

HUNGARY

CCPR A/32/44 (1977) 13/

130. The initial report submitted by Hungary under article 40 of the Covenant was considered by the Committee at its 32nd and 33rd meetings, on 19 and 22 August 1977. The Government of Hungary had further drawn the attention of the Committee to a questionnaire concerning the study on "the individual's duties to the community" undertaken by the Sub-Commission under its resolution 9 (XXVII). The representative of Hungary emphasized that the provisions of the Covenant were applied as part and parcel of the national law of his country, and that the Hungarian State was making increasing efforts to develop co-operation with all States parties in implementation of the Covenant. For instance, the visa requirement had been abolished in the relations of Hungary with a number of countries.

131. The representative of Hungary replied to a number of the questions asked by members of the Committee. He gave assurances that unanswered questions would be transmitted to his Government, and that replies to them would be included in an additional report. The texts of the Constitution, the Criminal Code and the Code on criminal procedure were subsequently forwarded to the Committee.

132. The questions of the members of the Committee are summarized below:

(a) Some members of the Committee requested information on the measures taken in Hungary to implement article 3 of the Covenant concerning equality of men and women. The representative of the Hungarian Government stated that the equality of all Hungarians was guaranteed by the Constitution and that there was no discrimination based on sex. There was full opportunity for Hungarian women to participate in social life and to be elected to the highest posts.

(b) Clarification was requested concerning the regulations in force in Hungary governing the conduct of police and other authorities in relation to pre-trial arrest and detention. In reply, it was indicated that arrests may be made only in cases defined by law and only upon presentation to the suspect of a written warrant indicating the grounds for arrest. The detained person shall be heard within 24 hours and he shall be informed of the charges and his right to choose counsel.

(c) One member of the Committee asked whether there were any exceptions to the rule that the investigation of cases of persons detained under remand should be terminated within 30 days and that trial should be held within 30 days of the filing of indictment. The reply was that the Hungarian law was very strict and allowed no exceptions.

(d) In answer to a question regarding the existence of political prisoners, the Government's representative stated that there were no political prisoners in Hungary.

(e) Statistical information was sought on the number of people who had applied for passports to travel abroad and the number of cases when passports had been refused. The representative of Hungary stated that in 1976, 92 per cent of applications for emigrant passports had been satisfied. A number of Hungarian emigrants could not adjust to the society of the host country and wanted to return home. In 1976, more than 3 million Hungarians had visited other countries and more than 9 million people had visited Hungary. During the last three years considerable investments had been made for accommodating tourists. New regulations had come into force to speed up the granting of visas.

(f) Some members requested information on existing guarantees against discrimination on ground of religion. The representative of Hungary stressed that to ensure the freedom of conscience the Church had been separated from the State. Religion was considered a private affair of citizens and there were no laws regulating their religious life. There was no discrimination against any religion. The maintenance of denominational schools was financially supported by the State and ministers of religion received salaries from public funds.

(g) Some members of the Committee requested information regarding the implementation of freedom of expression in particular for person who dissented from government policies. The representative of Hungary said that there existed full freedom of expression in his country. Citizens had the right to criticize the management of public affairs and were never punished for it. They address their grievances to the Deputies in Parliament. They could also express their views in numerous associations. There were legal restrictions aimed at the protection of national security, which were common to other countries. Cases of punishment for breaking such rules were few.

(h) A query was put concerning the manner in which the right of freedom of association was given effect. The representative of Hungary drew attention to the system of representative councils which had been established at all levels (local, regional, national) and in various sectors of economic and social life. Besides the Party, there were various associations in the country which contributed to the building up of a socialist society. The officers of all these councils and associations were freely elected.

(i) Information was sought on the implementation of article 26 of the Covenant concerning equality before the law. The representative of Hungary said that equality before the law was fully guaranteed by the Constitution. For instance, in accordance with this principle, a person held for a crime could not be granted conditional release against payment of a sum of money. The citizens of all the nationalities of the country could defend themselves in their mother tongues before the courts. In case of infringements of their right to equality before the law, they could apply to higher bodies.

(j) What did the report mean by the terms "a valid instrument of national law" which had embodied "the civil and political rights contained in the Covenant" when the Hungarian People's Republic had been established?

