

**INTERNATIONAL
COVENANT
ON CIVIL AND
POLITICAL RIGHTS**



Distr.
GENERAL

CCPR/C/SR.28
19 August 1977

Original: ENGLISH

HUMAN RIGHTS COMMITTEE

Second Session

SUMMARY RECORD OF THE 28TH MEETING

held at the Palais des Nations, Geneva,
on Wednesday, 17 August 1977, at 3 p.m.

Chairman: Mr. MAVROMMATIS

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GE.77-8426

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT: INITIAL REPORTS OF STATES PARTIES DUE IN 1977 (agenda item 3)
(continued)

Report of Cyprus (CCPR/C/1/Add.6) (continued)

1. Mr. TOMUSCHAT said he wished to emphasize two points that had already been made. First, it was not enough to state that the Covenant had been incorporated into the domestic legal order, since it contained a considerable number of provisions to which effect had to be given by specific legislative and administrative measures; additional information showing how various articles were being implemented was therefore required. Secondly, information on limitations of freedoms might, in many cases, be more important to the Committee because the Covenant guaranteed only the principle of such freedoms and permitted its restriction. Very often the Committee's task was to ensure that the dividing line between various freedoms and the interests of the State was drawn in a proper manner which did not contravene the spirit of the Covenant.
2. Article 6 was of particular importance, and he therefore asked for information on the nature of the offences for which capital punishment could be imposed in Cyprus; it would be helpful for the Committee to see the texts of the relevant penal provisions. He also asked whether any prisoners were deprived of liberty for offences other than criminal ones and, with reference to article 26 prohibiting discrimination on the grounds of language and religion, whether Christianity and other religious beliefs were treated on a footing of equality in the Republic of Cyprus?
3. It would be useful if the final report could be accompanied by the relevant texts as the Committee depended on an exact knowledge of the legal situation as well as on an examination of administrative practices.
4. Mr. MOVCHAN observed that the report, although brief, referred to the constitutional, legal and administrative provisions enacted to safeguard human rights in Cyprus.
5. Many members of the Committee had mentioned the delicate legal problem of incorporating the provisions of the Covenant in domestic legal provisions or of ensuring that international law became an integral part of domestic law. Article 2 of the Covenant on Civil and Political Rights, among others, made it quite clear that States were required to adopt legislative measures, and the Committee therefore had a vital interest in information on how a State viewed that obligation. He hoped that the Government of Cyprus would supply such information later.
6. Mr. YIANGOU (Cyprus) stated that in addition to his replies to the points raised in the discussion, all questions would be answered in detail in the supplementary report to be submitted later. There was no intention of making any derogations from the Constitution; some of its articles could not be amended while the amendment of others required a special majority.
7. The last paragraph of his country's report seemed to have created a misunderstanding; the special committee of governmental experts referred to had been established to study both the Covenant on Civil and Political Rights and the

Covenant on Economic, Social and Cultural Rights. Provisions for implementing the latter could be amplified and efforts to that end were in progress. Almost all the rights set forth in the Covenant on Civil and Political Rights were covered, and details would be submitted in the supplementary report. One point that had been omitted was any reference to article 20 on propaganda for war, but in view of the fact that Cyprus was the smallest country in the region, that oversight did not appear to be serious.

8. A procedure for remedies existed under which a person whose rights had been violated by the act or omission of an administrative authority could apply to that authority and require a reply within 30 days. If no answer was received by the end of that period, the person could apply directly to the Supreme Court of the Republic for redress. He could also apply to the courts of first instance for an assessment of any damages suffered.

9. The unconstitutionality of a law could be examined by any courts on the application of a party to a suit, or by reference to the Supreme Court.

