

**INTERNATIONAL
COVENANT
ON CIVIL AND
POLITICAL RIGHTS**



Distr.
GENERAL

CCPR/C/SR.142
1 May 1979

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Sixth session

SUMMARY RECORD OF THE 142nd MEETING

Held at Headquarters, New York,
on Friday, 20 April 1979, at 3 p.m.

Chairman: Mr. MAVROMMATIS

later: Mr. KOULISHEV

CONTENTS

Consideration of reports submitted by States parties under article 40 of the
Covenant: initial reports of States parties due in 1977 and 1978 (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Department of Conference Services, room A-3550.

Any corrections to the records of the meetings of this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 3.25 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT: INITIAL REPORTS OF STATES PARTIES DUE IN 1977 AND 1978 (continued)

Spain (continued) (CCPR/C/4/Add.1)

1. Mr. TARNOPOLSKY said that he wished to join previous speakers in expressing admiration of Spain's achievements during the past two years. It was rare for a people to be able, through peaceful revolution, to make a transition from an autocratic State to one based on democracy, equality, justice and liberty. Spain could be justly proud of its Constitution, which showed a high degree of conformity with the Covenant; he hoped that the legislation to give effect to the Constitution would live up to the latter's high ideals. He welcomed the statement in paragraph 44 of the report (CCPR/C/4/Add.1) to the effect that the Government was prepared to give an account of future developments in that respect.
2. Articles 10 and 96 of the Constitution, which made the Government's international obligations part of the legal order, were commendable; he had noted that article 96 went on to state that the provisions of international treaties could only be repealed, amended or suspended in the manner provided in the treaties themselves or in accordance with the general rules of international law. He had also noted in particular articles 25 and 28, article 30, paragraph 2, and articles 39, 53 and 161.
3. He wished to make a number of observations that might assist the Government in its legislative implementation phase. Firstly, as concerned article 2, paragraph 3, of the Covenant, he noted that article 162, paragraph 1 (a) of the Constitution appeared to confine the lodging of an appeal on the basis of constitutionality to governmental organs. That right should be available also to private individuals.
4. He had noted the references in the Constitution to equal rights for men and women and the indication that further provisions on the subject might follow. The words "... to ensure the equal right of men and women ..." in article 3 of the Covenant required that the proclamation of equality should be followed up by specific measures to give effect to the principle. He therefore wished to know what action was to be taken in that direction.
5. As concerned article 4 of the Covenant, he noted that there was a reference in article 116 of the Constitution to a state of alarm, a state of emergency and a state of siege, whereas article 55 referred to a state of emergency and a state of siege but not to a state of alarm. Were the restrictions referred to in article 55 inapplicable in the latter case? He hoped that the further information to be submitted would include more details on the law referred to in article 55, paragraph 2, when enacted, bearing in mind that investigations relative to the activities of armed bands or terrorist groups might relate to people who were not necessarily members of such groups, and the law might therefore have a broader application.

/...

(Mr. Tarnopolsky)

6. He welcomed the provision in article 15 of the Constitution for the abolition of the death penalty. Although in no way contrary to the provisions of article 6 of the Covenant, the penalty of 40 years' "rigorous imprisonment" as referred to in the report (CCPR/C/4/Add.1, para. 18 (i)), or even 30 years as mentioned orally, might nevertheless infringe the provisions of article 7. Some offenders might even prefer the death penalty to such a long term of imprisonment.

7. He wished to ask two further questions concerning article 7 of the Covenant. Firstly, in what conditions could solitary confinement be imposed and, secondly, in relation to articles 7 and 23, what provisions were made for visits from and correspondence with the offender's family?

8. As concerned article 9 of the Covenant, he would welcome more details in subsequent reports on the exceptions to be provided by the law to the provision in article 17, paragraph 1, of the Constitution that nobody could be deprived of his freedom.

9. He could find no reference in the Constitution to conditional release, as provided for in article 9, paragraph 3, of the Covenant. Information on that point would also be welcome.

10. Referring to article 11, paragraph 2, of the Constitution, which stated that no person of Spanish origin could be deprived of his nationality, he asked whether naturalized citizens would also be protected in accordance with article 12, paragraph 4, of the Covenant. He wished to know more about the provisions to be laid down by the law with respect both to article 11 and article 19 of the Constitution.