- (k) By what juridical act had the Covenant become part and parcel of the national law of Hungary?
- (l) What was the relationship between the provisions of the Covenant and those of the Constitution and other law in case of conflict?
- (m) Might the provisions of the Covenant be invoked by individuals in proceedings before the courts or in their dealings with administrative authorities?
- (n) Were foreign women married to Hungarians and Hungarian women married to foreigners equal before the law?
- (o) What were the measures taken in Hungary to reduce infant mortality and increase the life expectancy?
- (p) Could there be any instance of imprisonment for debts in Hungary?
- (q) What were precisely the limitations on freedom of speech, freedom of the press and freedom of assembly imposed by Act II of 1972 on Health, Act I of 1976 on National Defence and Decree No. 21/1953 (V.15) of the Council of Ministers on the Regulation of Matters Relating to Animal Health? Were they the only limitations to those freedoms?
- (r) Precisely, in what manner were the political rights recognized in article 25 of the Covenant implemented? What forms of participation of Hungarian citizens in public affairs were there other than taking part in elections?

CCPR A/35/40 (1980)

307. The Committee considered the supplementary report submitted by Hungary (CCPR/C/1/Add.44), containing replies to questions raised during the consideration of the initial report, 5/ at its 225th and 228th meetings on 17 and 18 July 1980 (CCPR/C/SR.225 and 228). The issues were considered topic by topic.

308. The first topic related to the implementation of the Covenant in the legal system of Hungary. Some members of the Committee noted that the Covenant had the force of law in Hungary and that cases of conflict with the Constitution and other laws were settled by legislative action following the same process as in cases of conflicts between the Constitution and other national law. It therefore appeared that the Covenant formed part of the domestic law of Hungary and had a legal status equivalent to that of the Constitution; if there was any conflict between the Covenant and other legislation, presumably measures would be taken to bring that legislation into line with the Covenant. Members of the Committee asked for some additional information as to what advantages Hungary had seen in integrating the Covenant into its legal system; how often the Covenant had actually been invoked in practice and how cases of conflict between the Covenant and the laws were settled by legislative action, particularly in cases relating to such matters as freedom of the press and freedom of expression. Other members wondered whether the substance of the Covenant was discussed through meetings and conferences of judges, assessors and administrators as they dealt with matters affecting the human rights and freedoms of individuals. Additional information was requested on the manner in which the Covenant had been promulgated and the publicity given to it, and in particular whether the Decree-Law referred to in the report contained the full text of the Covenant and what kind of distribution the Covenant had been given.

309. The representative of Hungary replied that, in addition to the provisions mentioned in the report, there was a decree of the Presidential Council - No. 24 of 1974 - which contained more detailed rules on the publication of laws. In any case all laws, decrees and Government decisions relating to the rights of citizens had to be published in the Official Gazette. The Covenant had been published in Official Gazette No. 32 on 22 April 1976 which was readily available through subscription, in public libraries and shops. A collection of international instruments of human rights, including some to which Hungary was not a party, had also been published. Special compilations of legislative texts, including international treaties, were published periodically. Thus international instruments, including the Covenant, were accessible to the public. The provisions of the Covenant could be invoked by everyone before the courts and other authorities, but it was difficult to state how many times the Covenant had been invoked before the courts. The representative pointed out that, if certain provisions of the Covenant conflicted with national laws, the latter would be brought into alignment with the Covenant, as the codification of the law was a continuing process in Hungary and legislation was reviewed periodically. In drawing up the new Criminal Code, a special ad hoc

5/ The initial report of Hungary (CCPR/C/1/Add.11) was considered by the Committee at its 32nd and 33rd meetings on 19 and 22 August 1977, see CCPR/C/SR.32 and 33 and Official

Records of the General Assembly, Thirty-second Session, Supplement No. 44 (A/32/44), paras. 130-132.

