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ON CIVIL AND
POLITICAL RIGHTS**



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Tenth session

SUMMARY RECORD OF THE 228TH MEETING

Held at the Palais des Nations, Geneva,
on Friday, 18 July 1980, at 3 p.m.

Chairman:

Mr. KOULISHEV

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Covenant (continued)

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The meeting was called to order at 3.20 p.m.

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

Hungary (continued) (CCPR/C/1/Add.44)

1. Mr. OPSAHL said that, under article 40, the Committee was required not only to study the reports submitted to it, but also to make its own report and, if necessary, to formulate general comments. In order to decide how that was to be done, it was undoubtedly useful to have two series of dialogues with countries from different regions, and co-operation with Hungary was particularly important in that respect. The countries which had submitted reports had shown the way, and it was currently for the Committee to take action. He thanked the representatives of Hungary for their assistance, and hoped that their example would be followed by all other States Parties with which the Committee was concerned.

2. A re-reading of the summary records of three years previously and of the initial report by Hungary, in the light of experience subsequently acquired, showed that the Committee had learned a great deal. It had a better idea of what to look for in a report and of what questions it should ask. On the other hand, as had been shown by the questions asked the previous day, additional information provided by a country inevitably led to further questions. Problems which had been referred to only briefly in 1977, for example the Hungarian legislative provisions on the authorization of publications and associations - problems which were relevant to important articles of the Covenant - could be more thoroughly examined in the light of the details submitted in the second report. The dialogue could thus be continued and would enable the Committee to deepen its knowledge of the problems and to improve its methods of examining the application of the Covenant.

3. He would begin by considering the subject of judicial guarantees, notably in connexion with article 9 which protected personal liberty, and in connexion with article 14, which laid down the principles guaranteeing a fair hearing before the courts and other judicial bodies. He noted with satisfaction that the second report replied at length to a question which he had raised in 1977 regarding the independence and impartiality of the judiciary in Hungary, but also observed, in connexion with the special safeguards mentioned on pages 2 and 3 of the new report, that no mention was made of the right of an accused person to challenge his judge if he thought that the judge was partial. He would like to know if such a right existed and, if so, how it could be exercised, and by what legislative provision it was governed.

4. In the area of judicial guarantees, the Committee had become more aware of the fact that article 9 was concerned not only with arrest and detention for crime, or on suspicion of crime, but also for other purposes which had not been mentioned either in the initial report or in the discussion in 1977, such as, for example, the detention of mental patients against their will and the detention of vagrants, juvenile delinquents, or persons awaiting extradition or expulsion. In other words, he would like to have information on what was often called administrative detention, which might even be possible under the law for the purpose of preventing crime. He would like to know whether there existed safeguards against arbitrary detention (prohibited under article 9, paragraph 2, of the Covenant), and how the provisions of paragraphs 2-5 of that article were implemented in Hungary. In conclusion, in connexion with minimum guarantees in the case of criminal proceedings (article 14 of the Covenant), he asked whether a defendant was still required to bear the cost of interpretation services if he was found guilty.

5. Mr. GRAEFERATH said that, as he had already indicated in the discussion in 1977, he did not share the views of the previous speaker regarding the manner in which the Committee's mandate was to be interpreted. He noted with satisfaction that, in its new report, the Hungarian Government had supplied information on some particularly important subjects.
6. Mr. TOMUSCHAT said he noted that article 48 of the Hungarian Constitution provided that judges could be removed from office by a decision of Parliament. He asked what were the grounds which could lead to a judge being removed from office.
7. Sir Vincent EVANS said that he would like to have some information on the removal of judges from office and on the appointment of judges and assessors. It was stated on page 1 of the addendum to the report that judges were elected by the Presidential Council. While he did not know how many judges there were in Hungary, he assumed that they were fairly numerous at various levels. He would like to know, therefore, whether the Presidential Council elected all those judges and, if so, whether it did so after having consulted other bodies, professional bodies, judicial bodies etc. Since, in principle, the members of the Presidential Council were politicians, it was hard to see how they could elect judges without the advice of properly qualified bodies or individuals. The report went on to state that the courts consisted not only of professional judges but also of assessors, who had the same rights and the same duties as the judges. He asked who those assessors were and what were their qualifications: whether they were employed as full-time assessors, or whether they were elected, but called upon to carry out their duties as assessors only when assigned to a particular case. He would like to have more information on how the members of courts were chosen.
8. Mr. DIEYE said he noted that the report stated that the judges were entirely independent, and asked by what authority their independence was guaranteed. In the case of a judge being removed from office, he wished to know whether such a judge would be able to appeal to a higher authority to try to have the decision revoked.
9. The CHAIRMAN invited the representative of Hungary to reply to the questions raised by members of the Committee on the report submitted by his country.
10. Mr. KIRALY (Hungary) said, with reference to the independence of the judiciary, that he referred the Committee to the detailed explanations on the subject provided in the addendum (CCPR/C/1/Add.44) to the initial report of 1977. In connexion with that new document, he wished to point out that in the second paragraph of section II, the phrase "for any act connected with their participation in the administration of justice they shall not be held criminally responsible" related to the assessors and not the professional judges; that phrase should therefore be deleted, or else made more specific.
11. The removal of judges from office was in fact possible in Hungary. In 1973, the Presidential Council had set up disciplinary councils (Decree No. 1). Those councils examined the cases that were brought before them and, if they considered that a judge had infringed the Constitution or the law, or that his attitude violated professional ethics, they would bring the case to the attention of the Presidential Council which, on the basis of the investigation by the disciplinary council and of the evidence that had been brought forward, would remove the judge from office and, where appropriate, ask that proceedings be initiated against him.

