CCPR

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Distr.
GENERAL

CCPR/C/SR.261
30 October 1980

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE

Eleventh session

SUMMARY RECORD OF THE 261st MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 30 October 1980, at 3 p.m.

Chairman: Mr. MAVROMMATIS

CONTENTS

GE.80-16843

The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued) (CCPR/C/6/Add.4)

1. At the invitation of the Chairman, Mr. Squillante (Italy) took a place at at the Committee table.

2. Mr. SQUILLANTE (Italy), having thanked the Chairman and members of the Committee for their welcome and their praise of the Report by the Government of Italy, said that the representatives of that Government intended to reply to the questions that had been asked by grouping them together. Should the Committee members wish further clarification of particular points, such clarification would be submitted in the next report by his Government to the Committee.

3. At the invitation of the Chairman, Mr Zanghi (Italy) took a place at the Committee table

4. Mr. ZANGHI (Italy) said that he would reply first of all to the questions that had been asked concerning the position of the Covenant within the Italian legal system, with due regard to the procedure for putting international treaties into effect. When introducing the Report, the representative of Italy had indicated that, in the case of ratification of an international treaty or accession to an international treaty requiring implementation within the Italian borders, the practice followed since the inauguration of the Republic consisted in enacting a law which reproduced integrally the text of the international treaty, which then became an integral part of national law. That procedure had the effect of introducing the provisions of the international treaty itself into the Italian legal system. He agreed with Mr. Tomuschat that, from a strictly legal point of view, it was incorrect to say that the Covenant had become domestic law. The Covenant remained in the international domain. Domestic law did not change the nature of the provisions of the Covenant but established national provisions having the same content as the Covenant. The law thus adopted, to the extent that it contained provisions which were directly applicable, could be invoked before any competent instance by any legal subject who thought that the provision concerned him. Replying to a specific question raised by Mr. Graefrath, he explained that an individual could request implementation of a provision of the Covenant or, more precisely, of the corresponding provision of domestic law, either when there was no other applicable national provision or when the provision of the Covenant seemed more favourable to the applicant.

5. In principle, the act of ratification and execution of an international treaty had no particular value. Its hierarchical position within the Italian legal system was determined by the nature of the legislative act - constitutional law, ordinary law, decree-law, presidential decree, etc. - by which the treaty had been ratified. In fact, the Italian legal system accorded no primacy to international law. The problem of the hierarchy of rules, mentioned specifically by Sir Vincent Evans, Mr. Koulishev and Mr. Sadi, was resolved not by legislative means but by interpretation.

6. Mr. Tomuschat had made some criticisms of the procedure just described because, in his view, where a parallel domestic law was involved, the national judge might be led to interpret it according to his own knowledge without, perhaps, taking into account the relevant rules of international law or any case law of bodies such as the Human Rights Committee. From the theoretical standpoint, the observation was no doubt a relevant one. However, in the Italian legal system, the judge was free to avail himself of all relevant factors in forming his own conclusions and reaching a solution regarding the case before him. Where it was a question of interpreting a provision of an international treaty, he was therefore free to find out how the provision in question was interpreted internationally, and that was what he often did in practice - particularly when there was a well-established case law to which the judge could refer, as already indicated in connection with the European Convention on Human Rights.

7. As for interpretation, he felt that the major problem was not the one he had just mentioned but rather that of interpreting a national provision derived from the Covenant in the context of other national provisions. He thus came to the questions raised by Mr. Graefrath, Mr. Tomuschat and Mr. Koulishev regarding a possible conflict of laws. First of all, it should be explained that, since the Covenant had been ratified by ordinary law, the conflict could arise only with other ordinary laws which were at the same level in the hierarchy of the Italian judicial system. (If the conflict arose between an ordinary law and a law at a higher or a lower level, the problem was easily resolved.) The Italian legal system contained no specific provisions for solving such conflicts between laws. It was always left to the judiciary to decide which law applied in a particular case. Case law and the legal literature had, of course, elaborated principles which could be applied in such cases. Mr. Koulischev had already mentioned the principle that a subsequent law took precedence over a previous law or a special law over a general law.