11. A commendable effort was made in the Constitution, particularly in article 127, paragraph 1, to ensure the independence of the judiciary in accordance with article 14, paragraph 1 of the Covenant. What were the reasons provided by law for the dismissal, suspension, transfer or retirement of judges and magistrates, referred to in article 117, paragraph 2, of the Constitution? He also wished to know what the legal provisions were as concerned article 122, paragraph 2, of the Constitution, which might have some relationship to the independence and impartiality of the judiciary.

12. He noted the reference in article 120, paragraph 1, of the Constitution, to public hearings "with the exception of those provided for in the laws of procedure". Article 14, paragraph 1, of the Covenant, made specific reference to the grounds on which a restriction could be applied. Such grounds might be narrower than those provided for in the laws of procedure and it would therefore be useful to know what the latter provisions were.

13. No reference was made in article 24, paragraph 2, of the Constitution, to the provision of adequate time for the preparation of the defence in accordance with article 14, paragraph 3 (b), of the Covenant. Article 24 failed to provide sufficiently clearly for the rights referred to in article 14, paragraph 3 (e), of the Covenant. Recognition of the right of persons not to make declarations

/...

(Mr. Tarnopolsky)

against themselves, provided for in article 24, paragraph 2, of the Constitution, might not necessarily give persons the full protection provided for by article 14, paragraph 3 (g), of the Covenant.

14. As concerned article 17 of the Covenant, he wished to know in what circumstances a legal warrant, as referred to in article 18, paragraph 2, of the Constitution, could be obtained, and also to have information on the laws, such as that referred to in article 55, paragraph 2, of the Constitution, determining the exceptions for legal ruling, to which reference was made in article 18, paragraph 3, of the Constitution.

15. Did Spanish judicial practice or legislation contain any definition of the term "truthful information", referred to in article 20, paragraph 1 (d), of the Constitution? It would be useful to be able to compare any restrictions in that respect with those permissible under article 19 of the Covenant.

16. As concerned article 22 of the Constitution, which was related to article 22 of the Covenant, he wished to know whether the provisions of paragraphs 2 and 4 were set forth more specifically in the legislation.

17. The measures against discrimination envisaged in articles 26 and 27 of the Covenant were not necessarily confined to Government action. Were there any laws or administrative procedures in Spain dealing with discrimination by citizen against citizen as well as by Government against citizen? He welcomed the measures in articles 143 et seq. and article 3 of the Constitution, to implement article 27 of the Covenant. What provisions were made to enable the smaller ethnic, religious or linguistic minorities to profess their religion, enjoy their culture and use their language? Was the right to self-determination viewed as a right that could be exercised in favour of secession, bearing in mind that article 2 of the Constitution referred to the indissoluble unity of the Spanish nation, and not to a geographical area?

18. Mr. OPSAHL said that he, too, wished to express admiration of the report (CCPR/C/4/Add.1) and of the recent developments which had taken place in Spain. The Constitution was an interesting and well-drafted instrument. Bearing in mind that it was perfectly possible for a person to be a republican in a monarchy, he wished to know what attitude would be adopted under the Constitution towards the propagation of republican ideas.

19. Referring to the statement in paragraph 2 of the report that no special remedy had been established for violation of the rights recognized in the Charter of the Spanish People of 17 July 1945, he asked for a brief explanation of how the weaknesses implicit in that system had been experienced. The short-comings of remedies of the type described as compared with specific written provisions were not confined to the Spain of the past. Similar situations were current in many States. He wished to know whether the concentration of all the State powers in the hands of a single person, and the subordination of individual rights and freedoms to the higher interests of the State (CCPR/C/4/Add.1, para. 5) had obtained in law as well as in fact.

/...

20. He wished to have more information concerning the statement that the transition towards political democracy was taking place without repudiating, in revolutionary fashion, what had been legitimate in the past (CCPR/C/4/Add.1, para. 6), and particularly on any possible steps taken against individuals identified with the past régime.

21. He noted that article 10, paragraph 2, of the Constitution stated that the standards relative to the fundamental rights and liberties recognized by the Constitution would be interpreted in conformity with the Universal Declaration of Human Rights and the international treaties and agreements thereon ratified by Spain. He would like to know what Spain's position was with regard to the European Convention on Human Rights and the protocols thereto. Had Spain ratified that Convention and if so, was it enforcing it? Had Spain accepted or did it intend to accept the international rules regarding the right to petition and acceptance of the jurisdiction of the European Court of Human Rights?

22. With regard to anti-terrorist legislation, he would like to know whether the measures envisaged might prevent lawyers from visiting persons who had been arrested on suspicion of committing terrorist offences, and which courts had jurisdiction on matters falling within the scope of the decree on public order.

