

**INTERNATIONAL
COVENANT
ON CIVIL AND
POLITICAL RIGHTS**



Distr.
GENERAL
CCPR/C/SR.68
2 February 1978
ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE

Third Session

SUMMARY RECORD OF THE 68TH MEETING

held at the Palais des Nations, Geneva, on
Tuesday, 31 January 1978, at 10.45 a.m.

Chairman:

Mr. OPSAHL

SUMMARY

- Consideration of reports submitted by States Parties under article 40 of the Covenant: Initial reports of States parties due in 1977 (agenda item 4)
(continued)

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CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT: INITIAL REPORTS OF STATES PARTIES DUE IN 1977 (agenda item 4)
(continued)

Report of the German Democratic Republic (CCPR/C/1/Add.13) (continued)

1. Mr. HEILBORN (German Democratic Republic) said that the questions asked by members of the Committee in connexion with the initial report submitted by his Government related partly to specific problems of domestic law and partly to matters of principle, which were dealt with in very different ways depending on the State concerned and on its social order. Members of the Committee should bear in mind that, in the German Democratic Republic, human rights were exercised in accordance with the principles of Marxism-Leninism and socialism. Having made that general observation, he would concentrate more particularly on certain questions which, in his view, were of special importance.

2. The socialist order of society was founded upon the workers, who included old-age pensioners, housewives bringing up their children and taking care of their families, and persons in need of society's aid. The objective of the socialist State was to reconcile the interests of all those who lived on its territory. The exercise of human rights was organized with a view to the free development of all without distinction of any kind, it being understood, however, that action in the field of human rights must not be prejudicial to the State. In order to apply that principle in an effective manner, it had been necessary to put an end to the hegemony enjoyed by certain individuals and social strata by reason of their ownership of mineral resources or of means of production. Only the ending of exploitation of man by man had made it possible to create conditions in which man could freely develop his personality and fully enjoy his fundamental rights. With the socialization of mineral resources and certain other goods, the citizen retained the right to personal property but could no longer misuse his property to gain economic hegemony. Socialist property was used by all and in the interest of all; that was why it was of immediate political importance in the development of human rights. The more citizens were able to participate, under conditions of equality, in the conduct of affairs of the State and society, the better were the chances of implementing the fundamental rights of the individual.

3. The question has been raised whether the interpretation of the freedom of opinion, assembly and association within the spirit of the Constitution and in accordance with its aims were not restrictive. It should be pointed out that a number of legislative provisions on those subjects had been put before the people and had been approved by majorities amounting in many cases to more than 90 per cent of the vote. Generally speaking, therefore, the implementation of civil and political rights in the spirit of the Constitution corresponded to the people's aspirations as expressed in the exercise of the right to self-determination, and was legally in conformity with the social order of the German Democratic Republic.

4. Every five years the sovereign people elected a representative body through which it exercised political power. Candidates were chosen in factories and in various organizations, and elections were held by direct suffrage and secret ballot. During the five years of their mandate, the elected representatives remained responsible to their constituents. The Council of State and Council of Ministers were responsible to the popular representative body, as were the President and judges of the Supreme Court and the Procurator General. That did not, however, imply that that body had judiciary powers. Since the popular representative body was the supreme authority and the expression of the people's sovereignty, it also decided whether laws and regulations were or were not constitutional.

