CCPR

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Distr.
GENERAL

CCPR/C/SR.188
25 October 1979

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE

Eighth session

SUMMARY RECORD OF THE 188th MEETING

held at the Palais des Nations, Geneva,
on Tuesday, 23 October 1979, at 10.30 a.m.

Chairman: Mr. MAVROMMATIS

CONTENTS

GE.79-4331

The meeting was called to order at 10.50 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Initial reports of States parties due in 1977 and 1978: Sweden (CCPR/C/1/Add.42)

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

2. The CHAIRMAN invited the Committee to consider the supplementary report of the Swedish Government (CCPR/C/1/Add.42), which dealt with the issues in the same order as in the Committee's report to the General Assembly on its third, fourth and fifth sessions (A/33/40, paras. 70 to 83). Members of the Committee would be able to put questions to the representative of the Swedish Government concerning the information appearing in Sweden's initial and supplementary reports. He suggested that the Committee should first examine the question of the implementation of the International Covenant on Civil and Political Rights.

3. Sir Vincent EVANS expressed appreciation to the Swedish Government for its supplementary report, which showed that that Government had studied with great care the questions previously raised by the members of the Committee. The discussion at the current session would be based on the initial report submitted at the third session, the replies given by the representative of Sweden at that session and the supplementary report before the Committee.

4. There were two ways to implement the relevant provisions of the Covenant in domestic law: the State could either incorporate them unchanged into its domestic law or it could reflect them in its domestic law and ensure that its legislation and practice were in keeping with the Covenant. States parties currently had the choice between those two alternatives, but the Human Rights Committee might at some future date clarify its policy in the matter, giving preference to one system rather than the other, and recommend or request States parties to incorporate the relevant provisions of the Covenant into their domestic legislation.

5. The system of direct incorporation of the Covenant's provisions into the legislation of the State party was clearer and more comprehensible for an individual wanting to know his rights under the Covenant and to invoke the Covenant in order to apply for remedy if he felt that those rights were being violated. It could also be said that that method guaranteed the "effective remedy" available under article 2, paragraph 3 (a), of the Covenant to any person whose rights or freedoms as therein recognized were violated. Conversely, it could also be maintained that the Covenant gave rise to an international obligation and that it was for each State party to reflect it as well as possible in its legislation. That task fell to the Government and legislative power of the State party concerned, and the courts were then responsible for monitoring the implementation of the provisions adopted.

6. It would be useful to have the views of the Swedish Government on that subject and to know whether it had any particular reason for not incorporating the relevant provisions of the Covenant directly into Swedish legislation. A compromise solution might be to allow the ombudsman to give an opinion as to whether the rights set forth in the Covenant were respected in the legislation and practice of the State.

7. Mr. PRADO VALLEJO noted that the supplementary report stated that Swedish courts and administrative authorities had the power to set aside laws and regulations, if they considered them to be manifestly in conflict with the Constitution. However, he wondered what was the attitude of the administrative authorities when laws were in conflict with the Covenant and whether or not those laws could be annulled. Noting that Sweden had expressed three reservations regarding the Covenant, he asked whether any progress had been made towards withdrawing them and ensuring the integrity of the Covenant in Swedish legislation.

8. Mr. SADI said that the extremely precise supplementary report of Sweden prompted him to make two remarks. First of all, he shared the view of the Swedish Government that it was for States parties to decide as to the measures necessary to give effect to the rights recognized in the Covenant. Secondly, he thought that the fact that Sweden had acceded to the Optional Protocol was additional proof of its respect for the Covenant.

9. The report stated that a Swedish Parliamentary Commission had been considering the right of courts and administrative authorities to examine the constitutionality of laws and regulations with special reference to the protection offered by the Constitution to basic human rights and fundamental freedoms. He wondered whether that Parliamentary Commission would also concern itself with the conformity of laws with the provisions of the Covenant, and if not, why not. He would also like to know whether, in keeping with article 2, paragraph 1, of the Covenant, under which each State party undertook to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant, without distinction of any kind, aliens in Sweden enjoyed the same protection as Swedish nationals.