committee had been created to determine whether the provisions of Hungary's legal code were in keeping with the Covenant. The Covenant formed an integral part of the national law of Hungary. Compliance with the provisions of the Hungarian Constitution was ensured by articles 19 (3) (1), 30 (2) and 35 (3) of the Constitution. Any laws or measures which conflicted with the provisions of the Covenant would be repealed. Moreover, various bodies were entitled to draw attention to any inconsistency between internal legislation and the Covenant, including the Prosecutor's Office which not only indicted persons before the courts, but studied all bills of proposed legislation and pronounced on their conformity with existing laws and the Constitution. Article 64 of the Constitution guaranteed freedom of the press; while there were regulations governing the technical aspects of publications, which were reviewed periodically to see whether they ran counter to the provisions of the Covenant, there had never been an instance of any organization complaining that its publication had been forbidden by the State authorities. In case a citizen considered that internal legislation was contrary to the provisions of the Covenant, he could invoke the Covenant through his member of Parliament or by recourse to the Presidential Council, the Council of Ministers or the Prosecutor's Office. That right had been confirmed by Act No. 1 of 1977, which had instituted a procedure entitling citizens to lodge complaints with the State authorities, which were obliged to study those complaints.

310. The next topic concerned freedom of political opinion and non-discrimination in this respect. Referring to articles 2 (3) and 3 of the Hungarian Constitution, which stated that the leading class of society was the working class and that the Marxist-Leninist party of the working class was the leading force of society, some members of the Committee asked why the working class was given such pre-eminence and why the establishment of other political parties had not been allowed. It was also asked how the Hungarian Government reconciled the establishment of a hierarchy of classes of society with the integration of the provisions of the Covenant into its national law.

311. The representative pointed out that the Hungarian Constitution was based on Hungary's own political philosophy and theories. Each State throughout the world had a governing class, chosen by more or less democratic methods and that class remained the dominant factor. What was enshrined in the Constitution was the leading role of the working class, which exercised power in alliance with the other classes. However, that did not mean that the other classes were discriminated against. There was today in Hungary one political party, the Socialist Workers' Party, and that was the leading political force in the country. Nevertheless, the political structure of Hungary was not restricted to the existence of one political party. A major role was played by the People's Patriotic Front, which was not a party as such but a widespread movement dealing with social and political issues. Every major piece of legislation was considered by groups organized by the Front, and the various strata of society, including the Church, were represented on it. Thus the People's Patriotic Front provided an opportunity for people of differing ideologies and creeds to meet for joint discussion with the aim of improving and perfecting the democratic principles of Hungarian society. Reverting to article 2 of the Constitution, he emphasized that no discrimination existed between the classes mentioned therein and hence that article of the Constitution did not run counter to the

provisions of the Covenant. All classes and all strata of society were represented in the Hungarian Parliament and in fact, as a result of increased educational opportunities, the ratio of professional to working class members was higher than the corresponding ratio for the country as a whole.

312. The next topic concerned the question of whether different treatment was enjoyed by citizens as distinct from aliens lawfully on Hungarian territory. With reference to article 2 (1) of the Covenant and articles 17, 54 (3), 63 and 66 of the Hungarian Constitution, the question was asked as to how the provisions of article 2(1) of the Covenant, which provided that the rights guaranteed by it should apply to "all individuals", was reconciled with the term "citizens" contained in the above-mentioned articles of the Constitution, and whether equal rights were granted to aliens lawfully in Hungarian territory. It was also wondered as to how the Hungarian Government reconciled the guarantee of the right to choose one's ideology, subject only to the restrictions mentioned in the Covenant, with article 54 (2) of the Hungarian Constitution, which stated that civic rights had to be exercised in harmony with the interests of socialist society. Did that latter article of the Constitution really accord equal rights to all?

313. The representative of Hungary stated that, in the Hungarian language, the word "citizen" was synonymous with "human being" or "individual" and that it was traditional to use the term in legal texts. The word "citizen" covered all individuals residing in Hungary, including stateless persons, and therefore did not preclude anyone from enjoying the rights and freedoms enshrined in the Constitution and other legal instruments. So far as non-nationals in the territory of Hungary were concerned, specific conditions governing their stay were laid down by Government decree, similar to the administrative provisions governing the residence of foreigners in other countries. In 1979, the Presidential Council had adopted Ordinance No. 13 on private, international law, which set out the conditions governing the competence of a specific court and specified the circumstances in which a decision by a foreign court had the force of law in Hungary. There was in fact a whole series of legislative texts dealing with the rights of aliens living in Hungary and setting out the circumstances in which they could be brought before a Hungarian court. Commenting on articles 54 and 64 of the Constitution, the representative indicated that those articles were merely an expression of the fact that there was a socialist state structure in Hungary, and that the enjoyment of civil and political rights including the freedoms of speech, the press and assembly was guaranteed in accordance with the Constitution. It should be noted that, in Hungary's Constitution and legislation frequent mention was made of conformity with socialist legality. The sole reason for the use of the word "socialist" in that context was that the law of his country served the interests of a socialist society.