10. Article 169 of the Constitution provided that the international instruments concluded by the Republic should have precedence over domestic laws:

"Subject to the provisions of Article 50 and paragraph 3 of Article 57:

(1) every international agreement with a foreign State or any International Organization relating to commercial matters, economic co-operation (including payments and credit) and modus vivendi shall be concluded under a decision of the Council of Ministers;

(2) any other treaty, convention or international agreement shall be negotiated and signed under a decision of the Council of Ministers and shall only be operative and binding on the Republic when approved by a law made by the House of Representatives whereupon it shall be concluded;

(3) treaties, conventions and agreements concluded in accordance with the foregoing provisions of this Article shall have, as from their publication in the official Gazette of the Republic, superior force to any municipal law on condition that such treaties, conventions and agreements are applied by the other party thereto."

11. Cyprus had placed far fewer restrictions on the enjoyment of human rights than other countries, and they were rarely invoked. After the coup d'état, for example, no declaration of emergency had been made under the Constitution, article 183 of which provided that:

"1. In case of war or other public danger threatening the life of the Republic or any part thereof, the Council of Ministers shall have power, by a decision taken in this respect, to issue a Proclamation of Emergency:

"2. Any such Proclamation shall specify the Articles of the Constitution which shall be suspended for the duration of such Emergency:

Provided that only the following Articles of the Constitution may be suspended by any such Proclamation that is to say:

Article 7, only in so far as it relates to death inflicted by a permissible act of war; Article 10, paragraphs 2 and 3; Article 11; Article 13; Article 16; Article 17; Article 19; Article 21; Article 23, paragraph 8, sub-paragraph (d); Article 25 and Article 27."

All the articles referred to were contained in Part II of the Constitution dealing with fundamental rights and liberties.

12. The role of the legislature was as follows:

"4. A Proclamation promulgated under the foregoing provisions of this Article shall be laid forthwith before the House of Representatives. If the House of Representatives is not sitting it must be convened as soon as possible for this purpose.

"5. The House of Representatives shall have the right to reject or confirm such Proclamation of Emergency. In the case of rejection the Proclamation of Emergency shall have no legal effect. In the case of confirmation the President of the Republic shall promulgate forthwith such decision of the House of Representatives by publication in the official Gazette of the Republic.

"6. The Proclamation of Emergency shall cease to operate at the expiration of two months from the date of confirmation by the House of Representatives unless the House, at the request of the Council of Ministers,"

13. On the question of legal aid to individuals, he explained that in criminal cases a lawyer was assigned by the court if the accused appeared without one; in other cases, procedure by which legal aid was provided was specified in the relevant rules of civil procedure.

14. The Supreme Court had had to deal with an increasing number of appeals during the past five or six years, and although its backlog of cases was one of the lowest in the world, an increase in the number of Supreme Court justices was envisaged. For the moment acting justices were being used.

15. The application of the various instruments on human rights in Cyprus was co-ordinated by the courts by reference to the Constitution, the European Convention for the Protection of Fundamental Rights and Freedoms, and the Covenant. The courts' interpretations in cases of alleged conflicts were liberal and invariably in the interest of the individual.

16. As regards the crimes for which capital punishment was imposed, article 7 of the Constitution provided that:

"Art. 7. 1. Every person has the right to life and corporal integrity.

2. No persons shall be deprived of his life except in the execution of a sentence of a competent court following his conviction of an offence for which this penalty is provided by law. A law may provide for such penalty only in cases of premeditated murder, high treason, piracy jure gentium and capital offences under military law."

17. Article 18 of the Constitution, which dealt with religious matters, was worded as follows:

"Art. 18. 1. Every person has the right to freedom of thought, conscience and religion.

2. All religions whose doctrines or rites are not secret are free.

3. All religions are equal before the law. Without prejudice to the competence of the Communal Chambers under this Constitution, no legislative, executive or administrative act of the Republic shall discriminate against any religious institution or religion.

4. Every person is free and has the right to profess his faith and to manifest his religion or belief, in worship, teaching, practice or observance, either individually or collectively, in private or in public, and to change his religion or belief."

18. In conclusion, he said that he would not fail to transmit to his Government the various questions which had been raised and which he had been unable to answer.

19. The CHAIRMAN thanked the representative of Cyprus for his statement and noted that answers to outstanding questions would be provided by the authorities in Cyprus as soon as possible. He recalled the Committee's view that it would be desirable to have specific texts on certain matters, and that it attached as much importance to restrictions as to paper guarantees.