10. Mr. GRAEFRATH thanked the Swedish Government for its supplementary report and said that he had no questions to ask for the time being.

11. Mr. LALLAH said that it would be interesting to know whether the Swedish Government had any difficulties in implementing the Covenant and whether it was contemplating some other method for giving effect to its provisions. It was perhaps going too far to claim, as some had done, that incorporation into the domestic legislation of a country gave the Covenant a status quite different from the one it was supposed to have. The way in which the highest jurisdiction of a State interpreted the provisions incorporated into domestic legislation would vary according to the State. Nevertheless, where the State had acceded to the Optional Protocol, the Human Rights Committee, which was competent in the matter, might arrive at an interpretation somewhat different from the domestic interpretation. He would like to have the Swedish Government's views on the subject.

12. As to the constitutionality of laws, it was stated on page 2 of the report that the courts could declare unconstitutional laws which were manifestly in conflict with the Constitution. Nevertheless, the fact that a Parliamentary Commission had been set up to consider the right of courts to examine the constitutionality of laws suggested that there might be some doubt in the matter. He would like to know whether there had been cases in which a law had been declared unconstitutional by a Swedish court and whether there was any doubt as to the competence of judicial bodies to declare a law unconstitutional.

13. Mr. DANELIUS (Sweden) said that Sweden had chosen to implement the Covenant not by incorporating the relevant provisions directly into its domestic legislation but by reflecting them in that legislation. That choice did not result from a comparative evaluation of the two methods, but mirrored Swedish legal tradition regarding the relationship between treaties and domestic law. According to that tradition, international treaties could not be applied directly, but had to be transformed into provisions of domestic law. It had proved to be easier for the courts and administrative authorities to apply the provisions of domestic law. On ratifying the Covenant, Sweden had kept to that tradition, which was observed in respect of other treaties, and that approach had never given rise to discussion. Nevertheless, that did not mean that the Covenant had no effect in cases with which the courts might have to deal. International treaties constituted an important factor in interpreting domestic laws. If a provision of Swedish law was difficult to interpret, the court would interpret it in the manner most in keeping with the international treaty which it reflected domestically.

14. To his knowledge, there had never been a case of direct conflict between a domestic law and the Covenant in Sweden. In theory, however, if such a conflict should arise, domestic law, as the law applied by the courts, would prevail. It would be the task of the Government, on learning of such a conflict, to rectify the situation and to bring domestic law into line with Sweden's international undertakings. Since Sweden had acceded to the Optional Protocol, an individual could challenge the conformity of a provision of Swedish law with the Covenant before the Human Rights Committee.

15. The reservations made by Sweden in ratifying the Covenant related to three specific points concerning provisions which Sweden had not deemed to be fully acceptable. Sweden maintained those reservations and was not contemplating a change of position for the time being.

16. As to the right of the courts to examine the constitutionality of laws, the report indicated that that question had been studied by a Parliamentary Commission. Pursuant to that Commission's report, the Government had submitted a bill to Parliament for the insertion of a new provision into the Constitution. According to Swedish legal theory, the courts had the right to refuse to apply a law considered to be manifestly in conflict with the Constitution, but no provision of the Constitution or of legislation specifically confirmed that interpretation. The bill before Parliament would constitute the first provision regarding the question. Parliament had passed the bill once, but the bill had to be adopted a second time, with elections being held in the interval between the two decisions. The second adoption should take place in

the near future. In practice, the question of the constitutionality of a law had been raised in the courts, but there had never been a specific case in which a court had actually declared a law adopted by the Swedish Parliament to be manifestly in conflict with the Constitution.

17. As to the protection given to aliens, chapter 2, article 20, of the Constitution provided that foreigners enjoyed fundamental rights on an equal footing with Swedish nationals. That provision applied to nearly all human rights, with the exception of the right to remain in Sweden and the right to vote. Those were common exceptions in any legal system.