8. Nevertheless, the rigid application of that principle might produce some bad results, i.e., cases in which preference was not necessarily given to the national law derived from the Covenant. Thus Italian legal literature had, on the basis of the above-mentioned principles of interpretation and of articles 10 and 11 of the Italian Constitution, produced certain theories which, incidentally, were applicable to any international treaty and not only to the Covenant. Some authors pointed out, for example, that the act of ratification and execution of a treaty must always be regarded as a special law, thus derogating from other national laws. In that context, the special nature of that law would derive not from its specific content but from the very fact that it was a law ordering the implementation of an international treaty. With that concept of its special nature, the law could be changed only by another law of the same nature, i.e. another act of ratification and execution of a treaty. That thesis also referred to article 10 of the Italian Constitution, which, in providing that the Italian legal system should conform to the generally recognized norms of international law, would include among those norms the obligation to respect treaties.

9. On the practical level, efforts had also been made to solve the problem of a conflict between a domestic law and a treaty, a very concrete problem which had already arisen in connection with the treaties establishing the European Communities, for example. To that end, recourse had been made to the principle of conformity with the Constitution. If it was assumed that a national law might derogate from another law adopted in execution of a treaty but, on the other hand, there was the

consideration that the Italian Constitution imposed an obligation to respect international treaties, the question of the conformity with the Constitution of the national law derogating from the treaty might arise. In such a case, the Constitutional Court had exclusive competence. Replying to a question raised by Sir Vincent Evans, he explained that, in the case envisaged, the Constitutional Court would have no competence to judge the compatibility of the national law with the Covenant but only the constitutionality of the national law which derogated from the Covenant.

10. Case law in the field was constantly evolving. Thus, in respect of the application of Community law, whereas the earliest decisions of the Italian Constitutional Court had tended towards a strict application of the principle of the equivalence of laws, without any reference to the application of an international treaty, the latest decisions of the same Court tended in the other direction, drawing the attention of judges to the need to raise the question of conformity with the Constitution of the national law, whenever it might arise, so as to enable the Constitutional Court seized with the case to reach a decision and to quash, if necessary, the national law which derogated from an international treaty. That was a tendency, confirmed on a number of occasions, in case law, which made it possible to be optimistic regarding the solution of any conflict between a national law and a provision of the Covenant.

11. He then turned to some specific questions which had been raised in the context of the general observations. In connection with the implementation of article 8 of the Covenant (paragraphs 35 to 39 of the report), Mr. Opsahl had asked whether the Government of Italy considered that the Covenant also applied to relations between individuals. That question had not yet found an unequivocal solution and was still being examined, on the basis of the German theory of the "Dritte Wirkung". In Italy, it was hard to imagine that the Government should have a position on the subject. That was a question which was being considered in the legal literature, and the solution of the problems connected therewith still belonged to jurisprudence. In practice, the question had not yet formed the subject of important decisions but, in his own view, there was nothing in the Italian legal system which prevented, in principle, at least some of the provisions of the Covenant from applying to relationships between individuals.

12. Replying to Mr. Tomuschat, who had raised the question of the denial of extradition for a political offence, he recalled that that principle - a very old one - had been adopted by most States and also appeared in the international agreements on extradition. Nevertheless, some more recent international agreements (those relating to the hijacking of aircraft, such as the Tokyo and The Hague Agreements, for example) had introduced the principle that the State which denied extradition because of the political nature of the offence committed must prosecute the perpetrator of the offence. For that matter, article 8 of the Italian Penal Code made it possible, even without a particular agreement, to prosecute in Italy the perpetrator of a political offence, even if that offence had been committed abroad.

13. Replying to a question raised by Mr. Prado Vallejo about the right not to be arbitrarily prevented from entering one's own country, set forth in article 12, paragraph 4 of the Covenant, to which Italy had made a reservation, he confirmed that transitional article XIII of the Italian Constitution prohibited members of the House of Savoy (the former royal family of Italy) from ingress into and sojourn

in the national territory (para. 56 of the report). He could express no opinion on that subject. There were some in Italy who favoured an amendment of those constitutional provisions but, as long as they were in force, they had to be respected and that was why Italy had made a reservation when ratifying the Covenant. Furthermore, the problem was not peculiar to Italy. Austria had made a similar reservation on the basis of the law of 1919 concerning the banishment of the members of the House of Habsburg-Lorraine and the confiscation of their property.