23. Was article 7 of the Covenant duly enforced or were there incidents of ill-treatment of detainees? If so, how were those situations dealt with in practice?

24. He would appreciate further clarification of paragraph 40 of the report (CCPR/C/4/Add.1), which implied that since the Constitution recognized and guaranteed the right to autonomy of the nationalities and regions which made up the Spanish nation, it was impossible for any situation to arise in Spain which would involve actual discrimination against any of those nationalities and regions. It was not obvious to him that the Constitution could make actual discrimination impossible in practice.

25. He did not understand the meaning of the term "professorial freedom" in article 20, paragraph 1 (c), of the Constitution, but that problem might be merely one of translation. Likewise, he had some difficulty understanding the provision, in article 20, paragraph 1 (d), concerning the right to communicate freely or receive "truthful information". In practice, someone had to decide what was truthful; he wondered how that could be done without censorship.

26. Article 21, paragraph 2, of the Constitution allowed authorities to ban meetings when there were well-founded reasons to expect a breach of public order. Such a provision could be either beneficial or dangerous, depending on how it was applied. "Public order" could mean either physical order in the streets or the very existence of the Government. Such clauses were used in different ways in different countries; in some cases, they might be invoked to interfere with normal political expression. He would therefore appreciate clarification on the matter.

27. He noted that title I, chapter two, of the Constitution was divided into two sections, one concerning fundamental rights and public liberties and the other

/...

(Mr. Opsahl)

concerning the rights and duties of citizens. He appreciated such precision but wondered how literally such a division was to be interpreted. Articles 31, 32, 33 and 38, which fell within the section concerning the rights and duties of citizens, should not necessarily be limited to citizens. Although not all the articles in that section dealt with rights that were protected under the Covenant, some of them, such as the right to enter into marriage referred to in article 32, were so protected.

28. Mr. KOULISHEV thanked the Spanish Government for its report to the Committee, (CCPR/C/4/Add.1) which had been prepared under difficult circumstances, in view of the changes the Spanish system was undergoing.

29. Although he understood that pursuant to article 96 of the Constitution, the Covenant was considered incorporated into the internal legal order of Spain, he would like to know whether the provisions of the Covenant or those of internal law would have priority in the event of a conflict between the two.

30. The report stated, in paragraph 22, that measures had been initiated to institutionalize the autonomous organization of the various historical regions forming part of the Spanish State. That was a feature unique to Spain and there was no precedent for it in the reports of other States parties. It would therefore be worth while to have clarification regarding the relationship between the regional and the national authorities. He would also like to be informed about the implications of autonomy for the enjoyment of human rights and the situation of the Covenant in the regions.

31. As mentioned in paragraph 35 of the report, article 1, paragraph 1, of the Constitution stated that Spain constituted a "social and democratic State". What was the meaning of the term "social" in that context?

32. Paragraph 38 of the report referred to the establishment of the institution of People's Advocate (Defensor del Pueblo). He would appreciate it if the Spanish representative would explain the powers and functions of that official.

33. He noted, from paragraphs 21 and 43 of the report, that Spain envisaged having what might be called a "bill of rights". He would appreciate clarification on that matter.

34. Referring to article 20 of the Covenant, he noted that the Spanish representative had said that advocacy of racial hatred was prohibited. Was war propaganda also prohibited as it was in the Covenant?

35. Mr. Koulishhev took the Chair.

36. Sir Vincent EVANS commended the Spanish Government for having ratified the International Covenant on Civil and Political Rights during the initial phase of transition to a democratic form of government. He was aware that many of the provisions regarding fundamental rights, set forth in title I of the Constitution,

/...

(Sir Vincent Evans)

required further legislation and he appreciated the assurances given by the Spanish representative that such additional legislation would comply with the Covenant. He would like some clarification, however, as to what the situation would be in the meantime. Presumably many of the laws enacted by the previous régime would remain technically in force for a time; some of them might not satisfy the requirements of the Covenant. Article 96 of the Constitution established that validly concluded international treaties would form part of the internal legal order. Did that apply to treaties that had been ratified before the Constitution had entered into force, including the International Covenant on Civil and Political Rights? If so, did that mean that the Covenant could be invoked by an individual before the courts and the administrative authorities? If there was a conflict between the Covenant and the Constitution or other legislation, which would prevail?