18. Mr. OPSAHL said that the explanations provided by the representative of the Swedish Government showed that Sweden had no particular reason, for the purposes of implementing the Covenant, to depart from its traditional practice regarding the implementation of treaties in general. The question of the method chosen to give effect to the rights recognized in the Covenant concerned the policy of the Human Rights Committee, as Sir Vincent had noted, but also the progress made in the enjoyment of those rights, regarding which States parties were required to report under article 40, paragraph 1. From the standpoint of the individual, it was perhaps better for the provisions of the Covenant to be incorporated directly into domestic legislation, and the subject should be kept in mind by States which, following their tradition, had reflected those provisions in their legislation.

19. Article 2, paragraph 1, of the Covenant stated the obligation to respect and ensure the rights recognized in the Covenant. It should be noted that that constituted a twofold obligation: to respect and to ensure. In the dualist countries, such as Sweden and Norway, the traditional attitude had always been that that obligation was fulfilled if the rights were respected in the sense of not being violated. The question was whether somewhat greater importance should not be attached to the second aspect, namely, the guarantee of rights. The provisions of the Covenant did not oblige States parties to incorporate the Covenant into their domestic legislation. Furthermore, it was clear that the rights recognized in the Covenant must not be violated, even if the fact of violating them was not contrary to domestic legislation. No State could invoke its constitution or legislation in order to evade its international obligations. Nevertheless, a question arose as to what was the content of the obligation to ensure the rights recognized in the Covenant. He thought that the answer fell under three possible headings: the guarantee of rights in legislation, the remedies referred to in article 2, paragraph 3, of the Covenant and the actual situation obtaining in the country, it being necessary to know whether there was a discrepancy between norms and reality, since in some cases the norms and remedies were excellent in theory but left much to be desired in practice.

20. In the light of those observations, and not wishing to repeat various points mentioned by other members, he noted that in order to ensure the rights recognized in the Covenant, it was not enough to verify the conformity of domestic legislation with the Covenant before ratifying the Covenant. Whenever a new law was being drawn up, it was necessary to make certain that it would be consistent with the obligations already undertaken. Certain facts seemed to show that, when a new law was drawn up,

it was much easier to neglect the obligations undertaken when they were not incorporated in domestic legislation. One might even cite bills which expert commissions had recently prepared in Sweden without, perhaps, giving due attention to certain human rights provisions.

21. Mr. HANGA observed that the initial report submitted by the Swedish Government had been very clear and very comprehensive. The representative of Sweden had provided extremely satisfactory answers to the many questions concerning that report put by members of the Committee and those answers were further supplemented by the observations and clarifications in document CCPR/C/1/Add.42 and the oral explanations given by the representative of Sweden. That supplementary information related, inter alia, to the proposals to ensure equal treatment of men and women in working life and to the provisions of the Aliens Act. He wished once again to express his appreciation to the Swedish Government for its initial report and for all the subsequent explanations.

22. Mr. TOMUSCHAT said that he also wished to thank the Swedish Government for its excellent supplementary report (CCPR/C/1/Add.42), as well as for the constitutional documents distributed to the members of the Committee. Nevertheless, he would like to revert to the question of presumed agreement between domestic legislation and international obligations. Since the provisions of the Covenant were rather similar to those of the European Convention on Human Rights, it would be interesting to know if there had been a specific case in which, in order to bring Swedish legislation into line with that Convention, the principle that the domestic legal order should be adapted to international obligations had been invoked. In the future, it would be useful for the Committee to be informed of new developments, and particularly to be given the text of decisions interpreting the Covenant. It would be useful for the Committee to be informed exactly how Swedish judicial bodies had interpreted certain terms of the Covenant, namely, of the relevant decisions taken by Swedish courts.

23. Mr. DIEYE welcomed the presence of a representative of the Swedish Government; such co-operation in the Committee's work demonstrated Sweden's respect for human rights. In the supplementary report submitted to the Committee (CCPR/C/1/Add.42), he had noted one extremely important point which had not yet received a precise answer in Sweden. It concerned the power of judicial bodies themselves to give genuine and positive effect to provisions of the Covenant which did not coincide with those of Swedish laws. According to the report, the Swedish courts, and even the administrative authorities, could declare a law or a regulation to be unconstitutional. In order to give such a provision its due legal force, should it not be specified that the unconstitutional law was ipso facto annulled? He would therefore like to know whether, in the event that a judicial organ found a law or a regulation to be unconstitutional, the decision of that organ subsequently served as a legal precedent, in other words whether an individual could invoke that decision before another judicial body in order to request that the latter should make a similar finding, or whether it was merely a decision which applied to one specific case and had no erga omnes effect.