5. In conformity with article 96 of the Constitution and article 5 of the Court Constitution Act, judges were elected by the popular representative body but were fully independent in their administration of justice. They were bound only by the Constitution, the laws and other regulations. The Court Constitution Act provided for the recall of judges, the grounds of recall, as set forth in article 53 of the Act, being the exercise of another activity, infringement of the law, or non-fulfilment of fundamental obligations. A judge's term of office was the same as that of the popular representative body. The judge's independence was guaranteed in all judiciary procedures, penal as well as civil, and in particular in matters relating to family law and labour law. The reason why judges were not elected for life but only for five years, like the popular representative body, was that it was thought desirable that they should always receive their mandate from the last assembly elected by the people; on the one hand, their position was considerably strengthened thereby and, on the other, they were not inclined to consider themselves above the law which they were required to apply. The judge pronounced judgement in the name of the people and with the people's participation, as provided in article 6 of the Court Constitution Act which stated that judicial decisions were collective and involved the participation of lay judges. The latter took part in a court's activities for two weeks of every year; they participated not only in hearings but also at every stage of court procedure, giving opinions and consultations, preparing files and supervising the outcome of cases which did not carry sentences of deprivation of freedom. Lay judges were elected by direct suffrage in enterprises in towns and in the country, and continued to receive remuneration during their term of office. They were on a footing of equality with professional judges and enjoyed the same rights with regard to debate and procedure. Courts were generally composed of three judges, including two lay judges, and the latter's decision could therefore always be decisive. That system enabled the people to participate in the administration of justice.

6. Another form of participation was envisaged in articles 9 and 53-57 of the Penal Code and article 4 of the Code of Civil Procedure. In criminal cases, the representative of a team of workers could be invited to take part in the trial, so that the fellow workers of the accused could express their views before the court through a person enjoying their confidence. The team could also designate a counsel to follow the trial at the procurator's side and make known to the court the views held concerning the accused by members of his work-team or community. Lastly, the team or the community could appoint a consultant sociologist to acquaint the court with any attenuating circumstances that should be taken into

consideration. Under article 57 of the Penal Code, the work-team to which the accused belonged could stand bail for him. Since it knew the accused better than did the court, it could offer its good offices with a view to reforming and educating him, and could even propose a sentence not entailing deprivation of freedom; the court was not, however, obliged to accept such a proposal, being fully independent in pronouncing judgement. All those provisions had the effect of enabling judges to exercise their functions without cutting themselves off from the people.

7. Before leaving the subject of the organization of the judicial system, he said that there were no administrative tribunals in the German Democratic Republic; that was because, in the past, such tribunals had opened the way to fascist forms of government.

8. He had already, in his introductory statement, indicated the German Democratic Republic's position in respect of the incorporation of the Covenant's provisions in domestic law. The important point was not the incorporation procedure itself but whether the provisions incorporated in domestic law were useful to the citizen and to society.

9. Article 20 of the Constitution proclaimed the equality of men and women in all spheres. In the German Democratic Republic it was impossible to take decisions or to adopt provisions in disregard of the principle of equality which, indeed, was also proclaimed in the Penal Code, the election law and the Family Code. The relevant texts would be communicated to the Committee by the Mission of the German Democratic Republic. He would, however - by way of example - refer to the Labour Code which contained the most recent and most important provisions concerning mothers exercising a paid activity. The mother working outside the home could not freely develop her personality because of the family responsibilities she bore in addition to her professional obligations. That was why the Labour Code contained a large number of provisions in her favour. Enterprises were required to guarantee working conditions that would enable the working mother to perform her professional activities without having to neglect her family obligations. The mother who worked full-time and had several children of less than 16 years of age benefited from shorter working hours and measures enabling her to improve her professional qualifications during working hours. Pregnant women and nursing mothers could not be assigned to hard physical work or prolonged tasks, and night-work and overtime were prohibited. The law provided for six months' paid maternity leave before confinement and 20 weeks after confinement, with the possibility of post-natal leave being extended in the event of a premature birth. Regular paid leave was added to the two kinds of maternity leave and, under a recently adopted provision, mothers could be authorized not to resume work until the child was one year old. Furthermore, if the mother failed to obtain a place in a day nursery for her child, she could be granted leave for three years. In either case she kept her job. During maternity leave the mother was entitled to certain social benefits; in particular, the enterprise was obliged to enable her to attend vocational training courses so as to safeguard her promotion rights.