37. It was his understanding that constitutional matters not expressly assigned to the State might fall within the jurisdiction of the self-governing communities. What measures were envisaged to ensure that the laws and administrative decisions of self-governing regions would conform with the Covenant?

38. Article 116 of the Constitution provided for the declaration of a state of emergency or a state of siege and article 55 dealt with the suspension of rights and liberties in such situations. It seemed to him that article 55 of the Constitution was much more far-reaching than article 4 of the Covenant, which allowed for derogation from obligations under the Covenant only to the extent required by the exigencies of the situation. How would the provisions of the Constitution be reconciled with those of the Covenant?

39. In the final paragraph of its report, the Spanish Government offered to provide an account of the subsequent development of the legislation and practices mentioned in the report. He looked forward to receiving such additional information, since he felt that much could be learned from the Spanish experience.

40. Mr. SADI congratulated the Spanish Government on its report (CCPR/C/4/Add.1) and stressed the need to take into consideration the fact that the process of democratization in Spain had begun only recently.

41. He noted that the preamble to the Constitution proclaimed the will to protect all Spaniards and peoples of Spain in the exercise of human rights. Article 2, paragraph 1, of the Covenant stated that each State party to the Covenant undertook to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant. It seemed to him that the Spanish Constitution referred only to citizens of Spain and not to all individuals as required by the Covenant.

42. According to article 3, paragraph 1, of the Constitution, Castilian was the official Spanish language of the State and all Spaniards had the duty to know it and the right to use it. Article 3, paragraph 2, stated that the other languages of Spain should also be official in the self-governing communities. He

/...

(Mr. Sadi)

interpreted article 3 to mean that even in the self-governing communities, citizens must learn Castilian Spanish. He was not criticizing that provision, but merely wanted to make sure that his interpretation of it was correct; the question of official languages had sometimes given rise to delicate situations, as in Canada, for example.

43. Article 6 of the Constitution, concerning political parties, provided that their internal structure and operation must be democratic. Did that mean that some political parties might not be allowed because they were not considered democratic?

44. He noted that article 11, paragraph 2, of the Constitution stipulated that no person of Spanish origin might be deprived of his nationality. If such a person chose to give up his nationality, would he have difficulty doing so?

45. In connexion with article 13, paragraph 4, of the Constitution, he asked whether the Spanish Government intended to grant asylum in accordance with international standards which the United Nations was currently preparing and which were expected to be completed in the near future.

46. Article 15 of the Constitution referred to the prohibition of torture, and he asked whether the Government planned to enact legislation for the prosecution and punishment of perpetrators of torture.

47. With regard to the stipulation in article 16, paragraph 3, of the Constitution that there was to be no State religion, he asked whether there was a clear separation of Church and State or whether churches received subsidies from the Government in any form.

48. As to article 17 of the Constitution, he expressed the hope that its provisions extended to non-citizens as well as citizens, and asked why the right of arrested persons to legal counsel was apparently limited in paragraph 3 to police or legal inquiries and not extended to courtroom proceedings.

49. He requested an illustration of what was meant by the "right to honour", mentioned in article 18, paragraph 1, of the Constitution.

50. Article 19 of the Constitution stipulated that the right freely to enter and leave Spain could not be restricted for political or ideological reasons, and he asked whether that meant that entry to or exit from Spain might be restricted on economic grounds.

51. As to freedom of opinion, he asked whether it was lawful in Spain to disseminate such notions as racial discrimination, apartheid, and nazism. Article 20, paragraph 1 (d) of the Spanish Constitution referred to the right of individuals to receive "truthful information" and he sought clarification regarding the meaning of that expression.

52. Article 22 of the Constitution prohibited secret associations, and he asked whether that prohibition covered Masonic lodges or mason-like associations.

/...

53. He wished to know whether basic education, as envisaged in article 27, paragraph 4, of the Constitution, covered religious education and whether religious education was compulsory in schools.

54. With regard to article 28 of the Constitution, concerning freedom to join trade unions, he observed that the Spanish Constitution seemed to be at variance with ILO standards providing for the right of public officials to form unions.

55. As to the constitutional provisions governing marriage (article 32), he asked whether Moslems and Jews were required to marry in accordance with Spanish law or whether they were permitted to contract marriages in accordance with their own religious laws.

56. He asked whether article 38 of the Constitution meant that Spain was totally committed to the free enterprise system and therefore could not opt for socialism in any form.

57. Referring to article 39, paragraph 3, of the Constitution, which stipulated that parents must provide their children with "assistance of every kind", he noted that it was unusual to describe the obligation of a parent to his child in terms of "assistance", and sought clarification as to the meaning of that word.