24. His second question concerned the right of aliens to go to law in order to assert their rights. In some countries, aliens, even when naturalized, did not have the same rights as other citizens, except after a probationary period. Moreover, aliens had to deposit cautio judicatum solvi in some countries before taking legal action. In Sweden, could an alien assert his rights before legal bodies in exactly the same way as a Swedish national?

25. Mr. TARNOPOLSKY said that he would like clarification on certain points. Except for certain provisions, the most important of which were those of article 25 and, to a certain extent, those of article 12, all the articles of the Covenant required that the same rights should be ensured to all, namely to aliens within the territory of the State party as well as to citizens of that State. It had been pointed out that chapter 2, article 20, of the Swedish Constitution granted aliens in Sweden most of the rights accorded to Swedish citizens. However, the second part of that article stated that aliens enjoyed such rights only unless otherwise provided by rules of law. The rights listed included some for which the Covenant made no distinction between aliens and the nationals of a State party. With regard to the Freedom of the Press Act (chapters 4 and 5 of the Constitution), there were express provisions under which Swedish citizens had the right to produce printed matter (chapter 4, article 1). That no doubt meant that the same right was not recognized for aliens. Moreover, the owner and the editor of any periodical had to be Swedish nationals (chapter 5, articles 1 and 2). Those provisions appeared to be contrary to article 19 of the Covenant.

26. Of course, each State party was allowed to respect the provisions of its own constitution in implementing the Covenant; however, a State party to the Covenant in which the Covenant did not possess the status of fundamental law was under even more of an obligation to show that its legislation and judicial practice conformed to the provisions of the Covenant. Was there therefore a means of challenging the conformity of Swedish legislation with the Covenant on the basis of distinctions which existed in Swedish legislation but not in the Covenant? Had cases brought before the European Court of Human Rights resulted in changes being made to Swedish laws recognized as not conforming to the provisions of the European Convention on Human Rights? In any case, the fact that Sweden had ratified the Optional Protocol and had made the declaration referred to in article 41 of the Covenant meant that the conformity of Swedish legislation and judicial practice with the Covenant could if necessary be challenged.

27. Mr. MOVCHAN said that the information given by the Swedish Government in its initial report (CCPR/C/1/Add.9) and through its representative during the consideration of that document at the 52nd and 53rd meetings of the Committee and subsequently, in response to questions asked by the members of the Committee, in its supplementary report (CCPR/C/1/Add.42), seemed to him to be satisfactory. The questions he himself had asked had received all due attention from the Swedish Government. Since a reading of the supplementary report and the replies to the questions asked showed that Swedish legislation had not been amended although there were a number of bills pending, he did not consider it necessary to ask any further questions. However, he wished to thank the Swedish Government and its representative for the comprehensive information given to the Committee.

28. Mr. DANELIUS (Sweden) said the fact that Sweden had chosen to implement the Covenant indirectly was attributable to historical reasons. The Covenant authorized either direct or indirect implementation. The detailed discussion to which that question had not given rise when Sweden had ratified the Covenant could perhaps take place at the current stage. Several individuals had based their law suits not on the Covenant but on the European Convention on Human Rights. The question had therefore arisen whether the courts would keep to the principle that international treaties could not be applied directly or whether they were prepared to implement those treaties, or at least such of them as concerned human rights, directly. The Supreme Court and the Supreme Administrative Court had decided in favour of the traditional principle, and the practice of the two Supreme Courts on that point was now very clear: conventions on human rights, like any other international treaty, should not be applied directly. Their direct implementation would therefore require new legislation. Thus far, however, it had not been felt necessary to make such a radical change to the fundamentals of the Swedish legal system. The system of direct implementation would have certain advantages. For instance, it would make it possible to challenge the conformity of Swedish legislation with the Covenant and not merely with the Constitution, which was currently the only possibility. However, the system of direct application might also have disadvantages, because Swedish judges and administrative officials had no international experience and were neither trained for nor accustomed to interpreting international treaties. There were therefore arguments both for and against such a change.