314. As regards the topic of freedom of thought, religion and expression, one member referred to article 268 of the new Criminal Code which provided that whoever, before a large public, incited others to disobedience to laws and regulations or to measures by an administrative authority should be deemed to have committed an offence. He stated that in so far as such activities took place publicly, rather than as sly subversive acts, they were equivalent to the right to dissent. Referring to Government Decree No. 26/1959 concerning the press, and to article 4 of Decree No. 21/1957 on religious institutions, the member asked what was the position if authorization was not forthcoming for the publication and distribution of periodicals; how the provisions of Decree No. 26/1959 could

be reconciled to the freedom of the press; and, if a parent wished his child to receive religious instruction other than that provided in schools, whether he would have to obtain permission from the State.

315. In reply to the question regarding article 268 of the new Criminal Code, the representative stated that a citizen did have the right to criticize or disagree with legislation and had the right of recourse to a legislative body if he considered particular legislative provisions to be unjust. However, since the entry into force of the new Criminal Code, there had not been a single case in which a citizen had been prosecuted for failure to agree with legislation. So far as freedom of the press was concerned, the publication of periodical required prior authorization, but that did not imply the existence of censorship or run counter to the provisions of the Covenant. In Hungary there existed an exceptionally large and varied number of publications dealing with political questions and with the life of society. Moreover, authorization for publication was freely granted. With regard to freedom of religious instruction in Hungary, the churches and the authorities had signed certain agreements at the end of the 1950s which reflected the fact that the Government provided material aid to various churches. The State Office for Church Affairs was intended to ensure the implementation of those agreements and not to monitor or control the activities of the churches, including the provision of religious education. Individuals qualified to impart religious instruction were appointed through the churches and the only control that the State Office exercised was to ensure that those persons did indeed possess the necessary qualifications.

316. On the topic concerning the independence of the judiciary, the liberty and security of the individual and the guarantees of fair trial, members referred to the statement in the report to the effect that the impartiality of the judiciary and the protection of civil rights in Hungary are guaranteed by the provisions of the Constitution, the Act on Courts and the Code of Criminal Procedure. Further information was requested to illustrate this statement. The representative of Hungary was asked vis-à-vis whom or which authorities were the judges independent in Hungary; how were the judges elected; in what manner was the Presidential Council responsible for the election of all the judges and whether they were elected in consultation with other professional or judicial organs.

317. Referring to article 48 of the Constitution which stated that the elected judges may be recalled for reasons determined by the Act of Parliament, one member asked what were the grounds on which a judge could be recalled and what use had been made of these circumstances to recall a judge.

318. In relation to the assessors in the judiciary, the representative of Hungary was asked who were entitled to be assessors in the Hungarian courts; what were their qualifications; if their election meant that they were employed full time in that capacity; and if there was a panel from which they were selected.

319. With reference to legal guarantees concerning the right to liberty and security of persons provided for under article 9 of the Covenant, and the right to equality before the courts and tribunals guaranteed under the Covenant, it was asked whether there was administrative detention in Hungary,

including detention on the grounds of mental illness, vagrancy, juvenile delinquency which might be authorized under the law; how were the provisions of article 9 implemented in Hungary, in particular the provisions of paragraph 5 of that article which provided that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation; and whether free assistance of an interpreter was provided if a person charged with a criminal offence could not understand the language in court.

320. Replying to questions raised, the representative of Hungary explained that judges in Hungary were elected by the Presidential Council of the Hungarian People's Republic in a manner determined by a special Act of Parliament. He added that their independence was guaranteed by article 48 of the Constitution, that they had the right to give a normative interpretation of the law, that they could only be recalled by the Presidential Council if a disciplinary commission established by the Council determined that judges had violated the law, and that they had the right to appeal against any disciplinary action before the Supreme Court which was the highest judicial organ.