14. In the context of article 8 of the Covenant, several members of the Committee had touched upon matters connected with the security measures (paras. 37 and 38 of the report) prescribed by the Italian legal system and had asked a number of questions about the application of those measures. To answer them, he would first present some general considerations regarding those measures, as set forth in the Italian Penal Code. He wished to stress the fact that the measures were explicitly prescribed by the law, that they could be invoked only by a judge, and only when individuals dangerous to society were involved. The requirement of social danger was essential, not only in the sense that it must be present when the decision to apply the measure was made, but also as long as the measure was being applied. It followed that the judge had first to assess the social danger presented by the individual concerned, on the basis of criteria established by law. The measures were usually invoked against an individual who had already been sentenced for certain offences, and where there was reason to believe that he would commit others. In such a case, the measure took the form of a penalty additional to detention per se. Nevertheless, in certain special circumstances, the measure could be taken even against persons who had not been sentenced. Those were particular and quite exceptional cases provided for by existing legislation in three situations only: firstly, when mental deficiency prevented the perpetrator of an offence from being sentenced, the judge, in pronouncing acquittal, could order his confinement to a psychiatric hospital; secondly, when an individual had attempted to commit an offence but had failed because of the inadequate means employed; and thirdly, when an individual had conspired with other individuals to commit an offence, but without succeeding in committing it. Of the three situations, the first, i.e., that of mental deficiency, was the most frequently applied, whereas the other two were quite exceptional. Furthermore, even in cases deriving from those three situations, the judge must always verify the existence of a danger to society before invoking the security measure. Moreover, since there must always be a close link between the danger to society and the security measure, that measure might be overruled at any moment, at the request of the party concerned, before the initially prescribed time-limit had expired if it was established that the danger to society no longer existed. A former provision of the Penal Code had been modified by a provision of the constitutional law in order to make it possible to quash the security measure. In any case, the decision of the judge could always be appealed.

15. A particular security measure mentioned in the Report by the Government of Italy, which had attracted the attention of some members of the Committee, particularly Sir Vincent Evans and Mr. Prado Vallejo, was the assignment to a farm colony or a labour establishment. In spite of appearances, it was a matter simply of methods of executing a security measure, which left intact all the guarantees he had already mentioned. That sentence could be pronounced in only three cases: when it involved a "habitual" delinquent, a person "with delinquent tendencies" or a "professional" delinquent. The assessment of those three conditions enacted by the law was not left

to the judge's discretion but was explicitly provided for in the Penal Code. The choice between assignment to a farm colony or to a labour establishment would depend on the individual himself. A factory worker, for example, would obviously be sent to a labour establishment rather than to a farm colony. In any case, the measure was always designed to re-educate the individual, who received a renumeration set by the law at 90% of the salary established by collective agreements for work of the same kind.

16. As for the questions of pre-trial detention in custody and, more generally, the duration of legal proceedings, mentioned by Mr. Graefrath and Mr. Koulishev, he had not much to add to what appeared in his Government's Report. Of course trails often lasted too long, but it should be borne in mind that the duration of proceedings could not be properly judged without taking into account the complexity of the case and the behaviour of the party concerned, who himself often prolonged the proceedings through delaying tactics. Furthermore, the Government took great interest in that question and, as part of the current reform of the Code of Penal Procedure, efforts were being made to find ways of reducing the length of criminal proceedings.

17. The particular aspect of compensation for unlawful detention, mentioned by Mr. Tomuschat, Mr. Koulishev and Mr. Bouziri, deserved some explanation. First of all, he reminded the Committee that, in the act ratifying the Covenant, Italy had indicated that it interpreted the term "unlawful arrest or detention" in article 9, paragraph 5 of the Covenant as referring exclusively to cases which conflicted with the provisions of paragraph 1 of the same article (paragraph 48 of the Report). That statement of interpretation had been deemed necessary in order to avoid any arbitrary interpretation of the concept of "unlawful" detention, since article 9, paragraph 5 of the Covenant was not explicit on the subject. Before the ratification of the Covenant, Italian legislation had provided for compensation only in the event of judicial error. Nevertheless, since the ratification of the Covenant, any person concerned was entitled to request compensation for unlawful detention by directly invoking the relevant provision of the Covenant which, incidentally, fitted perfectly into the Italian legal system, which recognized the general principle of compensation for damages.