10. With regard to article 6 of the Covenant, he explained that the death penalty had not been abolished in the German Democratic Republic because the Government regarded it as an effective weapon against racialism, fascism and war criminals. His country had benefited from the lessons of the past and, having experienced the evils which could be caused by fascism and incitement to racial hatred, had very early on acceded to the International Convention on the Prevention and Punishment of the Crime of Genocide and to the International Convention on the Non-applicability of Statutory Limitations to War Crimes and Crimes against Humanity, as well as to the International Convention on the Elimination of All Forms of Racial Discrimination and that on the Suppression and Punishment of the Crime of Apartheid.

11. Under the 1968 Penal Code, a court's decision could always be adapted to the seriousness of the facts and it could impose a penalty other than the death penalty, which was applicable to certain serious crimes specified in article 110 of the Penal Code. Members would find relevant details in his Government's reply to a note from the Secretary-General dated 30 August 1974. He emphasized that, under the provisions of article 52 of the Constitution, the death penalty was imposed only in case of necessity and having regard to the dangers to which the punishable act had exposed society. In accordance with the legislation, it was not carried out in the case of women who were pregnant at the time sentence was passed or on the date fixed for the execution, nor after the birth of a child. Moreover, persons who were mentally ill could not be condemned to death, and a death sentence could not be carried out so long as a decision had not been reached on an appeal for pardon. He also pointed out that article 74, paragraph 2, of the Penal Code, provided for the right to clemency and that, in fact, the death penalty had seldom been carried out in recent years.

12. The rights of persons deprived of their liberty (articles 9 and 10 of the Covenant) were in essence guaranteed by the provisions of article 99, paragraph 4, of the Constitution, under which the rights of citizens in penal proceedings could be restricted only to the extent prescribed by law and for very compelling reasons. In addition, article 100 provided that the judge alone was competent to decide whether custody on remand could be ordered, and that a person who had been arrested had to be brought before him not more than one day after his arrest. The reasons for arrest were set out in the Penal Code, which also laid down that arrests could be carried out only if such action was essential in connexion with the investigation of the crime. Under article 131 of the Code of Criminal Procedure, the Public Procurator was required to ensure that custody was not unduly prolonged, and to that end each case was systematically followed by the courts, the results of the investigation and the names of the judges being recorded in the dossier.

13. As many questions had been put regarding the right to defence he explained that, under article 127 of the Code of Criminal Procedure, every citizen of the German Democratic Republic had the right to appeal and to have the assistance of counsel at all stages of the proceedings. Under the right of defence, the accused was entitled to know what charges were being brought against him and the nature of the evidence and, in general, to be provided with all the means necessary to prove his innocence.

14. He recalled that in his introductory statement, he had mentioned that a new law on the treatment of persons remanded in custody during the investigation, would come into force in May 1978; existing legislation had always applied the United Nations Standard Minimum Rules on the subject and had even gone further in certain respects. The question had also been asked whether persons in custody could have contact with their families and whether they had the right to engaged in religious activities. The replies to those questions were to be found in the Penal Code, which emphasized the reintegration of prisoners in the community, detention being regarded only as a temporary measure with a view to the achievement of that aim; minors, for example, could receive vocational training while in custody.
15. With regard to the freedom of movement provided for in article 12 of the Covenant and guaranteed by article 32 of the Constitution of the German Democratic Republic, he noted that earlier reports submitted by his country to the United Nations contained more detailed information than the document before the Committee. Restrictions could be placed on that freedom in certain regions for reasons of national security; it was, for example, forbidden for citizens to enter military zones situated along the western frontier and along the frontier with West Berlin. In accordance with the order on the protection of the State frontiers, the frontier regulations, and an order of the National Security Council, special permission was required to visit or stay in those zones. Those regulations, which were published in the Official Gazette of the German Democratic Republic (Gezetzblatt), applied to all citizens.
16. As in all countries, persons wishing to travel abroad had to obtain a passport and a visa, as well as a visa for the country of their destination. The issue of passports was subject to restrictions provided for in the relevant legislation, which was in accordance with the provisions of article 12, paragraph 3, of the Covenant. A few figures would suffice to provide an objective picture of the situation: of the German Democratic Republic's 17 million citizens, about 12.5 million had travelled abroad, and about 3.5 million of them had visited non-socialist countries. The right of persons other than citizens to enter the territory of the German Democratic Republic was subject to certain conditions. Under the law of 1967, citizenship could be withdrawn from a person who had ceased to reside in the German Democratic Republic or who had seriously failed in his civic duties; the text of the law in question would be transmitted subsequently to the Committee.
17. He thought he had already provided detailed information on the equality of rights of aliens and stateless persons (article 13 of the Covenant) in his introductory statement, and would therefore simply mention the 1956 regulations governing stays by foreigners and the 1973 regulations on the activities of foreign news agencies and their correspondents. The difference in terminology that had been noted between the Constitution and the Covenant, one of which referred to "citizens" and the other to "individuals", did not imply any contradiction and was not surprising, as the Constitution of the German Democratic Republic was concerned with persons who had helped build up the socialist society and not those who, at some time, had left the country. In conformity with