58. He asked whether alien workers were covered by the social security system referred to in article 41 of the Constitution.

59. The guarantees laid down in article 53, paragraph 2, seemed to apply only to Spanish citizens, and he sought clarification as to whether they extended to non-citizens as well.

60. Article 55 of the Constitution referred only to the declaration of a state of emergency by the Government, and he wondered whether Spain was in full compliance with article 4 of the Covenant, which required States to inform other States parties of the declaration of a state of emergency. He asked whether the Government intended to comply with that requirement in subsequent legislation.

61. With respect to article 68 of the Constitution, concerning the drawing-up of electoral districts, he asked to what extent regard was had to the "one man, one vote" principle, which was a well-established international standard towards which most democracies were evolving.

62. Mr. HANGA said that the report of Spain (CCPR/C/4/Add.1) provided important information concerning the legislative action being taken to eliminate the vestiges of the previous autocratic régime and to promote the development of democracy. The Committee was not in a position to discuss existing legislative measures per se, since the Spanish Government had only recently initiated the process of enacting legislation to give effect to the provisions of the Covenant. In that connexion the Committee could perform a useful function by expressing its views on the kind of legislation which in its view was desirable.

/...

(Mr. Hanga)

63. Noting that capital punishment had been abolished in Spain, he asked, in connexion with article 6 of the Covenant, what punishment would be substituted for it. He also asked how the crime of genocide was viewed in judicial practice and how it would be dealt with in positive law. He wished to know what international covenants concerning slavery and forced labour Spain had ratified.

64. As to article 9 of the Covenant, he noted that the Spanish Constitution provided for the payment of pecuniary damages to victims of unlawful arrest, and asked whether any law was in force or planned to provide for "moral damages" in such cases.

65. He sought information regarding the regulations in force concerning the penitentiary system and the treatment of persons deprived of their liberty. In particular, he wished to know what steps were taken to ensure the reformation and social rehabilitation of prisoners, and what educational measures were adopted for the rehabilitation of juvenile offenders.

66. He noted that article 19 of the Constitution provided that Spaniards had the right freely to enter and leave Spain under terms to be laid down by law, and asked what provisions the Government intended to enact in that regard.

67. In connexion with article 14 of the Covenant, he asked whether there were any administrative, fiscal or labour courts in Spain, and in what way did such jurisdictions help to safeguard the civil and political rights laid down in the Covenant. He also sought information concerning the jurisdiction of military tribunals at the current time. He asked what rules governed the appointment of judges and what qualifications they were required to possess. The Constitution referred to the "State Public Prosecutor" and the People's Advocate (Defensor del Pueblo), and he asked whether those two officials were members of the Judiciary or the Executive, and how the line of demarcation was drawn between those two branches of government.

68. He asked whether it was possible for a defendant to challenge a law under which he was prosecuted on the ground of unconstitutionality.

69. Referring to article 16, paragraph 3, of the Constitution, he requested clarification as to the social and legal meaning of the provision to the effect that the public authorities would "take into account the religious beliefs of Spanish society", and how that provision would be applied in the case of free-thinkers, for example. In connexion with article 27, paragraph 3, of the Constitution, he asked at what age a child could choose his religion or beliefs.

70. On the question of freedom of opinion, provided for under article 19 of the Covenant, he noted that article 20, paragraph 3, of the Constitution provided for access to the media by "significant social and political groups", and he asked what social and legal criteria were used to determine whether a group was "significant". He asked what steps the Spanish Government planned to take to combat Fascist ideas and prevent the recrudescence of outmoded concepts that had

/...

been discredited by history. Article 22, paragraph 2, of the Constitution referred to illegal associations, and he asked what government organs or bodies were empowered to decide that an association was illegal.

71. He asked whether the 'Workers' Statute' mentioned in article 35 of the Constitution was the equivalent of a labour code, and to what extent the workers were to be involved in the preparation and enactment of such a statute.

72. Referring to article 23 of the Covenant, he noted that a reform of family law was under way in Spain, and asked whether the Government planned to enact a family code or whether family relations would continue to be dealt with in the Civil Code. He also asked what matrimonial régimes were envisaged in future legislation.