18. With regard to the penitentiary system, Sir Vincent Evans had asked whether there were means of monitoring the living conditions in prisons and what rights the prisoners had. The replies to those questions were to be found in the Law of 1975 and the Rules of Application of 1976 relating to the new penitentiary system. In order to implement those instruments, a supervisory judge had been placed in each court and a supervisory section established in certain courts of appeal with authority to check at any time the living conditions of detainees and the proper implementation of the said law. Social welfare services had been attached to each penal establishment, whose social workers had a role similar to that of the supervisory judge, with particular concern for the re-education of detainees. Finally, there was a voluntary welfare service with similar functions. All those bodies were able to check the application of the prison rules. Under article 35 of the Law of 1975, each detainee could file an oral or written appeal, even in a sealed envelope, to the director of the institute concerned, to the supervisory judge, to other judicial and health authorities, to the president of the region and, finally, to the Head of State. It was true, as Mr. Koulishev had noted, that the Minister of Justice could suspend the application of some of the provisions referred to, but only for serious and exceptional reasons of public order and security, for a determined period and only to the extent that it was necessary in order to guarantee order and security (article 90 of the Law of 1975).

19. Replying to Mr. Bouziri, who had asked what was meant by persons who "have made outstanding contributions to social service activities" (paragraph 66 of the Report), he explained that they were simply individuals who had distinguished themselves in the field of social service.

20. To Mr. Graefrath, who was asked whether the expression "not guilty" in article 27 of the Italian Constitution meant that the person was considered "innocent", he replied in the affirmative, explaining that it was simply a matter of wording.

21. He then replied to various specific questions raised by members of the Committee. Mr. Tomuschat had asked, in connection with paragraph 33 of the Report, whether there were legal provisions other than article 53 of the Penal Code, as amended by the Law of 22 May 1975, which regulated the use of arms by the national security forces. He confirmed that the only texts on that question were articles 53, 54 and 55 of the Penal Code, as amended by the Law of 1975, which were mentioned in the Report.

22. Mr. Tomuschat had asked for additional information regarding the expulsion of aliens, referred to in paragraph 58 of the Report. He explained that, whenever an alien was being expelled, he could appeal to the Ministry of the Interior or the regional administrative court. If the expulsion decision was taken by the prefect, which was possible in certain cases, the same appeal to the regional administrative court was possible.

23. Clarification had been requested regarding the draft bill introducing supplementary regulations to govern the status of aliens, which was mentioned in the last sentence of paragraph 58 of the Report. That draft bill was designed to reduce the bureaucratic complexity of certain administrative practices concerning the expulsion of aliens, but in no way infringed on the guarantees granted to aliens.

24. Mr. Prado Vallejo, Mr. Koulishev and Mr. Tarnopolsky had requested some further details regarding the State's subsidies to the clergy (second subparagraph of paragraph 77 of the Report). He explained the historical events which had accompanied the development of legislation on that subject. When ecclesiastical institutions had been suppressed, their property had not been kept by the State but assigned to a special fund devoted to worship. That fund was used to subsidize the churches and the clergy. The subsidies financed "from tax revenue obtained from all citizens ..." were supplementary and exceptional in nature. He could make no particular comment regarding the agreements concluded between the Government of Italy and the representatives of religions other than the Catholic religion. If a church, such as the Waldensian Church, asked the Government of Italy to conclude such an agreement, it could be negotiated by virtue of the freedom of the parties.

25. Replying to a question by Mr. Koulishev, he explained that freedom of association (article 22 of the Covenant) was guaranteed to everyone, citizen or alien, by the Italian Constitution.

26. Mr. Tomuschat had asked whether the fact that some seats in the Senate were reserved to small regions of Italy such as the Val d'Aosta should be interpreted as a limitation or a privilege. That was a privilege accorded to regions so small that, under the system of proportional representation which governed elections to the Senate, they might never be represented by a senator.

27. It was true that the minimum age for a senator was 40 years while it was 25 years for a deputy. Mr. Koulishev had asked the reasons for that difference, but there was no reason strictly speaking; it was simply a choice of legislative policy.

28. Replying to Mr. Prado Vallejo, who had asked for information regarding electoral offences, he explained that they meant offences perpetrated during elections with a view to disturbing the normal course of the election. They did not immediately involve the loss of the right to vote, which required a final decision by a judge, and hence a prior conviction.

29. As for the questions asked regarding paragraphs 101 and 102 of the Report, he explained that, in practice, a person placed in a psychiatric institute or a mentally deficient person was still allowed to exercise the right to vote to the extent that he could be considered capable of doing so. Finally, with regard to the questions asked concerning paragraph 108 of the Report, and particularly with respect to the Albanian minority, he stressed that that minority, which had been established for centuries in the south of Italy and in Sicily, was not the subject of any particular legal provisions, but that the Government of Italy made every effort, as indeed it did in the case of all other minorities, to safeguard its cultural traditions and customs. He referred in that connection to Italy's Report to the Committee on the Elimination of Racial Discrimination.

