans in Spain; and,

(4) Those who obtain a special grant of naturalization by law.

Naturalized persons have the right to hold public office by popular election only after they have been in possession of a certificate of naturalization for five years.

The law shall prescribe the procedures for choosing between Chilean nationality and a foreign nationality, for the granting, refusal or rescission of certificates of naturalization, and for the constitution of a register of all these acts.

From the terms of the constitutional provisions cited above it can be seen that the Chilean Constitution recognizes and protects both the principle of jus soli, i.e. the right to the nationality of the place of birth, and the principle of jus sanguinis, i.e. the right to nationality by reason of parentage.

A further source of Chilean nationality is the "CERTIFICATE OF NATURALIZATION", which can be obtained in Chile by foreigners who satisfy the requirements laid down in article 5, paragraph 3 of the Constitution.

As a last point it may be noted that by paragraph 4 of the article in question, the Constitution authorizes the grant of Chilean nationality by special legislation to persons who have rendered meritorious services to the country. This honour, which is known as "Great Nationality" or "Honorary Naturalization", has been awarded to, among others, the renowned Venezuelan jurist, Don Andrés Bello, founder of the University of Chile and principal author of the Chilean Civil Code.

Article 25

Comment

The constitutions that have been successively in force in Chile have laid down the principle of the division of public powers into executive, legislative and judicial.

The executive power has invariably been vested in a single person known as the President of the Republic, who administers the State and is the Supreme Head of the Nation; the legislative power is vested in the National Congress, which is composed of two houses, the Chamber of Deputies and the Senate; the judicial power is vested in the courts established by the law.

The constitutions have also proclaimed the principle that sovereignty is vested essentially in the nation, which delegates the exercise thereof to the constitutional authorities.

These authorities exercise political power and are elected by universal, free, secret and informed suffrage.

Article 7 of the Political Constitution of 1925 provides that Chileans who have attained the age of 18 years and whose names are entered in the appropriate registers are citizens with the right to vote; in other words, in accordance with this provision, all Chileans over the age of 18 years who satisfy the statutory requirements participate in the conduct of public affairs through freely elected representatives.

Under the 1925 Constitution four offices are to be filled by popular election: those of President of the Republic, Senator, Deputy and Councillor. Eligibility to each of these offices is subject to fulfilment of certain conditions as to nationality, age and integrity.

At the present time the aforementioned provisions of the Constitution are suspended pursuant to the terms of article 4 of Constitutional Act No. 2, which provides that sovereignty resides essentially in the Nation and is exercised in accordance with the Act establishing the Government Junta and with any provisions which have been issued or which may be issued in pursuance of that Act. Pursuant to the terms of the said Act establishing the Government Junta, and other subsequent enactments, the executive power is exercised by the President of the Republic and the legislative power by the Government Junta.

The reason for this limitation of the right embodied in article 25 of the Covenant is the imperative need to deal with the institutional emergency which followed the political crisis that reached its culmination on 11 September 1973.

Since these are some of the rights that may be suspended in accordance with the provisions of article 4 of the Covenant, the Government of Chile has given the appropriate notification in accordance with that article.

The full restoration of the rights embodied in paragraphs (a) and (b) of article 25 of the Covenant is a fundamental concern of the present Government. This is the reason why, in the Government's declaration of principles, principle No. 6, paragraph 6 (a) provides:

> "Nevertheless, although it fixes no time-limit, the Government Junta will when appropriate hand over political power to those whom the people may elect by universal, free, secret and informed suffrage".

In keeping with the foregoing, on 9 July 1977, the President of the Republic publicly announced the process of institution-building in Chile by means of gradual stages of normalization. On that occasion, the President of the Republic reaffirmed the division of the powers of the State which will characterize the final scheme of Chile's institutional structure.

Subsequently, in his speech of 5 April 1978, the President elaborated on the ideas he had outlined on 9 July 1977 and said that the draft new political constitution of the State should be prepared this year. On being approved by the executive and the constituent powers, the draft will be submitted to wide public debate in which all sectors of the community, trade unions, professional associations, universities, will participate; this debate will be conducted without restrictions of any kind.

After the conclusion of this debate, the draft, with the consequential amendments, will be submitted to popular vote by means of a plebiscite. It is important to emphasize that both the permanent and the transitional provisions of the draft will be submitted to the plebiscite.

If approved by the country, the new constitution will govern citizen participation in public affairs, the right to vote and to be elected, all within the framework set forth in the Government's Declaration of Principles referred to earlier.

Paragraph (c): Comment

In article 10, paragraph 8, the Political Constitution of 1925 guarantees to all inhabitants of the Republic admission to all public employment or office without any conditions other than those imposed by law.

This provision was reproduced in Constitutional Act No. 3 which includes among the constitutional rights the right of access to all public employment and public office, without any requirements other than those imposed by the Constitutional Acts, the Constitution and the laws.

The decree with the force of law or administrative statute No. 338 of 1960 regulates in greater detail the official career of public employees, establishing the reciprocal rights and obligations of the State and its servants.

Article 26

Comment

The principle laid down in this article is embodied both in article 10, paragraph 1, of the Political Constitution of 1925 and in article 1, paragraph 2, of Constitutional Act No. 3.

The first of the provisions referred to reads: "The Constitution ensures to all inhabitants of the Republic:

"(1) Equality before the law. In Chile there are no privileged classes.

"In Chile there are no slaves and any person setting foot on its territory is free. Chileans may not engage in the slave trade. Any foreigner who engages in it may not live in Chile or be naturalized in the Republic."

Constitutional Act No. 3, article 1, paragraph 2, guarantees to all persons equality before the law. In Chile there are no privileged individuals or groups. Men and women shall enjoy equal rights. Neither the law nor the authorities may establish arbitrary discriminations.

Article 27

Comment

In Chile there are no "minorities" within the meaning of article 27 of the Covenant.