73. As to the rights of children, dealt with in article 24 of the Covenant, he asked whether children born out of wedlock would in future enjoy the same legal status as those born in wedlock. Referring to article 39, paragraph 2, of the Constitution, he noted that the consequences of the establishment of paternal filiation might be broad or limited, depending on a country's laws, and asked what legal provisions the Government intended to enact in that regard. Lastly, he wished to know whether any provision had been made or would be made, for State intervention in the event that parents failed to meet their legal obligations towards their children.

74. With regard to the conduct of public affairs and access to public service, matters that were dealt with in article 25 of the Covenant and article 23 of the Constitution, he asked what measures were envisaged to give effect to the concept of direct democracy.

75. Article 26 of the Covenant prohibited discrimination on a number of grounds, and he asked how future Spanish legislation would take into account all those grounds. In that connexion, he noted that article 33, paragraph 2, of the Constitution referred to the "social function" of the right to private property, an issue which had been much debated in the early part of the twentieth century. He requested further clarification regarding the Government's interpretation of the social function of property. In his view, the means of production were of paramount importance in contemporary societies and should belong to the community. Obviously, important economic and social consequences stemmed from that principle.

76. Article 38 of the Constitution referred to national economic planning, and he asked what constituted the legislative basis for such planning.

77. Lastly, he asked whether the provisions of the Covenant had the force of ordinary or constitutional law in Spain.

78. Mr. LALLAH said that he welcomed the peaceful transition from autocracy to democracy in Spain and commended the thoroughness of the initial report submitted

/...

(Mr. Lallah)

by that country (CCPR/C/4/Add.1). As had been noted, the new Constitution and Spain's accession to the Covenant in themselves represented a commitment to civil and political rights, and he was confident that that commitment would be translated into the ordinary laws of the country in short order. Spain was passing through a transitional period following one of repression, and it was only natural for questions to be raised regarding the vestiges of repression, especially since the Government's professed objective was to avoid unnecessarily abrupt changes.

79. He noted that until recently, military tribunals had had jurisdiction with regard to certain civil offences, which had since been placed within the jurisdiction of the civil courts. He asked how that change affected the situation of individuals who had been arrested, detained or charged by military authorities in connexion with such offences.

80. Turning to article 25 of the Covenant, he said he recognized the peculiar difficulties faced by Spain with regard to the public service. The public service included many officials who had served under the previous régime, and it would have been wrong to remove all of them from their posts. However, public servants who over a long period had given effect to the dictates of an autocratic régime might have unconsciously developed a frame of mind which would make it difficult for them to follow the policies of the new Government. In that connexion, he asked whether the Government had contemplated ways of giving greater effect to the new aspirations of the people, and sought further details regarding procedures for appointing judges and public servants under the new constitutional order.

81. With specific regard to the judiciary, he inquired whether any judges had been appointed recently, or whether they had all remained the same as under the former régime. While he did not wish to suggest that the judges who had served the former régime must automatically be influenced in their application of the new laws, it was extremely important that there be the greatest measure of objectivity in the discharge of judicial functions.

82. He also wished to have further information on the difficulties encountered, progress made and measures taken with a view to the full enjoyment of human rights in Spain.

83. Mr. DIEYE expressed particular interest in the continuing efforts of the Spanish Government to restore democracy and ensure full respect for human rights. It deserved to be congratulated on its efforts, since it faced formidable difficulties.

84. With regard to the judiciary, he noted that it was particularly difficult for judges to accommodate themselves overnight to profound political and legal changes. He wondered whether there might not be some small pockets of resistance to such changes, since there had been no purge of the judiciary. Furthermore, he noted that judges in Spain were not permitted to belong to a political party, trade union or professional association, and were consequently deprived of the possibility of defending their own interests. He therefore wished to know whether

/...

(Mr. Dieye)

they could join together in informal groups to defend their interests if they encountered difficulties vis-à-vis the administration.

85. Another problem might arise in the execution of judicial decisions: an independent judiciary exercised no control in that field, which was generally a matter for the administrative authorities. He understood that in Spain there was a mechanism whereby the judiciary not only rendered decisions but also ensured their execution. Such a mechanism would be an extremely important factor in ensuring that justice was done. He therefore wondered how it operated.

86. Turning to the question of the equality of the sexes, he noted that according to paragraph 18 (i) of the report the penalties for adultery and common law unions had been removed. That seemed to testify to the Spanish Government's desire to ensure effective equality between men and women. He wished to inquire, however, whether adultery and common law unions no longer constituted offences at all, or whether they were offences that were equally punishable, whether committed by men or women. He recalled that, in some countries, adultery committed by the wife was punishable whereas, if committed by the husband, it was considered an offence only if committed in the conjugal home. Similarly, in the case of common law unions, he wondered whether they no longer constituted an offence at all or whether penalties would be applied equally to men and women.