30. Mr. TOMUSCHAT explained that, in connection with the use of firearms by the police, he had asked whether there were any special service instructions. He also wanted to know on what texts the right of aliens to establish associations, which the Constitution appeared to grant only to citizens, was based.

31. Mr. ZANGHI (Italy) said that, in the first place, initiation into the handling of firearms was part of the normal training of the members of police force and was subject to the rules for the use of firearms. As for the second question, he replied that the civil and political rights mentioned in the Constitution applied to both citizens and aliens. Furthermore, the Constitution contained a provision which stipulated that, provided there was reciprocity, aliens enjoyed on Italian territory all of the civil rights recognized in the Constitution.

32. Mr. TARNOPOLSKY pointed out, in that connection, that the formula used in articles 17 and 18, for example, of the Constitution was "citizens", whereas in article 21 it was "everyone". He wondered therefore whether the Constitution made a distinction between citizens and aliens.

33. Mr. ZANGHI (Italy) said that he could only confirm that, in practice, no sharp distinction was drawn between citizens and aliens where the enjoyment of civil rights was concerned. It was true, however, that the exercise of certain political rights set forth in the Constitution was, quite rightly, reserved to citizens. In the case of such rights as the right of peaceful assembly, the right to form trade unions and the right to freedom of expression, they applied equally to all persons on Italian territory.

34. At the invitation of the Chairman, Miss Cao-Pinna (Italy) took a place at the Committee table.

35. Miss CAO-PINNA (Italy) said she would reply to the questions asked concerning the right of self-determination, particularly with respect to southern Africa and the Palestinian people.

36. The provisions of article 11 of the Constitution of the Italian Republic embodied, albeit in different words, the fundamental principle of self-determination as defined in the Declaration on the Granting of Independence to Colonial Countries and Peoples, an instrument on which Italy continued to base its foreign policy. As indicated in paragraph 8 of the Report (CCPR/C/6/Add.4), it must be implemented in a peaceful manner, through negotiations and by means of universal suffrage. That was the explanation for the position adopted by her Government regarding Zimbabwe's accession to independence and its wish to see a peaceful end to the illegal occupation of Namibia by South Africa.

37. As for the apartheid policy which prevailed in South Africa, she wished to stress that her Government had never ceased to condemn it both firmly and categorically, as it condemned every form of segregation and racial discrimination, including bantustanization. It was persuaded that a policy facilitating a peaceful transformation was the best way to help the South African people overcome the obstacles which prevented it from creating a free, democratic and multiracial society and eliminating all vestiges of colonialism. With that in mind, contacts with the South African authorities had to be maintained. Her Government did not favour, therefore, breaking off all relations with South Africa, any more than it favoured the application of economic sanctions, although it observed the arms embargo imposed by the Security Council. Italy, and the other members of the European Economic Community, thought it absolutely essential to eliminate apartheid in the field of employment, and they had consequently adopted a code of conduct for enterprises with branches in South Africa. That code included the following measures: all workers must be authorized to take part in collective bargaining with their employers, through the independent organizations of their choice, including trade unions; all workers must receive fair pay and enjoy the maximum chances of promotion, through more intensive vocational training; the minimum salary must be raised and working conditions improved; the system of migrant workers must be gradually eliminated and workers must be free to choose their place of employment; social security benefits must be increased; and racial discrimination within the enterprise must be eliminated. The results already obtained were encouraging and would not fail to become even more so.

38. As for the Middle East, Italy and the other members of the European Economic Community, which held ongoing consultations on the subject, recognized the legitimate rights of the Palestinian people, the exercise of which constituted an important factor in settling the problems of the Middle East as a whole. As indicated in paragraph 10 of the Report, her Government thought that a just and lasting peace could not be established in that part of the world except on the basis of a comprehensive settlement in conformity with Security Council resolutions 242 (1967) and 338 (1973). All the peoples of the region could live in peace with secure, recognized and guaranteed frontiers, only if two principles universally accepted by the international community - the right of all States of the region to existence and the right to security and justice of all peoples, which presumed recognition of the legitimate rights of the Palestinian people - were recognized and applied. Those guarantees should be given by the Security Council, and if necessary, should derive from other procedures jointly agreed upon. For its part, the Government of Italy was prepared to work for the establishment of a system of specific and binding guarantees, even in the field. As for the Palestinian problem in particular, her Government was convinced that a just solution had to be found. The Palestinian people, which was conscious of its existence as such, should enjoy fully its right to self-determination in accordance with an appropriate procedure which should be defined within the framework of a global peace settlement. It was clear that the achievement of those objectives called for the participation and support of all the parties concerned, including the Palestinian people and the PLO.

