

**INTERNATIONAL
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ON CIVIL AND
POLITICAL RIGHTS**



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Thirteenth session

SUMMARY RECORD OF THE 298th MEETING

held at the Palais des Nations, Geneva,
on Friday, 17 July 1981, at 3 p.m.

Chairman: Mr. MAVROMATIS

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Organization of work

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

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

Portugal (continued) (CCPR/C/6/Add.6)

1. The CHAIRMAN invited the representatives of the Government of Portugal to reply to questions that had been put by members of the Committee.
2. Mr. CUNHA RODRIGUES (Portugal) thanked the Committee for the welcome extended to his delegation and reiterated his earlier statement that Portugal was eager to contribute to the strengthening of guarantees of basic rights. Several members of the Committee had stated that Portugal's legal framework already fulfilled the requirements of the Covenant. The number and complexity of the questions asked had made it difficult to give a comprehensive answer to any single question. His delegation would therefore touch upon all areas in which questions had been asked and would submit further information to the Committee in written form at a later date. Mr. Martins da Cruz, his colleague, would present his delegation's replies.
3. Mr. MARTINS DA CRUZ (Portugal) said that the questions had covered some 50 main areas and replies would be given in connection with the article of the Covenant concerned.

Article 1

4. Mr. Graefrath and Mr. Movchan has asked what practical steps Portugal had taken to protect its institutions against Fascist organizations and ideologies. Act No. 64/78 prohibited organizations advocating Fascist ideologies and prescribed terms of imprisonment of two to eight years for the leaders of such organizations and shorter terms for members.
5. Concerning Mr. Bouziri's question about the current status of Macao, he said that the territory of Macao, which was administered by Portugal, was governed by a statute appropriate to its special situation; that statute was Act No. 1/76 and was maintained in force by article 306 of the Constitution.
6. Mr. Ermacora and Mr. Movchan had asked about Portugal's position with regard to the International Convention on the Suppression and Punishment of the Crime of Apartheid. In that connection, he wished to state that Portugal was in the process of acceding to the International Convention on the Elimination of All Forms of Racial Discrimination; it had expressed support for the implementation of that Convention through statements or votes in the United Nations General Assembly. It strongly condemned the system of apartheid, which it considered to be an institutionalized form of racism and a violation of basic human rights. It had not yet ratified the International Convention on the Suppression and Punishment of the Crime of Apartheid for two reasons: first, it did not consider the text of the Convention to be a realistic and effective means of ending the system of apartheid; and secondly, the Convention raised several problems with respect to Portuguese law, such as the controversial concept of the universality of penal jurisdiction, the absence of the type of crime of apartheid as defined in article 2 of the Convention, the vague definition of persons and institutions considered to be responsible under penal law, as set forth in article 3, and the proof required to try and punish such persons, in accordance with article 4.

7. Mr. Bouziri had inquired about Portugal's position on the right of peoples to revolt, in particular, with respect to the problems of Palestine, Namibia and South Africa. First of all, he wished to state that he did not agree with Mr. Bouziri that votes in the United Nations were not always significant. In the opinion of his delegation, votes and statements of position in the United Nations and other international forums were significant in that they expressed faith in the international community. The right of peoples to revolt was prescribed in the Portuguese Constitution in article 7, paragraph 3, which represented a programme rather than a statement of specific practical measures, and must be analysed in accordance with the principle of non-interference in the domestic affairs of other States.

8. Portugal's position with regard to the Palestinian people had been clearly and repeatedly expressed in the United Nations and during Mr. Yassir Arafat's visit to Lisbon. Portugal recognized the legitimate rights of the Palestinian people, including their right freely to determine their political future. It advocated Israel's total withdrawal from the occupied Arab territories, including the Arab section of Jerusalem. But an effective and lasting solution of the Middle East question required respect for the sovereignty and territorial integrity of all States in the region, including Israel's right to exist within safe and internationally recognized frontiers.

9. Portugal was also concerned about the problem of the Namibian people; it maintained excellent relations with a number of countries of the region, in particular Angola. It had consistently advocated the negotiation of a peaceful solution to the problems of the region, condemned the system of apartheid and supported the Namibian people's right of self-determination and independence, recognizing SWAPO as that people's legitimate representative.

10. Concerning the black community of South Africa, Portugal took the view that international pressure on the Government of South Africa could assist in changing the situation in that country; it did not consider that the isolation of South Africa was the most appropriate solution. Portugal had recently supported the resolution concerning action against apartheid recently adopted by the General Conference of the International Labour Organisation and had protested against the particularly unfair situation of black workers in South Africa, including workers from neighbouring countries, such as Mozambique.

Article 2

11. In reply to Mr. Herdocia Ortega, who had asked whether there were organizations or associations in Portugal concerned with the promotion of human rights, he said that the following organizations were active in that field: the Portuguese section of the International Commission of Jurists; the commission on human rights of the Portuguese Bar; the Portuguese League of Human Rights; the Portuguese section of Amnesty International (recently established); and the justice and peace commissions related to the Catholic church.