87. He also observed that paternal authority should be exercised in a rational way so that the husband no longer exercised his authority in a unilateral, exclusive manner, yet in most social systems one of the spouses had slightly more authority to take decisions than the other. It was detrimental to the stability of the family if such decisions were left to the courts. Generally it was preferable that the husband, after consulting his wife, should take a decision in the interests of the household. He therefore wished to know what the practice was in Spain in that respect.

88. Referring to the proposed amendment to the Danger to Society and Social Rehabilitation Act (CCPR/C/4/Add.1, para. 18 (g) (iii)) he noted that, since the notion of a person's being declared a danger to society had not been abolished in practice, he wondered whether it still applied in Spanish legislation. In his view, it was very important not to lay down subjective criteria for having a person declared a danger to society.

89. He also noted from paragraph 6 of the report that the authorities were seeking to direct the new democratic legality without repudiating, in revolutionary fashion, what had been legitimate in the past. It was his understanding, however, that much of the old order had indeed been repudiated. He therefore wondered to what extent Spain was trying to create something new that was completely uninfluenced by the old order.

90. He also inquired whether the law of amnesty had been applied without any restrictions, and to what extent the rights of those granted amnesty had been fully restituted.

/...

(Mr. Dieye)

91. With regard to the expulsion of foreigners, the question arose as to what extent foreigners could be a danger to the public order. It was necessary to ensure that any expulsion measure was justified and that if a foreigner considered his expulsion to be unjustified he could have recourse to the Administration and ensure that the expulsion order was postponed until the competent authorities took a decision.

92. In conclusion, he stressed that in his view eminently positive progress had been achieved in Spain in the field of human rights and democracy.

93. Mr. TOMUSCHAT noted that, after the dictatorship had ended, the Spanish people in a tremendous collective and non-violent effort had succeeded in establishing true democratic institutions, introducing a new spirit which had led to a complete overhaul of the legislation in force until 1975. Currently, only two years after the beginning of the new era, one could not but admire the exemplary achievements of the Spanish people. Recent events constituted a model case for what the drafters of the Covenant had hoped for: by providing for individual and collective self-determination, they had expected to promote conditions for stable political institutions whose noblest aims would be peace and justice, both internally and externally.

94. It was to be hoped that Spain would be able to continue the progressive adjustment of its legislation as successfully as in the recent past. Indeed, the general impression gained from reading the report of Spain (CCPR/C/4/Add.1) and the new Constitution was that much remained to be accomplished. The adoption of the new Constitution had been but a first step. A general framework had been set which had to be supplemented by a multitude of acts of ordinary legislation in keeping with the new basic principles. Accordingly it was understandable that the report had been drafted more as a kind of statement of ongoing legislative proceedings than as a document listing the results achieved. He therefore thought that the Committee's current consideration of the Spanish report could not be the definitive one. In order to discharge its functions fully, the Committee needed more extensive and detailed information which Spain should be able to provide once the major reform bills had been approved. It would be very helpful to the Committee to have before it as an additional report the explanations and comments provided by the representatives of Spain at the preceding meeting.

95. His first question concerned the position of the Covenant within the national legal order. Referring to article 3, paragraph 1, of the Constitution, he inquired whether the lack of knowledge of the Castilian language would prevent the acquisition of Spanish nationality by, for instance, a child born abroad or a spouse of a Spanish citizen.

96. Concerning effective remedies as contemplated in article 2, paragraph 3 (a), of the Covenant, he had noted with great interest from article 53, paragraph 2, of the Constitution, that the rights recognized in articles 14 to 29 thereof were guaranteed "by means of a preferential and summary procedure". Since it was difficult to see the sense of that provision at first glance, he wondered what had been the true intention of the legislator. Perhaps there had been a desire to stress the need for expeditious court action? However, summary procedure seemed

/...

(Mr. Tomuschat)

to be quite different and might not operate in favour of the aggrieved individual. Furthermore, he noted from paragraph 21 (j) of the report that consideration was being given to a draft law on the legal protection of the fundamental rights of the individual. He therefore wondered whether that bill could be said to implement article 53, paragraph 2, of the Constitution, and whether it had already been approved.

97. He also inquired whether a state of emergency, as contemplated in article 55 of the Constitution and coming within the purview of article 4 of the Covenant, was currently in force in any part of Spain, especially the Basque provinces.