The meeting was suspended at 4.05 p.m. and resumed at 4.35 p.m.

Report by the Government of Tunisia (CCPR/C/1/Add.7)

20. The CHAIRMAN invited Mr. Ben Massouad, the representative of Tunisia, to introduce his Government's report.

21. Mr. BEN MASSOUAD said that he had just provided the Secretariat with his Government's second report, which amplified the provisional report (CCPR/C/1/Add.7). He would comment on the first report as amplified and then refer briefly to the text of Tunisia's domestic legislation in relation to each article of the Covenant.

22. He explained that international treaties which had been ratified by Tunisia took precedence over domestic legislation. The ratification of any international instrument entailed its submission to the National Assembly for approval, after which it was signed by the President of the Republic.

23. The report in its amplified form provided a succinct analysis of the most important civil and political rights; he would deal with personal rights first. Article 5 of the Constitution guaranteed the dignity of the individual, freedom of conscience and the freedom of worship, provided it did not disturb law and order. Any person had the right to bring an action before the appropriate court, and under article 12 of the Constitution any person charged with an offence was presumed innocent until proven guilty at a trial at which he was provided with all the guarantees necessary for his defence. Article 13 of the Constitution stipulated that penalties were personal and laws not retroactive. Article 5 of the Constitution was supplemented by article 9, which guaranteed the inviolability of the home and secrecy of correspondence, save in exceptional cases laid down by the law. That subject was also covered by several provisions of the Penal Code.

24. He noted that a Decree of 13 August 1956 had promulgated the Code of Personal Status, which was based on full equality between the sexes except with respect to inheritance. The law relating to inheritance was based on Moslem law, and a woman was entitled to inherit only half as much as a man; some held that that principle was unjust, but it should be remembered that a husband had to contribute to household expenses, whereas a wife might or might not do so. The marriage settlement was another matter with respect to which there could not be said to be equality. However, there were many good points in the Code of Personal Status: it protected minors and prohibited polygamy; it had raised the marriage age to 17 years for women and 18 years for men; and it required that the marriage should take place in a public court and that the woman's consent should be obtained. He recalled that under Moslem law, such consent had been given by the woman's parents on her behalf. In Moslem countries marriage was sometimes considered to be a contract which could be repudiated, but, under article 31 of the Code of Personal Status the position had been formalized to ensure equality between men and women. It provided that either party could initiate proceedings for a divorce, which could be granted only by a competent court that took cognizance of all the facts and determined the indemnity payable to the wife for the injury done to her, or payable by the wife to the husband.

25. Tunisian legislation took account of the interests of the child above everything else; children born out of wedlock had the same rights as children born in wedlock.

26. Referring to political rights, he noted that for the past quarter of a century Tunisian legislation had been based on democratic practice. All forms of racial discrimination were prohibited, and article 6 of the Constitution stated that all citizens were equal with respect to their rights and duties and equal before the law. He had already mentioned article 5 of the Constitution, which was enforced by a number of decrees. Freedom of opinion, expression, the press, publication, assembly and association were guaranteed by article 8 of the Constitution and various provisions of the Press Code, which had been in existence

for some time and had been revised in 1968. Any violation of those rights was punished by a judicial or administrative court; that was a comparatively recent innovation. To ensure equitable decisions, judges were independent and subject only to the authority of the law. Any person who was unable to pay the court expenses was given legal assistance without charge.

27. He emphasized that the principle of detention had been modified recently, and that the prison system was no longer organized with a view to avenging society against the offender. A Board had been set up to implement the new policy, which was to rehabilitate the prisoner. It had a social studies unit, a rehabilitation service and a supervisory educational service, and it was hoped that offenders could be reintegrated into society through civil re-education and progressive retraining.