321. As regards the assessors, the representative stated that they were chosen by the local Councils. The Assessors could only spend one month in a judicial activity which could be extended if the Court believed that there was additional work to be done. As concerns their qualifications, he said that the assessors were given full explanations on the law and they were required to understand the provisions of the law.

322. Referring to the questions raised in relation to administrative detention, in particular the detention of mentally ill persons and juveniles, the representative of Hungary said that these categories of persons could only be detained if they committed a crime. He added that there was a procedure in Hungary whereby the evidence of those detained in hospitals for mental illness could be heard by the court especially when they had a complaint to lodge. As regards the detention of minors, the legal procedure was carried out in the presence of their defence counsel who could make a request for the release of the minor. The Hungarian Penal Code provided sufficient guarantees against arbitrary arrest. When a person was arrested, he had to be informed of the reasons for his arrest and of the charges against him. The Code of Criminal Procedure provided for the expenses for legal assistance which were borne by the State, and the arrested person was given an interpreter if he did not understand the language used in the Hungarian courts.

323. On the topic of the prohibition of discrimination, members referred to paragraph 2 of article 61 of the Hungarian Constitution which stipulates that the law severely punishes any prejudicial discrimination of the citizens by reasons of sex, religious affiliation or nationality. A question was asked as to why discrimination on grounds of political opinion, which was mentioned in the Covenant, was not included in that clause of the Constitution, and what was meant by the term "prejudicial discrimination".

324. As regards the individual's duties to the community referred to in article 69 of the Constitution, the representative of the State party was asked why it was compulsory for Hungarian citizens to protect the property of the people, to consolidate social ownership and to increase the economic strength of the country. What sanctions were taken against them if they failed to do so?

325. With reference to articles 19, 21 and 25 of the Covenant, it was asked whether it was conceivable in Hungary that the people could freely advocate a change in the socialist orientation of the government or to criticize it, with a view to introducing a different, or a new, form of government; and whether freedom of speech meant exclusively what was provided for by the law or did it mean also what the law did not provide. Citing, as an example of freedom of expression, opposition to the deployment of weapons of mass destruction, the question was asked as to whether an individual who wished to protest against it and to campaign for its elimination could publish a pamphlet propagating his views on the matter or organize a meeting, demonstration or association to promote support for his opinion. As regards freedom of assembly, the question was asked as to whether it was necessary for every single association in Hungary to receive an official registration and on what grounds an association could be declared illegal.

326. Turning to the question of religious freedom, one member wondered whether the restrictions referred to on page 7 of the report were compatible with the provisions of the Covenant. Further information was requested on the meaning of the statement that the rigour of the law shall be applied against whoever exploits religious instruction for political goals against the State.

327. In reply to the questions raised in relation to article 61 of the Constitution, the representative of the State party explained that all forms of discrimination were severely punished by the law in Hungary. The terms "prejudicial discrimination" contained in that article in fact "premeditated discrimination" which was a better translation of the meaning of that expression. He added that, after the amendment of the Constitution in 1972, there might still remain certain lacunae as the Constitution does not precisely mention racial discrimination; however, the Constitution, as interpreted in the light of its general principles which are designed to protect the civil and political rights of citizens, also prohibits all forms of discrimination.

328. Turning to the question raised under article 69 of the Constitution, the representative stated that the duties of citizens to the community were moral obligations that the individual had to comply with in order to protect public property, to consolidate social ownership and to increase the economic strength of the country. Failure to meet those moral obligations did not entail a punishment.

329. As regards the amendment of the Constitution, the representative of Hungary explained that there were possibilities to modify the Hungarian Constitution if this was required by the majority of the Parliament. However, the Hungarian people, so far, had not deemed it necessary to change the fundamental structure of its socialist system, though it still remained possible for citizens, through their deputies or representatives, to propose any change that they might wish.