98. Referring to article 6, paragraph 6, of the Covenant, he noted that article 15 of the Constitution abolished the death penalty, except as provided for by military criminal law in wartime. Spain should be sincerely congratulated on that decision, which might have been inspired by the aspiration expressed in the Covenant. With regard, however, to the penalty that would replace the death penalty, he associated himself with the concern expressed by Mr. Tarnopolsky that 30 years of deprivation of liberty was a terrible punishment.

99. With reference to article 9, paragraph 5, of the Covenant, he considered that compensation was due to the victim of unlawful arrest, even if he had not suffered any specific damage. Article 121 of the Constitution would therefore have to be read in conjunction with that provision of the Covenant - which was possible, since article 10, paragraph 2, of the Constitution stipulated that the standards relative to the fundamental rights and liberties recognized by the Constitution had to be interpreted in conformity with the relevant international agreements ratified by Spain.

100. Referring to article 12 of the Covenant, he said he had noted the explicit prohibition in article 19, paragraph 2, of the Constitution to the effect that the right freely to enter and leave Spain could not be restricted for political or ideological reasons. He assumed, however, that that provision was designed merely to confirm what was already the law.

101. As to the question raised by Mr. Opsahl concerning the reference in article 20, paragraph 1 (c), of the Constitution to "professorial freedom", he felt that it was again a question of translation: the Spanish words "libertad de catedra" merely signified academic freedom, which was not a personal but a functional privilege and, as such, was unobjectionable.

102. In connexion with article 22 of the Covenant, he was concerned to note that, under article 6 of the Constitution, political parties were bound to respect the Constitution and the law. The same applied under article 7 of the Constitution to trade unions and employers' associations. That provision could easily be misinterpreted to mean that no attempt could be made to change the Constitution, which would severely hamper the freedom of political activity. It was his understanding that political parties were merely under the obligation to observe constitutional rules as long as such provisions were in force, and were not

/...

(Mr. Tomuschat)

prevented from advocating peaceful change through the appropriate channels. He noted that, under articles 166 to 169 of the Constitution, constitutional amendments were permitted, provided the requisite majorities had been obtained in both Chambers. Thus, political parties should be free to advocate that the procedure for revision of the Constitution could be set in motion; otherwise, those provisions of the Constitution were a dead letter.

103. He considered that article 53, paragraph 1, of the Constitution was an excellent provision for ensuring the general implementation of the Covenant. He noted, however, that any restrictions permitted under the Covenant had to be enacted by law, i.e. through proceedings based on the principle of publicity. Administrative circulars did not seem to meet that requirement. Further, by stressing that the essential content of the rights and liberties recognized in the Constitution must not be infringed upon, the Constitution at least partly accepted the principle of proportionality, as reflected in article 22, paragraph 2, of the Covenant in the stipulation that any restrictions on those rights and liberties must be prescribed by law and must be necessary. Obviously, constitutional documents could not be taken at their face value: what mattered was the reality of day-to-day governmental practices.

104. One of the strongholds of Spain's new institutions was parliamentary control reflecting the will of the people, and a free press. He therefore trusted that the process of peaceful change would continue as successfully as it had in the past. The first steps taken by Spain to establish a new order were most promising. He hoped that the Spanish people would be able to overcome all the difficulties which currently threatened the democratic institutions.

105. In conclusion, he suggested that the additional information provided by Spain in the Committee should be reproduced in extenso in the form of a supplementary report.

106. Mr. GRAEFRATH noted that the report of Spain (CCPR/C/4/Add.1) was confined to the legal situation in Spain. However, human rights could not be implemented by legal measures alone. The Covenant required not only legislation but also other measures to ensure enjoyment of human rights. Consequently, he inquired what social measures had been taken or were envisaged to ensure that all the people could in fact exercise their civil and political rights. He wished to know, for example, what had been done to ensure equality between men and women, not only in the legal field but also in practice. Furthermore, what had been done to reduce infant mortality in order to ensure the right to life? In the educational field, he wished to know what steps had been taken to prepare people for public office, which might not be open to everyone.

107. He did not believe that the main responsibility for safeguarding human rights could be vested in the judiciary or legal remedies. Often the judiciary played a decisive role in preventing democratic developments. Since the Constitution relied greatly on the control and independence of the judiciary, he wished to know whether there had been any change in judges, or whether the new system was under the supervision of the same judges that had served the Franco régime. He also asked what had been done to ensure that people from all strata of society could become judges.