article 25 of the Covenant, some rights and duties, such as the right to vote and to be elected, the right and the duty to perform military service, etc., were enjoyed only by citizens of the Republic. However, aliens also enjoyed certain rights in accordance with the spirit and aims of the Constitution.

18. With regard to the question of the inviolability of the home and correspondence, (article 17 of the Covenant), he said that, under article 108, paragraphs 2 and 3, of the Code of Criminal Procedure, a search was authorized only if it was necessary in connexion with the preliminary investigation: the authority competent to take a decision in the matter was the Office of the Public Procurator or, in an emergency, the body responsible for the investigation. The decision had to be confirmed by the judge within 48 hours as otherwise it became null and void, and proceedings could be taken against those who infringed that rule. The privacy of postal communications and telecommunications was provided for in article 31 of the Constitution, and under the Code of Criminal Procedure correspondence could only be opened when a judge had so decided.

19. Referring to article 14 of the Convention, he explained that, in accordance with article 211 of the Code of Criminal Procedure, the public could be excluded from a trial if publicity was likely to be detrimental to public order or morals, or to have a harmful influence on young people. Access to the court-room could also be forbidden to the public for reasons of State security or if certain facts had to be kept secret. The Code of Civil Procedure contained parallel provisions - for example in respect of divorce cases. However, the sentence had always to be pronounced in public, in criminal and in civil proceedings alike. Custody on remand was authorized only in the circumstances specified in the Code of Criminal Procedure. There were no political detainees.

20. In reply to Mr. Hanga, who had pointed out that the report of the German Democratic Republic contained no information on the application of article 16 of the Convention, he said that, under the judicial system of the German Democratic Republic, all citizens enjoyed the same legal status and had the same duties before the law. All could make use of socialist property, could own property or copyrights and dispose of them contractually or by legacy, and could bring an action. Aliens and stateless persons also enjoyed those rights, even if they were not accorded to them in their country of origin.

21. Freedom of conscience and religion (article 18 of the Covenant) was embodied in article 39 of the Constitution. There was no State religion and, consequently, there were no religious minorities. Church and State were separate and religious communities managed their own affairs without State interference. There were some 2,000 Protestant clergy, 4,200 priests, 700 Christian communities and 8 Jewish communities in the German Democratic Republic. Religious services, both Christian and Jewish were broadcast, and bible-reading sessions, seminars, pilgrimages and processions could be organized freely. There were also young people's groups, and some religious denominations took care of the sick, old people and prisoners. Religious education could be provided in schools, and all children enjoyed the same rights - without any distinction based on religion - to secondary, higher or vocational education. In that connexion, he noted that the

percentage of persons having attended university was higher among the clergy than among the other categories of the population. Moreover, 500 students were registered at the 6 universities which had a faculty of theology. The State did not influence in any way the preparation of programmes or the selection of students and professors in religious educational establishments. There were 30 religious periodicals with a total circulation of 13 million copies, and a Berlin publishing house produced a substantial number of religious publications every year. The churches in the German Democratic Republic had frequent ecumenical contacts, and in recent years a number of religious delegations from France, the United Kingdom, the United States of America, Canada, the Netherlands and Switzerland had visited the German Democratic Republic.