29. It had been asked to what extent the existence of international conventions on human rights had influenced the interpretation of Swedish legislation. As had been seen, the supreme courts had decided that the European Convention on Human Rights could not be implemented directly. In one or two cases, they had also declared Swedish legislation to be in conformity with the provisions of that Convention. Some other judgements had been rendered by lower courts, but they were less important because the Supreme Court had not reviewed them.

30. With regard to the constitutionality of Swedish laws, it should be noted that a new provision was to be incorporated into the Swedish Constitution, after adoption by Parliament. According to that provision, if a court or a public body found a law to be manifestly in conflict with the Constitution, it should not apply it. If, however, that finding was made by the Supreme Court, the legislative power would be obliged to take the appropriate action.

31. Several members of the Committee had raised the question of the provisions relating to aliens, and particularly that of cautio judicatum solvi. Until recently, aliens wishing to bring a case before a Swedish Court had been obliged to deposit security, unless they were dispensed from doing so under an agreement between their country and Sweden. That provision had been based on the argument that, as far as the costs of a trial were concerned, it might be difficult to enforce a judgement when the person involved was resident abroad. The law had been amended and no longer applied to aliens resident in Sweden. However, it was still applied to aliens resident outside Sweden, unless an agreement had been signed between their country and Sweden. That, then, was a case in which Swedish legislation had been amended in order to put aliens on the same footing as Swedish nationals.

32. In Sweden, aliens, like nationals, enjoyed particularly broad freedom of expression, including the freedom to engage in political activities. The rights laid down in the Freedom of the Press Act were guaranteed to nationals under the Constitution and applied to aliens under conditions of equality except that in the latter case they could be limited by a simple legislative provision.

33. Mr. TOMUSCHAT reminded the Committee that, during its consideration of the initial Swedish report, he had requested clarifications on the competence of the administrative courts. Since the answer thus far received still did not seem clear, he asked if Swedish legislation specified the cases in which an individual could appeal to an administrative court or if it contained a general clause enabling an individual to appeal against an administrative decision in all circumstances.

34. Chapter 2, article 20, of the Constitution granted certain rights to aliens but contained a few gaps which were difficult to understand: for example, the right of an alien to leave Sweden was not guaranteed by the Constitution, nor did the prohibition on imposing a penalty for an act not punishable by law at the time of its commission apply to aliens. A general problem therefore arose: if it was true that under Swedish legislation an individual was free to do everything which was not prohibited by law, what would be the position of an alien whose right under article 12, paragraph 2, of the Covenant was violated by the legislative power, that right being protected in Sweden neither by legislation nor by the Constitution?

35. Finally, he pointed out that no reply had yet been given to the question whether the ombudsman could at any rate refer explicitly to the international obligations contracted by the Swedish Government.

36. Mr. OPSAHL asked if it was true that no public authority, even the ombudsman, was empowered to ensure the implementation of the provisions of the Covenant. As the Committee seemed to agree that it was not compulsory for a State to incorporate the provisions of the Covenant into its domestic law, and since some of the rights set forth in the Covenant were not provided for in Swedish legislation, he wondered how a remedy applied for in the event that one of those rights was violated could be effective within the meaning of article 2, paragraph 3, of the Covenant. He noted that the European Court of Human Rights had, correctly as it appeared, interpreted the corresponding provision of the European Convention on Human Rights as meaning that anyone who claimed that one of his rights as recognized by the Convention had been violated should have an effective remedy. Similarly, still with regard to remedies, he wondered what was the situation regarding the right of an alien expelled with immediate effect in pursuance of a decision, to have his case reviewed by the competent authority, as provided for in article 13 of the Covenant.

37. Mr. SADI agreed that not all the rights set forth in the Covenant were applicable to aliens; the right to vote was one example. However, the fundamental rights were so applicable and any person, whether a national or an alien, was entitled to assert them. In that connexion, he would like to know if an alien expelled from Sweden by administrative or judicial decision had the right, after his expulsion, to appeal against that decision, as authorized by article 13 of the Covenant.