330. Referring to questions under articles 19, 21 and 25 of the Covenant, the representative stated that the Constitution made provisions for any Hungarian citizen to participate freely in elections, to vote, or not to vote against any candidate; that the right of association in Hungary was regulated by Decree Law No. 35 of 1970 which provided that Hungarian associations should be established in conformity with the provisions of the Constitution; and that like any other State, Hungary might prohibit the setting up of any association which it deemed anti-constitutional. The representative

also stated that the Members of Parliament were required to conform to the law in the discharge of their functions, and that any political, economic or other activities or attitudes conflicting with the interests of the State were incompatible with their mandate. They had to respect and conform to socialist morality. As to freedom of speech, the right to hold opinions as well as the freedom of expression were guaranteed in Hungary. Every Hungarian citizen was free to do what is not restricted by the Constitution. The younger generation in Hungary was educated and they were encouraged to propagate and impart ideas in favour of peace and disarmament. As examples, the representative cited organizations such as the Hungarian Popular Patriotic Front and the Union of Hungarian Women which devoted the major part of their activities to propagating peace and disarmament and published articles in the Hungarian press disseminating ideas and information in favour of peace and disarmament. He stated that a Hungarian citizen could freely organize a meetings on these subjects without prior authorization.

331. In reply to questions concerning freedom of conscience and religion, the representative stated that these freedoms were guaranteed by the Constitution and that all religious denominations could freely practice their religions and enjoyed the same rights. Hungarian citizens were free to decide whether or not their children should receive religious instruction at school. In his view, the fact that 18 to 22 per cent of the followers of Lutheranism practiced their faith in Hungary was a concrete illustration of freedom of conscience and religious worship in that country.

332. A member of the Committee asked for information concerning the laws governing the liberal functions of an artist and scientific researcher, and whether an artist who wished to publish a book or publicize his work was required to have an authorization or belong to an association before being able to do so. He also wished to know if the Constitution of Hungary had been commented upon and whether those commentaries had ever been published.

333. The representative of the State party explained that the degree of development reached in Hungary had brought about a freedom of artistic expression; that in terms of publications, some forms of art were protected by the State but that there was no "official line" in that respect. Artists were free to express themselves, to choose and determine the form of their art. There were many organizations in Hungary which propagated Hungarian art and literature, even abroad. He cited the Hungarian which Quarterly published in English which gave information abroad on Hungarian art, and stated that scientific research was protected and guaranteed by the law in his country. As regards the commentaries on the Constitution, he said that they were not formally published but were included in general in the reports prepared by the ministries to be submitted to Parliament.

CCPR A/41/40 (1986)

371. The Committee considered the second periodic report of Hungary (CCPR/C/37/Add.1) at its 684th to 688th meetings, from 14 to 16 July 1986 (CCPR/C/SR.684-SR.688).

372. The report was introduced by the representative of the State party, who provided additional information on legislative and other measures taken in Hungary during the reporting period and after the submission of his Government's second periodic report.

373. The representative stated that the most significant event concerning legislation in Hungary was the amendment of the Constitution by Act II of 1983, which had led to the establishment of the Constitutional Law Council and to certain changes in the Hungarian electoral system. He explained that, under the new Electoral Law, the right to nominate candidates for parliament and for local council membership was exercised in the electoral districts by nominating meetings of the constituents, and that members of parliament and councillors were required to meet their electors regularly to report on their work.

374. The representative also provided information on Decree Law No. 17 of 1982 and Decree No. 2/1982 of the Council of Ministers, which contained detailed regulations concerning such matters as births, marriages and deaths. The revision of two major Acts of parliament - Act 1 of 1973 on Criminal Procedure and Act I of 1974 on Marriage, Family and Guardianship - was also under consideration, the possible changes in Act I of 1973 concerned freedom of movement of aliens and the rules on pre-trial detention, while those in Act I of 1974 concerned the minimum marriageable age for women, special protection for children of divorced parents and the settlement of certain issues relating to property before contracting marriage. He also explained that a new Press Law, enacted by parliament in April 1986 and due to enter into force in September 1986, would deal with the tasks of the press, its statutory limits, certain obligations concerning the dissemination of information, the activity of journalists and the relation between the press on the one hand and State bodies, social and economic organizations and individuals on the other.

375. Finally, the representative informed the Committee that, on 25 June 1986, Hungary had signed the International Convention against Apartheid in Sports (General Assembly resolution 40/64 G, annex), and that the signature of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (resolution 39/46) was currently under consideration by the Hungarian authorities.