12. Mr. Sadi had asked what exactly was meant by the terms Fascist régime, democratic principles, democracy, etc. contained in the Constitution. The Constitution conformed to the democratic system, and the general principles and expressions it contained could be specifically defined only through the daily experience of democracy. Nevertheless, in accordance with article 16, paragraph 2, of the Constitution, the implementation and interpretation of basic rights must conform to the Universal Declaration of Human Rights.

13. Mr. Bouziri had asked the exact meaning of the terms "working classes" and "the exploitation of man by man", and whether such exploitation existed in Portugal. The ideological expressions contained in the Constitution should be interpreted in

the light of the historical circumstances in which the Constitution had been drafted. The concept of "working classes", therefore, should be understood not simply in the Marxist sense of production forces, but in the broader sense reflected in article 51 of the Constitution, which described work as a right and duty of all Portuguese. With respect to the exploitation of man by man, he would be happy to learn of a country where that did not exist: in the meantime, Portugal would continue to work towards the consolidation of conditions which would promote the dignity of the human person.

14. Mr. Tomuschat had asked whether Portugal's system of supervision of constitutionality was not too complex. The Constitution provided for preventive supervision and a posteriori supervision. The latter was ensured in a concentrated manner by the Council of the Revolution on the advice of the Constitutional Commission and by the Commission itself, and in a broad manner by the courts. The majority of the parties represented in the Assembly of the Republic were agreed on the abolition of the Council of the Revolution, whose functions would be distributed between the President of the Republic, the Assembly of the Republic and a Constitutional Court.

15. Mr. Tomuschat and Mr. Sadi had asked whether the references in the Constitution to "citizens" meant that the rights in question were reserved to nationals and that aliens were consequently excluded. It was true that the Constitution frequently referred to "citizens". However, article 15 stipulated that foreigners resident in Portugal should enjoy the same rights as Portuguese citizens, except for political rights and the right to perform public duties. Furthermore, the tendency of Portuguese jurisprudence was to adopt a maximalist interpretation of fundamental rights. It must therefore be concluded that foreigners indeed enjoyed the rights about which doubts had been expressed.

16. As to Sir Vincent Evans' question, which also related to article 13 of the Covenant concerning a guarantee against the expulsion of foreigners, Decree-Law No. 582/76 stated that expulsion might be ordered only by the courts and that the person in question had the right of appeal. A bill was under preparation to amend that Decree-Law in such a way as to strengthen foreigners' guarantees.

17. Mr. Graefrath had asked whether there had been changes in the judicial system and in the judges themselves since the democratization of the country. There had in fact been far-reaching reforms of the judicial system, guaranteeing the courts' complete independence from the Executive, which had no possibility of interfering in the appointment of judges, and the citizens' access to the courts. The number of judges had been increased by 70 per cent. Judges accused of disciplinary responsibility for acts under the previous régime had been the subject of judicial action. Nearly all judges were still in service since it had not been proved that there were grounds for removal.

18. Mr. Ermacora had asked whether the judicial system provided for in the Constitution was operating fully. It was, although there were some difficulties resulting from the disproportionately high ratio of cases to judges. There had been an increase in the number of judges since 1974, but at the same time the number of cases to be tried had increased sharply. In reply to the question whether there were special courts for the armed forces, he explained that Decree-Law No. 124/77 had reorganized the military courts, which now tried only military and related crimes.

19. Mr. Hanga had asked whether judges were removable. Article 221 of the Constitution and article 6 of Act No. 85/77 established the irremovability of judges, who, as had been previously stated, were not subjected to any pressure by the Government or the Administration. In reply to a question concerning the moral conditions to be fulfilled by judges, he stated that judges were recruited by competitive examination and subsequently followed a training course at the Centre for Judicial Studies. Apart from an age requirement (minimum: 25 years of age), Portuguese law did not set moral requirements for judges, as that was a fluid concept which could be used in a discriminatory way.

20. Mr. Hanga had also asked whether there were financial courts, courts dealing with matters of social security (social courts) and juvenile courts in Portugal. Financial courts did exist, but they were completely separate from the ordinary judicial courts. Questions of social security were dealt with by special judicial courts (labour courts) or by judicial courts of general jurisdiction. There were also juvenile courts whose organization and operation were appropriate to that type of jurisdiction.

21. On the question whether there were people's advisers in Portuguese courts, the law made provision for the participation of people's advisers in the areas of labour, minors and civil matters involving the payment of rents in rural areas. There was, in addition, the jury system, which operated in criminal cases where there was a possibility that a prison sentence of more than two years in general might be imposed.

22. Mr. Tomuschat had asked whether the administrative tribunals were the best means of resolving questions relating to guarantees of the rights of citizens vis-à-vis the Administration. In addition to the courts, Portuguese law provided for a system of preventive action by the Attorney-General and the Ombudsman, which frequently led to the restoration of legality independently of the courts.

23. In reply to Sir Vincent Evans' question whether Portugal had administrative courts which were separate from the ordinary courts, he stated that Portugal did have such courts. Like the financial courts, they were being reorganized and made more efficient. Their reorganization was due to be discussed by the Assembly of the Republic in October 1981.