39. She also wished to mention that Italy supported the national liberation movements recognized by the regional organizations and that, in answer to the question whether Italy gave practical economic assistance to the Palestinian people in the occupied territories, her Government made sizeable contributions to United Nations agencies' programmes in favour of the developing countries, regardless of any political consideration.

40. At the invitation of the Chairman, Mr. Squillante (Italy) took a place at the Committee table.

41. Mr. SQUILLANTE (Italy) explained to Mr. Tomuschat, Mr. Hanga and Sir Vincent Evans that the protection of subjective rights - in other words, of rights which belonged exclusively to the possessors, such as the right to property - was the responsibility of an ordinary judge, whereas the protection of legitimate interests which, even if they belonged to a particular subject, were closely bound to the general interest, was in the first instance within the jurisdiction of the regional administrative court and, in the second and last instance, of the Council of State.

42. Replying to Sir Vincent Evans, he explained that the administrative organs of jurisdiction were the Council of State, which judged in the second instance, and the regional administrative courts, which judged in the first instance. As for the participation of citizens in the administration of justice, he explained that the judges were appointed after a public competition, which guaranteed the independence of the Judiciary vis-à-vis the Executive Power and the Legislature. Nevertheless, since some of the judges of the Constitutional Court were elected by Parliament, it might be considered that they were elected at one remove by the people. There was provision, however, for the direct participation of the people in the administration

of justice in one case, that of the people's judges of the assize courts, which judged the most serious crimes (criminal judges). The assize courts were in fact composed also of citizens who were assigned the role of judge for a given period, after a drawing of lots among the persons enjoying full legal capacity.

43. As for the question raised by Mr. Hanga regarding the means provided by Italian legislation in cases where a public authority failed to issue an administrative act which it was required to issue or if it refrained from giving a verdict on an administrative appeal, he explained that the individual could turn to the courts to protect his rights. With regard to labour disputes, he referred to a law of 1973 which provided for a completely new and rapid procedure. As for the system of jurisdiction in tax matters, Legislative Decree No. 636 of 1972 established three degrees of jurisdiction: Tax commissions of the first instance, tax commissions of the second instance and the Central Tax Commission, whose decision could be challenged before the Court of Cassation.

44. Replying to Mr. Bouziri regarding the authority of the Constitutional Court, he said that the question of the constitutionality of a law or related act could be raised only within the framework of a civil, criminal or administrative trial. It was for the judge in the case to decide as to the justification of, or the manifest lack of grounds for a plea of repugnance to the Constitution and, if he felt that the plea was justified, to submit the instruments in question to the Constitutional Court for a judgement as to their constitutionality.

45. Replying to Mr. Dieye's question regarding the Italian system of ensuring the independence of judges, he stressed that their independence was fully guaranteed by articles 101, 102, 104 and 107 of the Constitution. While it was true that the measures concerning the careers of judges were adopted by decrees of the President of the Republic, it was nonetheless true that the adoption of the said measures was discussed within a collegiate body, the Upper Council of the bench. It should also be emphasized that the careers of judges proceeded in accordance with strict rules which the executive had no power to change.

46. At the invitation of the Chairman, Mr. Librando (Italy) took a place at the Committee table.

47. In reply to questions relating to articles 2, 3, 6, 23 and 24 of the Covenant, Mr. LIBRANDO recalled that Italian Law No. 555 of 13 June 1912 established the basic principle that Italian nationality was acquired as of right by a child born to an Italian father or an Italian mother, to a child whose father was unknown or stateless and to a child who did not acquire the foreign nationality of his father by virtue of the law of the latter's country. Article 4 of the said Law provided that Italian nationality could be granted by a decree of the Head of State, on the advice of the Council of State, to aliens in certain specified situations, primarily by naturalization. In order to become naturalized, the alien had to have resided for at least five years in Italian territory. Once naturalization had been obtained, the party concerned enjoyed all the rights of Italian nationality, including political rights. Furthermore by virtue of the same text, a foreign woman who married an Italian citizen acquired Italian nationality. Similarly, by virtue of a decision of