Constitutional and legal framework within which the Covenant is implemented

376. With reference to that issue, members of the Committee wished to receive additional information concerning the practice of the Constitutional Law Council and its rulings relating to rights covered by the Covenant. They asked, in particular, what the precise legal character of the Council's decisions was; whether, if the Council found a law to be unconstitutional, its decision could render the law null and void, whether certain provisions of the Covenant counted as

constitutional, so that the existence of a law conflicting with those provisions could be invoked before the Council, and whether the Council could oppose the adoption of legislative texts which conflicted with the Covenant. The members of the Committee also requested further information on the Council's role, powers and term of office and on its membership and the way its members were elected. They asked how the Council exercised its supervision over legislation, what directives and authoritative rulings the Supreme Court had adopted and what the legal status of those directives and authoritative rulings was.

377. In addition, members of the Committee wished to know whether there had been any judicial decisions in Hungary in which the Covenant had been directly invoked before the courts. They inquired whether the Hungarian judicial authorities habitually referred to international instruments or confined themselves to domestic law, and they asked for further information on the remedies available to persons whose rights or freedoms as recognized in the Covenant had been infringed. They wanted to know, in particular, whether such persons were entitled to ask for a lawyer, how the lawyers were trained, by whom they were paid and if they were duly familiar with the provisions of the Covenant.

378. Members of the Committee also wished to receive information on factors and difficulties, if any, affecting the implementation of the Covenant and on efforts made in Hungary to disseminate information about the Covenant. They asked whether the text of the Covenant had been brought to the attention of educational institutions and law enforcement authorities and in what languages it had been published.

379. In addition, information was requested as to the meaning and scope of article 19, paragraph 3 (1), of the Constitution. It was noted that the National Assembly could annul decisions taken by State organs that ran counter to the Constitution or the interests of society, and members asked whether the State organ in question also included judicial authorities.

380. In his reply, the representative explained that the Constitutional Council set up in June 1985 was composed of 15 members, nine being chosen from among the members of the National Assembly and the others being highly qualified lawyers. Their term of office was five years. The Council gave opinions on the limits of the legislative power and on the procedure that should govern the amendment or abrogation of rules of law and saw to it that laws, decrees and other legal directives were constitutional. The representative further stated that, in Hungary, the administration of justice was purely, a law-enforcing activity and that the courts had no power to create law. The directives and decisions of principle of the Supreme Court were binding on the lower courts, but the Supreme Court had no power to interfere with the jurisdiction of lower courts. On the other hand, the Constitutional Law Council was a body responsible to parliament and its role in supervising statutes, directives and decisions of the Supreme Court and guidelines issued by the Council of Ministers, authorities with nation-wide competence and the Chief Public Prosecutor was similar to that of the permanent committees of the parliament. If texts were found to be unconstitutional, it could suspend them or request the issuing authority to revise them. It also submitted opinions on constitutionally to parliament. Proceedings in the Constitutional Law Council could be initiated by a whole range of bodies, from parliament down to county councils. The parliament had the power

to dismiss members of the Constitutional Law Council if they failed to perform their functions.

381. The representative went on to say that the provisions of the Covenant had force of law in Hungary and could be invoked directly before the courts, but that no case of that kind had as yet occurred. Remedies in Hungary consisted of access by all individuals to the courts and other authorities, the right to lodge complaints, protection under the Criminal Code, the right to legal remedy under the Code of Criminal Procedure against decisions of the authorities or their failure to take action, and compensation under both criminal and civil law.

382. The representative also stated that there were no specific difficulties directly affecting the implementation of the Covenant in Hungary. The text of the Covenant had been officially published and disseminated in Hungary, and all officials were expected to be aware of its provisions, which were reflected in the law. In addition, human rights questions were included in the curricula of university law schools and many secondary schools, and, in 1985, the anniversary of the adoption of the Universal Declaration of Human Rights had been actively celebrated in the country.

383. The representative explained that the National Assembly was the supreme organ of the State and that its task was to guarantee the constitutional order of society. It could also amend the Constitution or adopt a new one.