24. In reply to Mr. Ermacora, he said that under article 24 of the Constitution, the Ombudsman was appointed by the Assembly of the Republic. The importance of the Ombudsman could be gauged from the fact that in 1976 he had heard 1,612 cases, reflecting complaints in 206 and completing his inquiries in 111. The corresponding figures for subsequent years were 2,000, 728 and 858 (1977), 2,703, 1,266 and 1,163 (1978), 2,934, 266 and 1,201 (1979) and 2,435, 488, and 879 (1980). The fact that over 500 cases had been resolved in 1980 had been due solely to the efforts of the Ombudsman. The possibility of giving the Ombudsman a corrective function, as mentioned by Mr. Herdocia Ortega, was something which could certainly be considered. The present procedure was informal, rapid and free, thus facilitating access by citizens and speeding up justice.

25. Mr. Hanga had asked about access to information. Article 269 of the Constitution gave the right to all citizens to be informed by the administrative authorities of action taken on matters in which they were directly concerned. A draft code of administrative procedure of extremely wide scope was in course of preparation and firmly established the right of access to information.

26. In reply to Mr. Tomuschat, he said that the Programme of the Armed Forces Movement was no longer in effect, but the relevant provisions of the Constitution were still in force.

Article 3

27. A number of members of the Committee had requested information on the status of women in Portugal. Decree-Law No. 485/77 had set up the commission on the status of women, whose terms of reference were to promote awareness of women's rights among women and to eliminate discrimination between the sexes. Since the democratization of the country on 25 April 1974, new professions, such as the legal profession and the foreign service, had been opened to women. The present position could best be

illustrated by the following statistics on the proportion of posts held by women in Portugal: director-general grade in the civil service, 4.5 per cent; executive grade, 14 per cent, civil service posts in general (1979), 53 per cent. There had been a general increase between 1968 and 1979 in the numbers of women employed in the executive, administrative, teaching and higher technical grades, while the proportion of female workers had fallen from 4 per cent to 1.5 per cent. The illiteracy rate was 26 per cent among women as compared with 19 per cent for men.

28. Eleven per cent of all lawyers were women and six women judges had been appointed in courts of the first instance. The Attorney-General's Office included 51 women out of a total of 305 and 36 out of 74 in the lower grades.

29. In political life women had held 8 posts in the provisional governments and 16 posts in the constitutional governments. The proportion of women university students graduating in 1979 had been 43.5 per cent. Twenty-five per cent of university teaching personnel had been women in 1977-1978. Relevant data on primary and secondary educational establishments would take about a month to obtain.

30. Mr. Bouziri had asked about the liberalization of abortion. That question was rooted in the cultural and historical background of the country and had philosophical and religious overtones. There was considerable public interest in the subject and there was even a pro-abortion movement in Portugal. A bill relating to abortion had already been submitted to the Assembly of the Republic by the Popular Democratic Union (a party of the extreme left).

Article 4

31. Mr. Ennacora and Mr. Tomuschat had drawn attention to a possible contradiction between article 19, paragraph 4, of the Constitution and article 4 of the Covenant, which included a more extensive list of rights and freedoms on which restrictions might not be imposed in time of emergency. There was, in fact, no such contradiction. The Constitution did not prohibit the adoption under national law of a more extensive system of rights that might not be restricted and article 18, paragraph 3 of the Constitution, was very specific on the nature of the restrictions that might be imposed. There was in any case no risk of conflict, since Portugal complied meticulously with its international obligations.

32. Replying to a question by Mr. Lallah about a possible conflict between the national defence bill, referred to in the report, and article 4 of the Covenant, he said that the bill, which had not yet been passed, merely incorporated the provisions of article 19 of the Constitution with regard to the restriction of rights, freedoms and safeguards.

Article 5

33. The question of the effectiveness of the Covenant in Portugal had been raised by several members of the Committee. The principle of the automatic acceptance of international conventional law in national law was enshrined in the Constitution. Opinion was divided as to whether conventions and national law were of equal validity or whether conventions had greater validity subordinate only to the Constitution itself. The possibility of conflict with the Constitution was highly unlikely, since article 16 stipulated that the provisions of the Constitution and laws should be interpreted and applied in accordance with the Universal Declaration of Human Rights.

34. Questions had also been asked about measures to publicize the Covenant in Portugal. The Covenant had been published in the government gazette in its original languages and in Portuguese, and also in the official bulletin of the Ministry of Justice. The Government had also arranged for symposia and lectures to be held on international human rights instruments, mainly for lawyers. About 300 members of the legal profession had attended the most recent symposium, held at Oporto. Attention had also been drawn to the Covenant in the mass media and increasingly frequent reference was made to such international instruments in court decisions. He drew the attention of the Committee to opinion No. 15/79, issued by the Advisory Council of the Attorney-General, which had expressly stated that certain national provisions relating to the right of association of trade unions violated articles 8 and 22 of the Covenant. That ruling was binding on all judges and on all official departments of the Ministry of Labour.