28. Economic and social rights were guaranteed by the Constitution, the Labour Code, laws and regulations. It was the Government's aim to provide the individual with a life worth living. To that end it had adopted provisions guaranteeing him education, work, the enjoyment of the fruits of his labour, and security against sickness, accidents, old age and so forth. In the educational context, he pointed out that the education rate was currently 76 per cent among the younger generation and that a special educational programme had been introduced for the illiterate. Article 8 of the Constitution guaranteed freedom of association under the conditions laid down by the law for the purpose of protecting trade union rights. There were workers' trade unions and agricultural and other professional associations. The Labour Code, promulgated in 1964, provided constructive guarantees for economic and social rights. The State stipulated maximum working hours, and provided for rest days, paid vacations, minimum wages, social security, retirement and other pensions, allowances and bonuses. Complete occupational equality between the sexes was guaranteed by equal pay for equal work, and women received certain additional concessions, such as paid maternity leave and authorized absences during working hours for nursing purposes. As far as foreign workers were concerned, Tunisian legislation enabled them to hold two nationalities simultaneously.

29. New legislation recently enacted aimed at protecting the fundamental freedoms of the individual as guaranteed by the Constitution and the laws in force.

30. In order to give the Committee a more precise picture of the way in which the provisions of the Covenant were reflected in Tunisian law, he would go through its articles seriatim, indicating the corresponding articles of the Tunisian Constitution or other legal provisions in each case. Article 2, paragraph 1 of the Covenant corresponded to article 6 of the Constitution. With regard to article 2, paragraph 2, since Tunisia had ratified the Convention by law, there was no question of conflict between it and domestic law. As to article 2, paragraph 3, he pointed out that there were two kinds of courts in Tunisia: law courts dealt with disputes between individuals and administrative courts with disputes between individuals and the State or its organs. Article 2, paragraph 3 (c) was covered by article 65 of the Code of Civil Procedure. Article 3 corresponded to article 6 of the Constitution. With regard to measures required in times of public emergency, which were mentioned in article 4,

Tunisia had not so far been obliged to avail itself of any derogations from provisions of the Covenant. When his Government had ratified the Covenant, it had made no reservations with respect to article 5, which was therefore fully applicable in Tunisia; it corresponded to article 7 of the Constitution. Article 6, paragraphs 1 and 2 had been ratified by laws, and article 6, paragraph 4 concerning pardon and amnesty corresponded to article 48 of the Constitution, and was also covered by articles 376 and following and 342 and following of the Code of Penal Procedure. Article 7 of the Covenant corresponded to article 5 of the Constitution, which stated that the human person was inviolable. With regard to article 8, Tunisia had ratified the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery by Law 66.32 of 3 May 1966. Article 9 corresponded to articles 8, 9 and 10 of the Constitution and to articles 68 and 69 of the Code of Penal Procedure. As to article 10, dealing in particular with the penitentiary system, the prisons in his country, as he had informed the Committee, had been transformed into centres for re-educating delinquents and reintegrating them into social and economic life. In Tunisia no one could be imprisoned on the ground of inability to fulfil a contractual obligation (article 11). Article 12 corresponded to article 10 of the Constitution, and article 13 to articles 308 and following of the Code of Penal Procedure. Paragraph 1 of article 14 was covered by article 143 of the Code of Penal Procedure; paragraph 2 corresponded to article 12 of the Constitution and was fundamental to the whole Code of Penal Procedure; as to paragraph 6, any prejudice suffered through a miscarriage of justice entitled the person to compensation. There was no retroactivity in Tunisian penal law (article 15 of the Covenant); article 4 of the Code of Penal Procedures stated that public action was extinguished by the abrogation of the penal law. As to article 16, in Tunisia every natural person was a person before the law. Article 17 corresponded to article 9 of the Constitution, article 18 to articles 5 and 8, and article 19 to article 8 of the Constitution. Up to the present, there had been in Tunisia no propaganda for war, as prohibited by article 20 of the Covenant. Article 21 corresponded to article 8 of the Constitution, as did article 22; Tunisia was a party to the ILO Convention of 1948 mentioned in paragraph 3 of article 22. With regard to the consent of intending spouses mentioned in article 23, he had already referred to the relevant articles in the Tunisian Code of Personal Status. By Law 66.70 of 22 November 1966 Tunisia had acceded to the International Convention on the Elimination of All Forms of Racial Discrimination (article 24 of the Covenant). Article 25 was covered by the Constitution and by the Municipal Code, which governed elections in communes. Article 26 corresponded to article 6 of the Constitution, and article 27 to articles 5 and 8 of the Constitution.