12. In reply to a further question, he said that the judges were entirely independent and answerable only to the law. They judged both civil and criminal cases on the basis of the law, with the proviso that the Supreme Court could, if there were an appeal, arrive at a different decision, which the judges would then be required to respect.

13. In regard to the appointment of professional judges by the Presidential Council, the Council assessed the personal qualifications of candidates on the basis of the curricula vitae submitted to it. In Hungary, candidates for the judiciary, after having completed their studies and gone through a period of apprenticeship, were required to sit a specialized examination, and only those who were successful in that examination could be elected. There were 1,300 judges in Hungary, including the members of the Supreme Court. The country had a population of 10.5 million, which gave some indication of the number of judges in proportion to the population.

14. Assessors were elected by the local councils from among the candidates put forward by the National Council of the People's Patriotic Front. The assessors attached to the Supreme Court were elected by the Presidential Council of the Republic for a period of four years. They were far more numerous than the professional judges, but usually did not exercise their functions as assessors for more than one month at a time. If the case they were concerned with was a very important or lengthy one, they were given special permission to be absent from their work for a longer period. Courts consisted of one judge and two assessors, with equal powers. The assessors did not, of course, know the law as well as the judges, and it was for the latter to refer them to the relevant legal provisions and to provide the necessary explanations. If the professional judges considered that the assessors that had been appointed were not suitable for dealing with the case for which they had been selected, they could indicate accordingly by transmitting their opinions in sealed envelopes; a court of second instance, composed of three professional judges, would then decide the matter.

15. When a judge was removed from office, he could appeal against the decision. The Presidential Council was not qualified to hear such appeals, but the judge could bring his case to the Supreme Court.

16. In reply to the question on the detention of mental patients, he said that mental patients could in fact be detained for purposes of treatment, but that the patient's lawyer could appeal against the decision. That, of course, affected only patients who had been found guilty of a crime. Under Hungarian law, representatives of the judiciary regularly visited hospitals in which delinquents were detained, and he himself, having been a judge not so very long before, had made frequent visits to such institutions and talked with the patients in order to ascertain whether they had any complaints. In theory, representatives of the court were obliged to hear evidence only from doctors, but they usually also tried to make contact with the detained person in order to establish whether he had been hospitalized against his will and whether an expert opinion was required. Detention of minors was fairly rare and minors were always accompanied by defence lawyers who could, if necessary, secure the release of their clients.

17. Administrative detentions were carried out by the militia, and those detained could not be held for more than three days unless the detention was ratified by the Procurator. In regard to arbitrary detention, he referred members of the Committee to the detailed information given in the report submitted by his country.

18. In reply to the question as to what was the procedure if a defendant did not speak Hungarian, he said that in such a case the State would bear the costs of interpretation.

19. Mr. BOUZIRI said, with reference to article 61, paragraph (2) of the Constitution of the Hungarian People's Republic, that he was surprised that the word "discrimination" should have been qualified by the adjective "prejudicial", since any form of discrimination was by definition prejudicial to someone. Incidentally, he wondered why there was no mention of discrimination on political grounds, as stated in the Covenant, and whether there existed, either in the Constitution or in Hungarian law, any specific provision condemning political discrimination in all fields and in all cases.

20. In regard to article 69, he noted that citizens of the Hungarian People's Republic had some very onerous duties laid upon them. He wondered, for example, how the law sanctioned an obligation to consolidate social ownership.