38. Mr. TARNOPOLSKY asked if, for example, an alien sentenced to one year's imprisonment could be expelled from Sweden despite having already been resident there for five years. If so, such expulsion seemed to him to be a very heavy penalty.

39. Mr. DIEYE asked if an alien who married a Swedish national acquired Swedish nationality ipso facto or if he or she had to prove a certain number of years' residence in Sweden. In the case of divorce, could the naturalized Swedish spouse be expelled, especially if it was established that the spouse concerned had entered into that marriage with the sole aim of acquiring Swedish nationality? If an expulsion measure against an alien could not be carried out immediately - for example, because appropriate transport was lacking - could the person concerned be arrested and detained in an appropriate establishment until he actually left the country?

40. Mr. DANELIUS (Sweden) explained that in Sweden there were a number of administrative courts and a Supreme Administrative Court; the question of the jurisdiction of those bodies was complicated, in that the legislative texts themselves provided that appeals should be made to a particular administrative court. If there was no possibility of appeal, a superior administrative agency, or in the last resort the Government itself, settled the matter.

41. With regard to the rights granted to aliens under the Swedish Constitution, there seemed to be a misunderstanding concerning the meaning of the provisions of chapter 2, article 10, of the Constitution as far as the non-retroactivity of penalties was concerned; that was a general provision which was not applicable only to nationals and should be read in conjunction with article 20 of the same chapter. Similarly, with respect to the right to freedom of movement in Sweden, guaranteed to citizens by article 8 of the Constitution, it had perhaps not been considered desirable to extend that right to aliens in order not to be obliged to enact legislation restricting that right for aliens in case of war or other special situations. As to the right to leave Sweden, which was also guaranteed to Swedes under the same article, he saw no reason why it should be refused to aliens.

42. With respect to the competence of the ombudsman in regard to the implementation of the Covenant, his duties were to supervise the implementation of Swedish legislation of which, by tradition, international treaties such as the Covenant did not form part. The ombudsman was therefore not competent to deal with violations of the provisions of the Covenant. However, his discretionary powers were broader than those of the courts and it was not impossible that, in his reports to Parliament, he might draw attention to the possible inconsistency of Swedish legislation with the Covenant or even adopt a definite position in that respect in his decisions.

43. The general questions concerning effective remedies asked by Mr. Opsahl were extremely complex; the same problems had been raised in connexion with the implementation in Sweden of the European Convention on Human Rights. Some jurists had maintained that the provisions of article 13 of the European Convention on Human Rights required a direct remedy based on the terms of the Convention, but the European Court of Human Rights had not endorsed that

interpretation in its judgements and in two decisions it had declared that it was sufficient to provide a remedy based on certain provisions which corresponded to the Convention. That was probably also true for the Covenant.

44. Expulsion decisions affecting aliens could always be the subject of an appeal which could go as high as the Supreme Court and the Supreme Administrative Court, depending on the case, and the appeal had a suspensive effect.

45. Under the Citizenship Act, an alien could normally acquire Swedish nationality if he had been resident in the country for not less than five years. That period was reduced in certain cases, for example in the event of marriage with a Swedish national. A person who had acquired Swedish nationality by marriage could not be deprived of it as a result of a divorce or otherwise, and could in no case be expelled.

46. In practice, provided that he had a permanent Swedish residence permit or had resided in Sweden for five years, an alien could not be expelled even if he had committed a serious offence, except in certain specific cases and for very special reasons. Under the Aliens Act, an alien could be deprived of his liberty pending the execution of an expulsion order issued against him if there was a risk that he might evade such expulsion. The competent authorities possessed full discretion to rule on the matter and could order the alien to be detained.

47. Mr. TOMUSCHAT, speaking on a point of order, expressed surprise at seeing no press officers in the conference room. Meetings such as the current one were very important and should be brought to the attention of the general public.

48. The CHAIRMAN said that the Secretariat would reply to that point at the following meeting.

The meeting rose at 1.05 p.m.