22. Some speakers had raised the question of conscientious objectors, and he explained that "construction teams" had been created under article 4 of the Order of the Defence Council of the Republic to enable conscientious objectors to perform useful work by participating in the construction of public works and the repair of damage caused by natural disasters.

23. He also mentioned that there was no discrimination as regards employment opportunities based on religion in his country. Christians held very diverse positions in enterprises, farms, co-operatives, in the educational system and in the public health administration. The President of the Supreme Court held religious convictions, as had many judges, writers, artists and musicians, who contributed to the development of the socialist community in accordance with their beliefs. In addition, numerous Christians had been elected to public office. The Christian Democratic Union had several thousand members, including about 100 priests or university theologians in popular representative bodies. Fifty-two deputies of the People's Assembly belonged to religious denominations, and persons professing various beliefs were members of the Council of State, the Council of Ministers, and district or municipal councils. The sole criterion for obtaining employment was clearly that of the candidate's qualifications, in accordance with article 94 of the Constitution and, as regards the post of Public Procurator, in accordance with article 35 of the law relating to the Procurator's Office.

24. Several members had wondered whether article 27 of the Constitution, guaranteeing freedom of opinion (article 19 of the Covenant), did not to some extent limit that basic right. One of them had rightly stated that a healthy society should encourage exchanges of views. The German Democratic Republic attached particular importance to such exchanges whenever decisions had to be taken on important legislation, social projects or economic plans; the representatives of the people were of course consulted, as were various bodies and institutions, and the workers in undertakings could even submit counter-proposals. Although the opinions elicited in that way were examined, it was not possible to satisfy everyone because, after all, democratic principles had to be applied.

25. With regard to freedom of the press, he stressed that the Constitution made no provision for censorship. The five political parties published 33 daily papers and 12 periodicals, and various social organizations published 3 daily papers, 11 weeklies and 151 other periodicals. Over 140 periodicals were published by universities and scientific institutions, about 100 by public authorities, 49 by economic bodies, 62 by scientific associations, 28 by individuals - and in addition there were the various religious periodicals he had already mentioned. Each field of activity had its own specialized publication, whose circulation was sometimes very high. According to the Yearbook of the United Nations Educational, Scientific and Cultural Organization, the average world-wide circulation of publications in 1975 had been 192 copies, and the German Democratic Republic, with an average of 425 copies, occupied second place after the United Kingdom (433 copies). He also mentioned that newspapers in the German Democratic Republic published many letters from readers side by side with their editorials. In 1976, for example, 350,000 of the 1.6 million letters received by the editorial departments of newspapers were published. Each year the German Democratic Republic received newspapers representing a total cost of over DM 19.6 million from the capitalist countries. Some 8,900 publications (235,000 copies) - chiefly scientific - were received from the capitalist countries of Europe, together with Canada and the United States, and the German Democratic Republic, for its part, sent 4,692 publications (78,000 copies) to 33 capitalist countries.

26. With respect to television and radio, he noted that in 1976, for example, the German Democratic Republic had bought from a television company in a capitalist country programmes that were 27 times as long as the programmes which that company had purchased from it. It had acquired televised programmes from the Federal Republic of Germany, the United Kingdom and Canada, the traffic having been in one direction only in the case of the last country. The same imbalance was noticeable in the purchase of copyrights as between the German Democratic Republic and the capitalist countries (678 works as against 309, in 1976), the difference being particularly marked in the case of France, the United Kingdom and Denmark. In general, therefore, it could not be said that the German Democratic Republic had closed its doors to information from the capitalist countries, but it was also clear that it exported more information to those countries than it received from them.