21. Mr. TOMUSCHAT asked whether there were limits to the possibilities of modifying the Constitution and whether it would be possible, for example, to change the socialist orientation of the Hungarian State. It was clear from articles 19 and 25 of the Covenant that the organization of the State must be the emanation of the will of the people. Moreover article 1 provided that all peoples had the right freely to determine their political status. They could obviously, choose the socialist road but, having chosen it, he wondered whether the Hungarian people would have the possibility of opting for another form of government, excluding, of course, fascism and national socialism, régimes which radically threatened fundamental human rights.

22. Mr. TARNOPOLSKY, referring to pages 4 and 5 of Hungary's complementary report, asked if official authorization had to be obtained to establish an association if it was not to be declared unlawful.

23. With regard to freedom of religion, he doubted whether the restrictions mentioned on pages 6-7 of the report were in conformity with the provisions of article 18 of the Covenant.

24. Turning to articles 19 and 21, with reference to chapter 11 of the report and article 54, paragraph 3 of the Constitution, he observed that it was difficult to obtain an exact idea of how freedom of expression was applied in Hungary. He wondered whether a person had the right to say what he thought to the extent that the law authorized or whether freedom of expression was limited only by restrictions established by law.

25. In connexion with article 25 of the Covenant, he noted that, according to article 20, paragraph 5 of the Constitution, any political, economic or other activity, or attitude conflicting with the interests of society was incompatible with the mandate of a member of parliament. In view of the wide range of interpretations which might be made of a term as imprecise as that of "attitude", he found it difficult to see how the provisions of that article could be in keeping with those of articles 25, 19 and 21 of the Covenant.

26. Mr. KIRALY (Hungary), replying to Mr. Bouziri's question on the use of the word "prejudicial" in article 61, paragraph 2, of the Constitution, said that all types of discrimination were severely punished by the law and, moreover, that the Russian version of the text referred not to "prejudicial" but to "premeditated" discrimination, a translation of which was more faithful to the original. Racial discrimination was indeed not mentioned and he acknowledged that it constituted a lacuna, but article 61, paragraph 2, should be understood as prohibiting all types of discrimination. Therefore, all the specific provisions of the Constitution must be interpreted in the light of its general provisions, whose aim was precisely to protect the civil and political rights of the citizen.

27. As to the meaning which should be given to article 69, he said that the citizen had a moral duty to protect and consolidate social ownership but that, if he did not do so, there was no question of punishing him unless he committed some act against it, in which case the provisions of the penal code would be applicable. By the same token, under the terms of that same article, the citizen was bound to enrich his education but, was not, of course, liable to prosecution if he did not do so.

28. On the possibilities of modifying the Constitution, he replied that it was possible, if such was the wish of the majority of members of Parliament. So far, the Hungarian people had seen no need to modify the basic structures of the socialist régime. It was, however, permissible for citizens to propose, through the intermediary of their deputies, any modification of the Constitution which they might consider desirable.

29. With regard to the right to vote, the Hungarian Constitution stated that all persons had the right to take part in free elections. Every person had the right to vote or not to vote, and to vote for or against any candidate. Thus, in the recent parliamentary and local council elections, not all the candidates had been elected and new elections had had to be held to fill the seats which had remained vacant.

30. Decree-Law No. 35 of 1970 made the meeting of a specified number of citizens a prerequisite for the establishment of an association and specified that the activities of the association must be in conformity with the Constitution. None of its provisions appeared to run counter to the Covenant. The Hungarian legal order had been constitutionally established and the country was, as like any other State, legitimately entitled to require its citizens not to establish associations whose aim was anti-constitutional. According to the Hungarian Central Statistical Office, the country had had almost 9,000 scientific, cultural, sports or other associations in 1969 with over 2 million members. A question had also been asked about article 54 of the Constitution, in connexion with freedom of speech. He explained that the law imposed certain specific restrictions and that everybody was free to do anything that was not prohibited.

31. With regard to the specific obligations of members of Parliament, he said that requiring of members of Parliament that their activities or attitudes should not be contrary to the interests of society could not be interpreted as restricting the rights of those concerned. By its nature, the parliamentary function was a demanding one and deputies, like other citizens - and perhaps even more so, had to respect the country's laws and public order. It seemed normal to subordinate the exercise of those functions to a moral criterion so as to keep out individuals whose behaviour might disturb a country's public order or morals.

Every member of Parliament had to respect those obligations and to conform to socialist morals. Concerning respect for the interests of society, it was obvious that, on the occasion of the pre-electoral meetings, the future deputy had committed himself to following a specific line and to pursuing certain aims in the exercise of his functions. Once the candidate was elected, he was bound to his electors by the commitments which he had undertaken and had to be true to them. The provisions of the Hungarian Constitution were therefore in no way incompatible with those of the Covenant.