Article 6

35. Mr. Hanga had asked for statistics on the effect of the abolition of capital punishment. Capital punishment had been abolished in Portugal in 1867, but the death penalty had not been imposed during the 21 years preceding that year. Although the statistics for the period 1850-1860 were defective and incomplete, it could be accepted that during the years preceding abolition the annual number of homicide cases had never fallen below 140 and sometimes had exceeded 220. In 1873, 11 years later, there had been 139 cases of homicide in spite of an increase in the population.

36. With regard to regulations on drug control, a further point raised by Mr. Hanga, legislation had been passed, mainly since 1974, for the prevention and control of drug addiction. Specialist diagnostic and prophylactic centres had also been set up.

Article 7

37. Mr. Lallah asked whether it was possible to guarantee that torture was not practised in Portugal, whether any complaints of torture had been made, in particular by political prisoners, and what had been the outcome. Portuguese law was particularly strict with regard to torture under the penal and prison régimes. One complaint had indeed been made about the ill-treatment of detainees by the police: an investigation had been held and the case was now before the courts.

38. Mr. Hanga had asked whether Portuguese law defined the moment of death in connection with organ transplants. Decree-Law No. 553/76 stipulated that, for the purposes of organ transplants, death should be certified by two independent medical practitioners of at least five years' standing. The moment of death was determined on the basis of normal scientific and deontological criteria.

Article 9

39. Mr. Lallah had asked for details on Portuguese legal practice with regard to the duration of criminal proceedings and the period of preventive detention allowed. The Penal Code laid down precise limits within which proceedings must be completed. The admissible periods of preventive detention were: (a) between arrest and indictment of the accused, 40 days for offences carrying a maximum sentence of two years' imprisonment and 90 days for offences investigated by the police; (b) between indictment and arraignment of the accused, not more than four months in the case of heinous offences. After the expiry of those periods, the accused was required to be released in all cases for which provisional release was allowed under the law; in other cases the judge was empowered to extend the period of detention for a further 60 days by means of an order specifying the grounds for such extension. A plea of habeas corpus could be entered in case of failure to comply with the regulations on preventive detention.

40. In reply to further questions by Mr. Lallah on the powers of Portuguese courts, he said that, when an appeal had been submitted by the defendant or the Public Prosecutor's Department on the defendant's behalf, the imposition of a more severe penalty by a higher court was not permitted, unless the facts were found to be different from those presented to the lower court or the Public Prosecutor claimed aggravation of the offence. A more severe penalty could be imposed by the Supreme Court only in cases where the facts were found to be different. Courts of the second instance were empowered in the normal way to reverse the factual findings of lower courts. The presumption of an accused person's innocence was enshrined in the Constitution.

41. Mr. Tomuschat and Sir Vincent Evans had asked for information on the detention of persons of unsound mind in psychiatric hospitals and on facilities for the compulsory internment of persons suspected to be suffering from infectious or contagious diseases. The compulsory detention of persons of unsound mind was permitted only as a safety measure on court authority and where the person concerned had committed an offence carrying a sentence of more than six months' imprisonment or had been declared not to be responsible for his actions. Special safeguards were incorporated in the proceedings. Decree-Law No. 530/79 made provision for the compulsory internment of patients in special hospitals for infectious diseases where they would be in the care of specially trained medical personnel.

Article 10

42. Mr. Sadi and other members of the Committee had pointed out that paragraph 7.1 of the report appeared to imply that the ill-treatment of prisoners was permitted by Portuguese law if they resisted arrest or attempted to escape. He agreed that the wording of the report was slightly ambiguous on that subject. Article 306 of the Penal Code in fact prohibited any form of ill-treatment and the use of insulting language or violence against prisoners. The use of force (which was not, of course, the same as violence) was permitted and any necessary measures might be taken to overcome resistance to arrest or to prevent an attempted escape. Decree Law No.265/79 laid down strict rules for the exercise of physical coercion, requiring the submission of a written report whenever physical force had been used.

43. Mr. Hanga, Mr. Lallah and Sir Vincent Evans had raised the question of a prisoner's right to have his complaints heard by a person unconnected with the prison service. Under the Portuguese judicial system, the judge responsible for the execution of penalties was required, inter alia, to visit prison establishments at least once a month and hear prisoners' complaints.

44. Decree-Law No.265/79 also made provision for special visits by prisoners' lawyers. There were special premises for such visits where confidential conversations could not be overheard. Written texts and documents carried by the prisoner's lawyer were not examined. Ministry of Justice order No.130/80, which had been sent to all prison establishments, published the Portuguese translation of the European Convention on Human Rights and explained the procedure for the submission of complaints by prisoners in accordance with article 25 of that Convention. Their attention was drawn to the procedure for obtaining legal aid.