27. Committee members had also asked, with reference to the right of assembly, whether non-violent demonstrations could be organized, and he said it must be borne in mind that the unlawfulness of an act could not be determined solely in relation to its violent character. All penal codes treated incitement, which did not of itself imply violence, as a punishable offence. During the fascist Hitlerite period, some writers had brought about the death of countless persons by their writings alone. Propaganda for war did not, strictly speaking, imply violence and many States had become parties to the International Convention on the Elimination of all Forms of Racial Discrimination because they were aware of the need to punish not only crimes committed for racial reasons, but also incitement to commit such crimes. In that connexion, and in response to Committee members who had asked how propaganda in favour of war and fascism was defined in the German Democratic Republic, he read out article 89 of the Penal Code; under that article, proceedings

could be initiated against anyone engaging in propaganda for a war of aggression or other aggressive acts, used nuclear weapons or other weapons of mass destruction, had recourse to force for purposes of aggression, brought about the violation of international instruments aimed at preserving and strengthening peace, or encouraged the persecution of the members of a peace movement. With regard to propaganda in favour of fascism, he drew attention to article 92 of the Penal Code, which defined it in precise terms, and regretted that all States had not given that question as much attention as his own country.

28. Societies and associations had to be established in conformity with the legislative provisions on public order. Article 29 of the Constitution guaranteed the right of association. Social organizations could be set up without special notification, and associations established by citizens with a view to defending their interests and enabling them to achieve common objectives had to comply with the provisions of the Decree of 6 November 1975 on that matter. The Civil Code envisaged a large number of possibilities of setting up economic societies and associations. In all, there were nearly 500,000 organizations, associations and groups of all kinds which were not subject to any restrictions as long as their activities were not contrary to public order and did not entail incitement to criminal acts.

29. The rights referred to in articles 23 and 24 of the Covenant were embodied in article 42 et seq of the Family Code, an English copy of which could be made available to Committee members. When a marriage was dissolved, custody of the children was very often granted to the mother, but could be entrusted to the father if it was in the children's interest to do so. The German Democratic Republic had spared no effort in reuniting families since the end of the Second World War, and many cases had been settled in collaboration with the International Committee of the Red Cross. Moreover, a series of social and economic measures had been adopted on behalf of the family, such as family allowances, social insurance, assistance to large families in need and loans to young couples.

30. Reverting to article 6 of the Covenant, he said that the question raised the previous day concerning the use of firearms was governed by the law relating to the People's Police, to which he had already alluded. On that point, the legislation of the German Democratic Republic did not differ from that of other States.

31. As regards the protection of frontiers, he repeated that the country's western frontier was regarded as a prohibited military zone. In recent years a number of transit points had nevertheless been opened and local frontier traffic took place. The Second World War, as was well known, had its origins in a frontier violation, and that was why his country attached great importance to the crossing of frontiers in accordance with the law.

32. With respect to discrimination in education, he recalled that the German Democratic Republic was a party to the convention on the subject and that it had taken the necessary steps to apply that instrument and to eliminate all forms of discrimination which had previously existed. On the question of the Sorbian ethnic minority, he referred Committee members to the information which his country had already supplied to the Secretary-General in documents other than the report under consideration.

33. He further explained that the activities of workers and farmers, were controlled by a supervisory body, whose principal task was to prevent the emergence of any attitude contrary to the interests of citizens.

34. In principle, the State was responsible for any damage or illicit act committed by an official although, under the new Labour Code, the official concerned could be held partly responsible.

35. The CHAIRMAN thanked the representative of the German Democratic Republic for the replies which he had given and which had marked the beginning of a constructive dialogue between his Government and the Committee. He hoped that the Secretariat would arrange to supply Committee members with the relevant documents which the Government of the German Democratic Republic had sent to other United Nations bodies.

The meeting rose at 1 p.m.