the Constitutional Court, based on article 3 of the Constitution and on the provisions of Law No. 151 of 19 May 1975, which had radically altered family law, the Italian woman who married a foreigner could, contrary to the provisions of the above-mentioned law of 1912, declare that she kept her Italian nationality, even if she acquired her husband's nationality by virtue of the latter's law. Finally, a male foreign citizen who married an Italian woman did not ipso facto acquire Italian nationality under the law in force. Nevertheless, the Constitutional Court had currently before it a request to verify the constitutionality of the legislation on that point, since article 3 of the Italian constitution proclaimed the principle of the equality of persons before the law while article 29 of the same text affirmed the equality of married persons. It was thus for that tribunal to settle the matter, but it should nevertheless be explained that the difference in treatment was justified by a concern to limit the number of cases of multinationality and that a foreigner who married an Italian woman could obtain his naturalization after two years of residence in Italy, hence under particularly favourable conditions.

48. As for the recognition of children and the legal declaration of affiliation in respect of a minor, the said Law No. 555 of 1912 provided that the child acquired the nationality of the father, even if the recognition or the legal declaration of paternity took place after the recognition of the child by the mother or the legal declaration of maternity. Furthermore, a minor who had been adopted acquired the father's nationality by adoptive legitimation. Hence, in those different situations also, there was a preference for the father's nationality, which was to be explained by the legislator's wish to promote family unity by recourse to the application of a single principle.

49. As indicated in the Report (CCPR/C/6/Add.4, pages 13 to 15), article 3 of the Italian Constitution established the principle of equality before the law without distinction of sex. That principle had been implemented by the legislator through laws enacted as situations developed. The laws gave women access to all civil service careers, particularly those in the judiciary and diplomacy, without any difference as to conditions. Women presided over courts, and two women had recently been nominated ambassadors. Nevertheless, the legislation in question was relatively recent, which explained why most women still occupied unimportant posts in those careers. He also pointed out, in that connection, that the President of the Chamber of Deputies was a woman and that a woman was Vice-President of the Senate. As to the performance of military service, the Ministry of Defence was studying the possibility of extending it to women in appropriate form.

50. Law No. 903 of 7 December 1977 on equality of pay between men and women expressly stated that salaried women in the private sector were entitled to the same pay as their male counterparts for work of equal value. Furthermore, it prohibited any discrimination regarding the functions performed and the possibilities of promotion. That legislation thus established the principle of equality of opportunity and career advancement for both sexes.

51. The situation was closely linked to the woman's role in the family and, more generally, to the status of women. He explained, in that connection, that the said Law of 1977 prohibited in principle women from working from midnight to 6 a.m., with exceptions, however, in the case of women exercising administrative functions or for health service employees. The law also provided for maternity leave for salaried women.

52. He confirmed that, although there was no difference in practice in the treatment of men and women, complete equality was sometimes frustrated by the survival of certain local traditions and personal habits, without however jeopardizing the constitutional principle.

53. As to the remedies available to women to obtain compensation in the event of discrimination against them, there were two cases that should be distinguished. In the first place, if the discriminatory treatment constituted a violation of the legislation in force or of an employment contract, the person concerned could avail herself of the ordinary judicial means, and if necessary, obtain the assistance of a trade union; if, on the other hand, the violation of the principle of the quality of the sexes derived from the rules or the laws themselves, the only recourse for the victim was to appeal to the Constitutional Court. It should be remembered, however, that there were some private associations which concerned themselves with the protection and defence of the rights of women at all levels.

54. As for marriage, article 29 of the Constitution established equality between husband and wife, who had the same legal and moral dignity, limited only by the need to preserve family unity. Law No. 151 of 19 May 1975 was designed to ensure full application of that basic rule by proclaiming two essential principles: that of equal authority, family life being regulated by agreement between husband and wife, and that of parental authority over the children, the paternal authority having been abolished. It was inevitable, however, that the concern for preserving family unity, in accordance with article 29 of the Constitution, made for certain differences between the husband and wife. The question of the family surname was an example. Article 143 (b) of the Civil Code provided that the woman was to take her husband's surname, but also expressly provided that she could, at the same time, keep her own surname. That solution was a compromise which took into account the role of the surname as a means of family identification. That formula was different from the one adopted by the legislator of the Federal Republic of Germany, for example, where husband and wife were completely free to choose either's surname as that of the family.