Article 13

45. Replying to Mr. Ermacora and Mr. Tomuschat, he said that legislation relating to the right of asylum had been enacted on 1 August 1980 (Act No.38/80). The right was a broad one and was granted to foreigners who had been subjected to persecution as a result of their activities in favour of democracy, social and national freedom, peace between peoples and human rights. All persons who had reason to fear persecution on grounds of race, religion, nationality, political opinion or social origin and were unable to return to their own country or to their country of residence, were entitled to asylum. Asylum might also be granted to persons unwilling to return to their own country for reasons of safety in cases of armed conflict or the systematic violation of human rights. The right of asylum could be extended to spouses and minor children and even to other members of the family. It was guaranteed by objective safeguards. In the event of the refusal of asylum, the applicant had the right of appeal to the courts, the appeal proceedings being free of charge, and was allowed to remain in Portugal pending the outcome of his appeal. Proceedings in connection with an application for asylum were governed by the provisions of the Universal Declaration of Human Rights, the Geneva Convention of 1951 and its Additional Protocol of 1967.

Article 14

46. Mr. Herdocia Ortega had asked whether there was any contradiction between article 28, paragraph 1, of the Constitution - making arrest without charge subject to judicial review within 48 hours - and article 31, paragraph 3 thereof, which gave the judge eight days to rule on an application for habeas corpus. In his delegation's view, there was no contradiction between the two provisions. An application for habeas corpus initiated special proceedings, in which both parties must be heard and which required a minimum of time; eight days for the ruling did not appear excessive.

47. Mr. Hanga had asked whether the "right to popular action" under article 49 of the Constitution was applicable in cases of habeas corpus. The answer was that article 316 of the Penal Code made provision precisely for an action of that kind in cases of habeas corpus: it specified that an application for habeas corpus could be submitted by any citizen in possession of his political rights.

48. Mr. Lallah had asked whether any new legislation on the subject of terrorism had been enacted in Portugal. In reply, he pointed out that Portugal had signed the European Convention on the Suppression of Terrorism. Moreover, the Assembly of the Republic had enacted a law amending a number of articles of the Penal Code, mainly to impose heavier penalties for crimes against the security of the State, i.e. recruitment for, or incitement to serve in, a foreign army or navy, offensive behaviour towards foreign diplomats, crimes against the President of the Republic or against members of other sovereign bodies, and kidnapping. In addition, new penal provisions had been introduced to punish acts of sabotage which imperilled human life. Lastly, it should be noted that there were in Portugal no special courts to try those crimes.

49. Mr. Lallah had asked whether there were any restrictions, particularly in practice - e.g. with regard to the calling of witnesses, in criminal proceedings relating to offences committed for political motives. The answer was that there were no restrictions of any kind.

50. Mr. Lallah had also asked how the law of amnesty operated with respect to such offences, referring expressly to the Revolutionary Party of the Proletariat (PRP) case, in which the accused had been convicted for rebellion. There was obviously a misunderstanding: although, in a few cases, the courts had considered the political purpose of an offence as a mitigating circumstance, the offences themselves constituted ordinary (and not political) offences, in the light of the proven facts of the case and in accordance with the applicable law.

51. As for the definition of political offences - the ones to which the law of amnesty of 1974 applied, it was contained in article 39 of the Code of Criminal Procedure, which stated that "Offences committed for an exclusively political purpose shall be deemed political in character". The article went on to list a number of offences "not deemed political whatever their purpose"; they included homicide, poisoning, assault, robbery with violence and arson, unless the offence was committed "during an insurrection or a civil war". Even if committed during such events, they were nevertheless not deemed political offences "if they represent acts of vandalism or odious barbarism forbidden by the laws of war, or were not committed by one of the parties in the struggle and to further its cause".

52. Actually, the persons sentenced in the PRP case had been convicted of armed robbery (of banks) and of bomb outrages - crimes committed after the promulgation of the Constitution and the democratic normalization. The Portuguese courts had examined the provisions of the law of amnesty and those of the Penal Code and had found that the benefit of amnesty did not apply in the case.

53. The decision of the Supreme Court of Justice to quash one of the convictions in that case was based on the Court's ruling as partly unconstitutional a provision of the Code of Criminal Procedure (art. 439) in so far as it was used to the detriment of the rights of the defence. The Supreme Court's decision was now under review before the Constitutional Commission and, in deference to the independence of the Judiciary, his delegation would refrain from making any further comment on a matter which was still sub judice.

54. Sir Vincent Evans had asked whether the possibility of holding criminally liable a person exercising sovereign functions could not give rise to political persecution or to the elimination of politicians. The answer was that there was no such danger in Portugal. The courts were totally independent of the Executive with regard to both their organization and their operation. The safeguard with regard to organization extended also to the Public Prosecutor's Department which supervised all police forces in respect of matters relating to criminal investigation. In criminal matters, the Minister of Justice could only give orders of a general character to the Attorney-General. There had been no problems in Portugal in that regard.

55. Mr. Ermacora had asked about the fate of the members of PIDES and civil servants who had been prosecuted for their participation in the former régime, and whether they were still imprisoned. The answer was that in that connection no one was at present being detained pending trial, nor were there any prisoners under sentence. The number of cases that had been referred to the courts was 2,850, of which 2,546 had been tried, with 116 acquittals. There were at present 177 accused free on bail awaiting trial. As for applications for reinstatement by dismissed civil servants, they numbered 4,384; the bulk of those concerned had been reinstated.