31. He would be glad to provide further information if so requested by members of the Committee.

32. The CHAIRMAN thanked the Tunisian representative for the additional information he had given to the Committee; the supplementary report to which he had referred would be circulated as soon as possible.

33. Mr. PRADO VALLEJO said that it was clear from the Tunisian representative's statement and from Tunisia's report (CCPR/C/1/Add.7) that much progress had been made in the social field in Tunisia. That was important because, as several members had stressed at previous meetings, the development of political rights went hand in hand with the development of the social rights.

34. He had understood the Tunisian representative to say that the provisions of the Covenant prevailed over domestic law in Tunisia. If that was so, the meaning of the phrase "any comments or reservations it may have to make in respect of the International Covenant on Civil and Political Rights", which appeared in the first paragraph of the introduction to Tunisia's report, should be clarified. What sort of reservations might have to be made?

35. Under article 7 of the Tunisian Constitution, certain limitations were placed on the exercise of rights. It was understandable that rights should be limited to protect the rights of others, to ensure law and order and for reasons of national defence. He wondered, however, how political rights could be limited for the development of the economy and for social betterment.

36. In conclusion, referring to article 10 of the Tunisian Constitution, he asked what were the legal limitations on the right to move freely within the country, to leave the country, and to choose one's domicile.

37. Mr. URIBE VARGAS said it would be interesting to know whether periods of emergency had been declared in Tunisia since the entry into force of the Covenant, the reasons that had been given for declaring any state of emergency, and which rights guaranteed under the Covenant had been suspended because of the existence of a state of emergency.

38. Mr. TOMUSCHAT said that, like Mr. Prado Vallejo, he had been puzzled by the phrase "or reservations it may have to make" in the first paragraph of the report; surely Tunisia would have made its reservations when ratifying the Covenant. Perhaps the phrase had been inaccurately drafted; in any case, clarification was necessary.

39. Observing that the representative of Tunisia had stated that Tunisian legislation corresponded exactly to the provisions of the Covenant, he said that a comparison between the Covenant and the Tunisian Constitution showed that in many respects the text of the Covenant was much more precise than that of the Constitution. In particular, the Covenant laid down, in very exact terms, the conditions in which a right could be restricted. Article 19 of the Covenant, for example, clearly specified that restrictions on the right to freedom of expression should only be such as were necessary to ensure respect of the rights or reputations of others and to protect national security or public order or public health or morals, whereas, according to the corresponding provision of the Tunisian Constitution, the law laid down certain conditions specifying how that right could be exercised. Thus, there seemed to be an essential difference between the two texts. It was important to stress the fact that there was a difference, and to emphasize that the legislator must keep within the limits of the very strict

and precise restrictive clauses laid down in the Covenant. In view of the precision of the Covenant in the matter of restrictions, it seemed to him that it was not sufficient merely to refer to a constitutional provision. What the Committee required was detailed information concerning specific conditions, laid down in the legislation giving effect to the provisions of the Covenant and governing restriction of a right.

40. The Tunisian representative had stated, in reference to the guarantees provided for in article 2 of the Covenant, that there were two types of court in Tunisia, law courts and administrative courts. It seemed to him, however, that the Covenant did not only require that there should be courts; it required that persons whose rights or freedoms were violated should have an effective remedy. What the Committee should know, therefore, was whether administrative acts - which were generally the means by which an individual's rights were violated - could be challenged in the courts.

41. He had gained the impression from the Tunisian representative's statement that there was only one trade union per economic sector, i.e. one trade union for workers in commerce, one for agricultural workers, etc. That would imply that freedom of association was restricted. Additional information on that point would be welcome.

42. Mr. MORA ROJAS said he had a few general comments to make on the Tunisian report and some specific questions to put to the Tunisian representative.