55. In the event of a disagreement between the husband and wife regarding the conduct of family affairs or the exercise of parental authority, the legislator had refused to give priority to the wish of the one or the other and provided for the intervention of a judge in the most serious cases. As Mr. Bouziri had said, it was hardly satisfactory for a complete stranger to intervene in family affairs. It should be noted, however, that the intervention of the judge was limited to extreme cases, explicitly stipulated by the law, in the hope that the husband and wife would try to reach an agreement precisely in order to avoid such intervention. Furthermore, it was reasonable to assume that, if the husband and wife did not succeed in reaching an agreement and asked the judge to intervene, the family unit was in fact already shattered and that the marriage was almost certainly headed for dissolution.

56. As to the derogations from the application of the Covenant in the event of a state of war or emergency (article 4 of the Covenant, see CCPR/C/6/Add.4, pages 16 and 17), he explained that the declaration of a state of public emergency and of a state of war was provided for in order to face an extreme threat facing the internal safety of the country. It fell in the last analysis within the competence of the President of the Republic or the Ministry of the Interior on the advice of the Council of Ministers, according to case. It could also be delegated to a prefect in connection with specific areas. In all those exceptional cases, all of the provisions of article 4 of the Covenant had to be observed. It should be stressed that the Government of Italy had never resorted to those extreme means, even during the recent very serious attacks on public order in the country, and that it had always preferred to resort to the provisions of the laws, which, even the special ones, had been adopted with regard for the observance of ordinary legislative procedures.

57. He explained that the decree-laws such as those of 1978 and 1979, about which his delegation had already spoken, had been published in application of the provisions of article 27 of the Constitution, which provided for such a possibility in exceptional cases of necessity and emergency. He also explained that, on the very day of their publication, decrees in that category must be submitted to Parliament, for conversion into laws - at the risk of losing their effectiveness if that conversion did not take place within 60 days following the publication of the decrees in the Official Gazette. Those texts did not fall within the category of cases of declaration of a public emergency or a state of siege.

58. As for the special laws he had mentioned, they were Law No. 152 of 22 March 1975 on the protection of public order, converted into Law No. 191 of 18 May 1978; Decree No. 59 of 21 March 1978, containing general and procedural provisions for the prevention and suppresion of certain specific crimes, and Decree-Law No. 625 of 15 December 1979, converted into Law No. 15 of 6 February 1980, which had introduced urgent measures for the protection of the democratic order and public safety. Law No. 152 of 1975 had also introduced limitations in respect of the release of the accused on bail and had widened the range of cases of detention in custody. Article 5 of that text provided, in a very restrictive way, that the police official who ordered the detention had to immediately notify the Public Prosecutor, who had immediately to question the prisoner, who was released if the Prosecutor did not confirm the detention order.

59. On the other hand, Decree No. 59 of 1978, converted into Law No. 191 of 1978, established more serious penalties for some particular crimes such as attacks on public utility installations, the kidnapping of individuals for purposes of extortion and the laundering of money proceeding from aggravated theft, extortion or kidnapping. The same decree also provided for the possibility of telephone-tapping, which was authorized only on the demand of a judge and for a specific period. There were also provisions that particular installations would be built in such a way that they could be tapped only from the offices of the Public Prosecutor.

60. Finally, Decree No. 625 of 1979, converted into Law No. 15 of 1980, widened the possibilities of custody and prolonged the length of pre-trial detention.

61. Of course those measures were not without risk, particularly with respect to the length of procedures. Nevertheless, the peculiar seriousness of the common law or political offences which justified their introduction must be borne in mind. Furthermore, Italy was preparing a new penal code and a new code of penal procedure,

which were already well under way. The new texts would contain rules ensuring the most rapid penal procedures possible, and there was therefore reason to hope that Italy would soon have simpler and more rapid penal procedures which would eliminate the risk of excessively protracted legal proceedings.

62. The CHAIRMAN thanked the delegation for its very complete replies and asked it to convey to the Government of Italy his gratitude for the spirit of co-operation it had shown and for the size and quality of its delegation to the Committee.

63. He noted that the Committee had concluded its consideration of reports submitted by States parties under article 40 of the Covenant (agenda item 4) for the eleventh session.

The meeting rose at 5 p.m.