Article 16

56. Mr. Hanga had asked what was the rule of Portuguese law as to when an individual was recognized as a person before the law - whether it was from birth or upon viable birth. The answer was to be found in article 66, paragraph 1 of the Portuguese Civil Code, which specified that personality at law was acquired as from the moment of a complete and live birth. Portuguese legal literature did not consider the viability factor necessary; it regarded the separation of the foetus from the body of the mother as sufficient and took breathing as the decisive indication of life.

Article 17

57. Mr. Hanga had asked whether there were in Portugal any laws to protect citizens against interference with their privacy by the State or by other citizens, and whether in the event of such interference the victim had a right to compensation for moral injury. The answer was that there were laws in force (e.g. Act No. 3/73) to protect privacy. In addition, very strict rules had been established to regulate the question of data processing. Lastly, Portuguese law recognized the general principle of compensation for moral injury.

Article 18

58. Replying to Mr. Hanga's question regarding the international copyright conventions acceded to by Portugal, he said that Portugal was a party to the special convention of Rio de Janeiro of 26 September 1922 on literary and artistic works; also it had ratified on 25 September 1956 the Universal Copyright Convention signed at Geneva on 6 September 1952, had ratified on 27 January 1975 the Stockholm Convention setting up the World Intellectual Property Organization (WIPO), had acceded on 10 October 1978 to the Act of Paris of 24 July 1971 concerning the Berne Convention for the Protection of Literary and Artistic Works (concluded on 9 September 1886 and revised on several occasions since), and lastly, had acceded on 30 April 1981 to the Universal Copyright Convention as revised in Paris on 24 July 1971.

59. In reply to Mr. Hanga, who wished to know the Portuguese illiteracy rates, he gave the figures for 1979; over-all illiteracy; 21 per cent (19 per cent for men and 24 per cent for women); 15-24 age group; 0.7 per cent; 25-39 age group; 5.3 per cent; 40-59 age group; 28.6 per cent; 60 years and over; 56 per cent.

Article 19

60. Mr. Sadi had asked whether the State monopoly over television broadcasting did not constitute a discriminatory measure. The answer was that there was no discrimination: there were rules governing access by everyone to the television media and information councils to guarantee ideological pluralism.

61. Mr. Hanga had asked what were the legal provisions relating to privately-owned mass media. The relevant provisions were to be found in Decree-Law No. 85-C/75, Decree-Law No. 181/76 and Act No. 13/78. The first of those enactments regulated in detail the various aspects of the matter: freedom of the press, freedom of competition and prohibition of monopolies, status of journalists, etc.

62. Mr. Graefrath has asked whether the press was protected against economic power. The answer was categorically in the affirmative. The law itself specified the objective that the press performed a public function independent of political and economic power and provided for measures to prevent the concentration of newspapers and news agencies.

Article 21

63. Mr. Sadi had asked whether the freedom of expression and association included the right of counter-demonstration. The answer was in the affirmative, always providing that the exercise of the first right was not affected.

Article 22

64. Mr. Lallah had asked what were the political parties and trends in Portugal and whether the relevant provisions of the Covenant were being applied. The answer was that the following 23 political parties had been registered with the Supreme Court of Justice, the first 9 being represented in the Assembly of the Republic: (1) Socialist Party (PS); (2) Social Democratic Party (PSD); (3) Portuguese Communist Party (PCP); (4) Democratic Social Centre (CDS); (5) Portuguese Democratic Movement (MDP); (6) Popular Democratic Union (UDP); (7) Popular Monarchist Party (PPM); (8) Left-Wing Union for Socialist Democracy (UEDS); (9) Independent Social Democratic Action (ASDI); (10) Christian Democratic Party (PDC);

(11) Portuguese Marxist-Leninist Communist Organization (OCMLP); (12) Portuguese Workers' Communist Party/Movement for Reorganizing the Proletariat Party (PCTP/MRPP); (13) Labour Party (PT); (14) Left-Wing Socialist Movement (MES); (15) Popular Socialist Front (FSP); (16) Popular Unity Party (PUP); (17) Revolutionary Socialist Party (PSR); (18) Popular Unity Dynamizing Groups (GDVP); (19) Independent Movement for National Reconstruction (MIRN); (20) Socialist Unity Workers' Party (POUS); (21) Democratic Party of the Atlantic (PDA); (22) Popular Unity Force (FUP); (23) United People's Alliance (APU). The Revolutionary Party of the Proletariat (PRP) had not applied for registration with the Supreme Court of Justice.

65. Mr. Sadi had asked whether article 47, paragraph 2, of the Constitution might not be discriminatory in that it forbade simultaneous membership of more than one party. There was in fact no discrimination since the article applied equally to all citizens. Moreover, the limitation in question served democratic purposes in as much as it promoted the free and healthy pursuit by political parties of their institutional aims.

66. Mr. Hanga had asked the meaning of the expressions "direct association" and "single membership" used in Decree-Law No. 595/74. The term "direct association" was somewhat imprecise: it probably referred to the obligation to register with a party, and not with a political organization of an intermediate or higher level. As for the expression "single membership", it meant that no one was allowed to be a member of more than one political party simultaneously.