43. First, he asked what was the meaning of the word "contribuyen" which, in the Spanish text, occurred in the third paragraph of the introduction to the Tunisian report. It implied that there were other instruments in addition to legal texts that guaranteed civil and political rights. Secondly, it would be useful to know how the courts referred to in the fourth paragraph of the introduction were organized and what procedures governed access to them. His final general comment was that it would be helpful to the Committee if, in its analysis of Tunisian legislation, the Tunisian Government followed by the order in which articles were set forth in the Covenant. It would also be useful to have the texts of national laws and regulations.

44. Turning to his specific questions, he drew attention to the fact that articles 8, 9, 10, 14 and 19 of the Tunisian Constitution contained such phrases as "under the conditions stipulated by the law", "within the limits provided by the law", "except in the exceptional cases provided by law" and "in the manner provided by law". If the Committee knew exactly what those limitations were, it would have a clearer picture of the situation with respect to guarantees in Tunisia.

45. Referring to article 12 of the Tunisian Constitution, he asked what all the guarantees necessary for a person's defence were. Moreover, as penalties were not retroactive according to article 13 of the Tunisian Constitution, it would be interesting to know whether the provisions of penal law could be applied retroactively in cases where retroactivity would benefit the offender. Information about the conditions on which a foreigner could acquire Tunisian nationality would also be helpful.

46. Turning to part II of the Tunisian report, he said it would be useful to have more details about steps taken to achieve equality of the sexes, and to know whether there was equality, or equilibrium, between men and women in the matter of the reasons for which divorce could be requested, and whether there was an objective system for the sharing of joint goods and property in the event of a divorce.

47. In conclusion, he said that additional information regarding the progress made in the spheres mentioned in part III of the Tunisian report would be welcome.

48. Mr. KOULISHEV said that he, too, had been struck by the reference, in the first paragraph of the introduction to the report, to possible reservations to the Covenant. Had Tunisia wanted to enter any reservations to the Covenant it would have done so when ratifying the Covenant.

49. He suggested that more information should be provided on the remedies available to persons whose rights or freedoms were violated. Possibly the supplementary report to which the Tunisian representative had referred contained additional information on that subject.

50. Mr. TARNOPOLSKY said that Tunisia had been the third country to ratify the Covenant; that was most gratifying.

51. The Tunisian representative had said that the provisions of the Covenant prevailed over domestic law. It seemed to him, however, that the restrictions on rights and freedoms permitted under articles 18, 19, 21 and 22 of the Covenant were less extensive than those established in articles 7 and 8 of the Tunisian Constitution. It would be interesting to know how the Tunisian courts interpreted the provisions of articles 7 and 8 of the Constitution in the light of the less restrictive requirements of articles 18, 19, 21 and 22 of the Covenant.

52. Again, article 21 of the Tunisian Constitution referred to a voter born of a Tunisian father. Did that mean that a naturalized Tunisian born of a foreign father was barred from standing for election? If so, prima facie article 21 of the Tunisian Constitution would appear to be in conflict with the provisions of article 25 of the Covenant. What attitude would the Tunisian courts adopt in considering article 21 of the Constitution in the light of the provisions of article 25 of the Covenant?

53. If he had understood him correctly, the Tunisian representative, when referring to the second paragraph of part II of the Tunisian report, had said that the woman had only one half of the man's rights of inheritance. If that was so, that provision of Tunisian law would appear to conflict with the provisions of article 2, paragraph 2, article 3 and article 23, paragraph 4, of the Covenant. How would the Tunisian courts reconcile what would appear to be differences between Tunisian domestic law and the requirements of the Covenant?

54. His final question to the representative of Tunisia concerned a matter which he had, unfortunately, omitted to raise with the representatives of the Syrian Arab Republic and Cyprus. He hoped, however, that in their final report, the Governments of the Syrian Arab Republic and Cyprus would take it up. It concerned corporal punishment. Article 7 of the Covenant stated that no one was to be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Was there any provision under Tunisian law for corporal punishment? If so, what form did the punishment take and for what crimes was it imposed?