32. Lastly, concerning freedom of conscience and freedom of religion, he said that those were rights which were guaranteed by the Constitution. Before the liberation not all churches and not all religions had had the same rights. However, contemporary Hungary accepted the Catholic and Protestant churches as well as a number of religious societies, a dozen or so of which had joined together in an association of free religions, whose members had the same rights as the larger religious movements.

33. Freedom of conscience and belief formed part of private life and it was possible to be a believer without belonging to a religious movement. That was how Hungary ensured freedom of conscience for its nationals. The report (page 7) stated that parents exercising parental supervision or the guardianship authority should decide whether the child should receive religious instruction. The right to religious freedom was not merely a formal right but was exercised in practice.

34. Prior to leaving Budapest for Geneva, he had spoken to a number of leading ecclesiastics. A Lutheran bishop had told him that 18-22 per cent of the Lutherans in Hungary attended church. He emphasized that those figures were higher than the corresponding figures for western Europe, and he saw in them a concrete example of freedom of religion.

35. Sir Vincent EVANS said that he would like to know if a person who was deeply convinced of the need to eliminate weapons of mass destruction, because of the threat which they represented to human rights and the very future of mankind, would have the possibility to publish a tract or brochure in Hungary to set forth his opinions; if he would have access to the mass-communication media, such as the daily press; if he would be allowed to organize public meetings to make his feelings known and if he could establish an association or organize demonstrations without having to obtain prior authorization from the authorities for all those activities. He thought that the replies to those questions would permit the Committee to appreciate the degree of freedom which citizens effectively had to express their opinions.

36. Mr. KIRÁLY (Hungary) reminded the Committee that his country had only 10.5 million inhabitants, that it had lost almost 600,000 men during the Second World War and that the suffering of those years of conflict had left an indelible mark on the consciousness of its people. The younger generation had been brought up with a horror of war and the spreading of ideas favouring disarmament and peace was encouraged. A number of Hungarian organizations, among which the People's Patriotic Front and the Hungarian Women's Union might be mentioned, devoted their activities to propaganda in favour of disarmament. Various other organizations and societies were working for peace and a large number of well-known religious figures had often expressed their support for the peace-loving policy of the Hungarian State.

37. In addition, Hungarian newspapers regularly published appeals for peace and it was possible to organize meetings without any prior authorization. With regard to associations, he had already given details of the legislation governing their establishment and added that, once they had been duly registered, they could act freely in favour of the maintenance of peace.

38. Mr. TOMUSCHAT said that he would like to know if an artist desirous of expressing himself might encounter any legal obstacles or have to obtain official authorization or belong to an association before being able to publish or exhibit his works. He would also like to know if commentaries had been made on the subject of the Hungarian Constitution, whether the opinions of the commentators were concordant, and whether they had been published.

39. Mr. KIRALY (Hungary) said that socialist realism was the necessary corollary of the socialist idea and that the level of development reached by Hungary made a certain freedom of artistic creation possible. With regard to publications, certain forms of art were protected and there was no "official line". Artists were free to express themselves and to select their art form. Various State bodies ensured a wide dissemination of art and of literature in Hungarian and foreign languages. At the Helsinki Conference, Hungary had even proposed to several Governments that some Hungarian works should be published in foreign languages, but that idea had not been put into practice. Hungarian art and literature had none the less produced numerous works worthy of world-wide dissemination, and a specialized publisher was responsible for disseminating works in foreign languages as well as a magazine in which different works and commentaries on them were made available to the public. However, the problem of copyright could be an obstacle to publication. In general, the economic situation of artists in Hungary could be described as satisfactory.

40. Furthermore, freedom of scientific research was protected by law and the situation in Hungary in that respect compared favourably with that of many more developed countries.

41. With regard to commentaries to the Constitution, they had not been published as such, but were usually included in reports prepared by the ministries and submitted to Parliament. They might have a bearing either on the Constitution as a whole or on specific provisions.

42. The CHAIRMAN thanked the Hungarian delegation for its detailed replies to the questions put by the Committee and requested it to transmit to the Hungarian Government the Committee's gratitude for the desire which it had manifested to co-operate effectively with the Committee.

43. Mr. KIRALY (Hungary) stressed the great importance of the exchanges between representatives of Hungary and the Committee and said that his own field of vision had been broadened as a result of the discussions, that he had listened to the questions with a great deal of interest and that such a sincere exchange of views could not but be of value, since the diversity of opinions that had been expressed would certainly both help his country to develop and improve its national legislation, in conformity with the provisions of the Covenant, and make it easier to prepare future reports.

The meeting rose at 5.50 p.m.