67. Mr. Lallah had asked why Decree-Law No. 215-B/75 had been amended; were not the requirements regarding the number of workers necessary to form a trade union association excessive? The answer was that the amendments in question had repealed provisions which prevented trade-union pluralism. As to the number of workers, it should be noted that the Advisory Council of the Office of the Attorney-General had indeed considered the above-mentioned number as excessively large and hence contrary not only to the Constitution but also to the Covenant. That opinion was binding upon the Public Prosecutor's Department and upon all official organs of the Ministry of Labour; as a general rule, it had been followed by the courts.

68. In reply to Mr. Hanga who had asked what role was played by the trade unions, he said that trade union organizations had all the rights set forth in article 58 of the Constitution.

69. Mr. Hanga had, in addition, drawn attention to article 57, paragraph 3, of the Constitution, which provided that trade union organizations must be governed by the principles of democratic organization and management, and asked whether the reference was to economic or to political management. The provision in question referred to trade union management, i.e. matters relating to the organization and operation of trade unions.

70. In reply to Mr. Herdocia Ortega's question on the position concerning ILO Conventions Nos. 87 and 105, he replied that Convention No. 87 on Freedom of Association (1948) had been ratified by Portugal on 14 October 1977 and Convention No. 151 on Labour Relations (Public Service) (1978) had been ratified on 15 July 1980, the instrument of ratification having been deposited with the International Labour Office on 9 January 1981. It was worth noting that, by the

latter date, Convention No. 151 had been ratified by only 3 out of 151 States members of ILO (Cuba, Finland, Norway, United Kingdom, Sweden, Peru, Zambia and Portugal). In the report submitted by the ILO Committee of Experts on the Application of Conventions and Recommendations - whose serious-minded work was universally recognized - and approved by the 67th International Labour Conference in June 1981, there was not a single observation by that Committee concerning the implementation by Portugal of Conventions Nos. 87 and 151.

71. His delegation therefore believed that Mr. Herdocia Ortega's comments were perhaps based on a complaint submitted to ILO by the Federation of Public Service Trade Unions of Portugal accusing the Government, among other things, of violations of ILO Convention No. 151. That complaint - which had been widely reported in the Portuguese press - was at present being examined (both parties being heard) in ILO and, although he felt certain of the success of his Government's stand, he would not comment at length upon the case while it was still under consideration. In any event, it should be noted that the above-named Federation claimed that public servants enjoyed the right of collective bargaining by the mere fact that ILO Convention No. 151 had been ratified. His Government rejected that view, first, because there was nothing in the letter or spirit of ILO Convention No. 151 on the subject of collective bargaining for the public service, and secondly and mainly, because in June 1981 the 67th International Labour Conference had adopted a new Convention concerning the Promotion of Collective Bargaining and article 1 (paragraph 3), of that Convention stated expressly that "as regards the public service, special modalities of the application of this Convention may be fixed by national laws or regulations or national practice."

72. Clearly, ILO was now making provision for the public service precisely because Convention No. 151 did not cover the subject. The proposed new Convention had been adopted by 322 votes in favour and none against, with 103 abstentions. The Portuguese delegation had abstained, stating its reasons therefore based mainly on the ambiguity of the terms of the above-mentioned article 1 (paragraph 3) (67th International Labour Conference, provisional record No. 30, pp.10-11 of the French text). The good faith of the Portuguese Government in the matter had thus been demonstrated and he felt sure that Mr. Herdocia Ortega would be satisfied with the explanations given.

Article 23

73. Mr. Bouziri had asked whether the Portuguese requirements for divorce (three years of married life for divorce by mutual consent; six years' de facto separation for a contested divorce) were not unduly restrictive. He explained that that system was well suited to the present Portuguese situation, where divorce had only recently been extended to the bulk of the population (divorce had, of course, been impossible in Portugal for spouses married in the Roman Catholic Church). The question whether the above-mentioned time-limits were too strict was obviously a controversial one, as shown by the discussion in the Committee itself, during which Mr. Hanga had expressed views different from those of Mr. Bouziri on the subject.

74. In reply to Mr. Sadi's question regarding the minimum age for marriage, he explained that it had been 15 years since 25 November 1977; previously, it had been 14 for women and 16 for men.

75. Mr. Sadi had also asked how the freedom of choice of occupation for both spouses could be reconciled with the duty of co-operation existing between them regarding their joint responsibilities in the matter of family life. In reply, he expressed his delegation's view that the principle of equality of the spouses implied their freedom of choice of occupation and ruled out any supremacy on the part of one of them. The Portuguese law on matrimonial matters was based on the idea that the spouses were complementary to each other.

76. To Mr. Sadi's third question, i.e. whether the list of grounds for divorce was the same for men and for women, he answered affirmatively.

77. Mr. Hanga had asked whether property relations between husband and wife were compulsorily governed by a statutory régime. The answer differed according to the circumstances. The system of separation of property for husband and wife was mandatory under Portuguese law in two situations: first, where matrimony was entered into without the publication of banns, and secondly, where the spouses were over 60 years of age at the time of marriage. In all other cases, the future spouses had, at the time of marriage, the choice from among several possible systems of property relationship; in the event of silence on their part, the fall-back system which applied was that of community of property limited to assets acquired during marriage (comunauté réduite aux acquêts).

78. Mr. Hanga had also asked whether the judge could take any steps to try and dissuade spouses from divorcing. The answer was that divorce proceedings in the case of application by common consent involved two attempts at conciliation conducted by the judge; only one such attempt was made in the case of a contested divorce.

79. Replying to Mr. Lallah, he said that adoption was recognized in Portuguese law and was effected in pursuance of a judicial decision. The adopted child was always heard if he was over 14 years of age. There were two kinds of adoption - full and restricted: full adoption conferred the status of a child integrated in the adoptive family; with restricted adoption the adopted child retained all the rights and obligations originating from his natural family.

Article 24

80. In reply to Mr. Bouziri he said that Portuguese law contained regulations governing family planning. There were also family planning centres which gave free advice and publicized the idea of planned parenthood.

81. Mr. Tomuschat and Mr. Herdocia Ortega had asked about Portugal's position with regard to the ratification of the Optional Protocol. Portugal had in fact signed the Optional Protocol and in 1978 the Government had submitted to Parliament a request for its ratification. A few months later, before the Assembly had been able to take a decision, the Government had changed. In accordance with the law the new Government was required to reiterate the request to Parliament. That had been done in February 1981, and the request was now being studied by a commission of the Assembly. Unfortunately his delegation was not in a position to indicate the length of time which the ratification procedure would take, but it hoped that it would be short.

82. Mr. TOMUSCHAT, Mr. LALLAH, Mr. BOUZIRI, Sir Vincent EVANS and Mr. PRADO VALLEJO congratulated the Portuguese delegation on the excellent manner in which it had replied to the Committee's questions.
83. Mr. TOMUSCHAT, commenting on the point which he had raised regarding the distinction between foreigners and nationals in the Constitution, noted that reference had been made to a "maximalist" trend in legal doctrine. However, that might not be enough. The Portuguese Government might wish to give the matter further consideration in the light of the provisions of article 2, paragraph 2, of the Covenant; if the language used in the Constitution was ambiguous, the effectiveness of the constitutional guarantees might be impaired. Some written information on the primacy of international conventions would also be very useful.
84. Mr. LALLAH said that since the Covenant formed part of domestic law, it was very important that people should be aware of it. For example, had any publicity been given to the fact that the Portuguese delegation was now appearing before the Committee?
85. Mr. BOUZIRI observed that, unless a statement was made in explanation of vote, it was very difficult to gauge the exact significance of a vote at international meetings.
86. Sir Vincent EVANS, noting that the Portuguese Constitution was in the process of being revised, said that it would be very useful if the Committee could be informed in due course of any amendments on which the Covenant and the questions raised by members had a bearing.
87. Mr. MARTINS DA CRUZ (Portugal) said that his Government would note Mr. Tomuschat's comment regarding a possible improvement in the wording of the Constitution as far as equality of rights between citizens and foreigners was concerned. His delegation would also send the Committee some information on the implementation of the Covenant as soon as possible.
88. Mr. Lallah could rest assured that extensive coverage had been given in the Portuguese press to the appearance of the Portuguese delegation before the Committee. With regard to Mr. Bouziri's observation on explanation of vote, Portuguese delegations usually delivered explanations of vote when voting on particularly sensitive issues.
89. He apologized for the relative lack of news regarding the revision of the Constitution. A Parliamentary commission was now working on four drafts submitted by different political parties. His delegation hoped that all comments made by members of the Committee would be taken into account in the revision process.
90. Mr. PRADO VALLEJO suggested that the Portuguese delegation's replies to the questions raised by members should be reproduced in extenso.
91. The CHAIRMAN said that full coverage in the summary record would be sufficient. He commended the Portuguese Government for the effectiveness with which it had replied to the Committee's questions, and in particular for having sent highly competent officials from different departments to attend the Committees' meetings: a single person would have had great difficulty in replying so comprehensively.

The meeting was suspended at 5.25 p.m. and resumed at 5.35 p.m.

ORGANIZATION OF WORK

92. The CHAIRMAN said that from the information at his disposal it was not clear whether a representative of the Government of Guinea would attend the Committee's current session. He therefore suggested that the Committee should adopt a flexible time-table for the following week, so as to allow for the possibility that a representative of Guinea might appear.

93. It was so agreed.

94. The CHAIRMAN said that the discussion of Norway's supplementary report would take place the following Tuesday on the understanding that whenever a conclusion was reached regarding periodicity, Norway should be treated in exactly the same way as other countries which had submitted supplementary reports for consideration.

95. Mr. GRAEFRATH said that he had no objection to the Chairman's decision regarding Norway but noted that it represented a departure from the consensus reached by the Committee at its eleventh session.

96. The CHAIRMAN replied that his decision was based on the last sentence of paragraph (g) of the consensus. Norway was being placed on exactly the same footing as other countries which submitted subsequent reports for discussion.

The meeting rose at 5.40 p.m.