Non-discrimination, equality of the sexes and equality before the law

384. With reference to those issues, members of the Committee wished to receive detailed information concerning the implementation of the principle of non-discrimination referred to in paragraphs 14 to 22 of the report and wished to know in what respects the rights of aliens were restricted, as compared with those of citizens. Noting that the Hungarian Constitution contained no provision explicitly prohibiting political discrimination, some members asked what would happen if a person came before a judicial authority and invoked the Covenant in regard to that issue. They also asked what the proportion of female to male students in primary and secondary schools was; how articles 61 and 62 of the Hungarian Constitution, dealing with non-discrimination, were implemented in practice, since they failed to include certain grounds specified in the Covenant on which discrimination should be prohibited; what the meaning of the words "any prejudicial discrimination" in article 61 (2) of the Constitution was; how the principle that civic rights must be exercised in harmony with the interests of socialist society, in article 54 (2) of the Constitution, was applied by the courts; whether citizens who were not members of the Socialist Workers' Party enjoyed absolute equality with those who were members; and whether persons not members of the National Council of the Patriotic People's Front could nominate candidates for the National Assembly. It was further asked whether only members of the Socialist Workers' Party could be candidates for election to the legislature. Furthermore, members of the Committee wished to know whether a Council of National Defence had been established and, if so, what the powers conferred on the Council under the Constitution were and what restrictions it had applied; to what extent citizens were given effective guarantees of access to various organs of State; and whether the fact that ecclesiastics were members of the National Assembly was the result of a reserved allocation of seats, and, if so, what impact that situation had on the separation between Church and State.

385. In his reply, the representative stated that any citizen, irrespective of whether he was a member of the Hungarian Socialist Workers' Party, could hold any office other than office in the Party itself. He provided statistics concerning the equal access of women and men to the activities of representative bodies of the people, education and vocational training, employment, remuneration, and cultural and social activities. He also stated that aliens enjoyed the same rights and freedoms as Hungarian citizens and that no restrictions had been applied to their rights, with the exception of those concerning participation in elections, access to certain public service posts and ownership of real estate obtained by contract of sale or by donation. The representative pointed out that under Hungarian criminal law, the national authority of an alien accused of a criminal act could be provided with the opportunity to institute criminal proceedings against that person if the act had not already been judged by a Hungarian Court and the sentence had not become final.

386. In addition, the representative pointed out that the requirements of the Covenant with regard to the guarantees of non-discrimination were covered by the declaration in the Constitution regarding the equality before the law of all Hungarian citizens - which made discrimination on any grounds illegal - and by certain provisions of the Criminal Code. Furthermore, everyone could rely on the prohibition of discrimination contained in the Covenant since its provisions were directly applicable law. Regarding article 54 (2) of the Hungarian Constitution, the representative explained that it meant that, in administering justice and applying the law, State organs, social organizations and courts should respect the principle contained in it. He also explained that, in accordance with the new electoral law, 35 members of the National Assembly were nominated by the Patriotic People's Front on the national list and the others, the majority, were elected by individual constituencies. The majority of the members of parliament were not members of the Hungarian Socialist Workers' Party. The Party had its own rules concerning the rights and duties of its members, but those rules had no legal character. The ecclesiastics who were members of the National Assembly had been elected with the full support of the population. In addition, he made it clear that a Council of National Defence would be set up only in the event of war or a grave threat to the security of the State. The Council would be authorized to impose some restrictions concerning the right of assembly, but it would not be empowered to derogate from the provisions of the Covenant.

Right to life

387. With reference to that issue, members of the Committee wished to know which offences were punishable by the death penalty and in how many cases that penalty had been carried out in the last five years. It was also asked whether any lives had been lost in Hungary as a result of the activities of members of law enforcement agencies and, if so, whether investigation had been conducted in that regard.

388. The representative informed the Committee that the Criminal Code prescribed the death penalty as an exceptional measure for only a few offences of particular gravity: offences against the State, including armed conspiracy, sedition, sabotage, treason and espionage - none of which had been committed in Hungary in the previous decade; offences against humanity, including genocide and war crimes; offences against the person, including homicide when committed with

premeditation, out of greed, with particular cruelty or by a confirmed offender; offences against public order, including acts of terrorism or the hijacking of an aircraft when they caused death; and military offences. In the past 10 years, the death penalty had been enforced in 25 cases. All actions by members of law enforcement agencies were strictly regulated in accordance with the relevant provisions of the Criminal Code and no one in Hungary had been killed as a result of those actions.

Liberty and security of the person and treatment of detainees

389. In regard to those issues, members of the Committee wished to receive information on any problems encountered in the application by police authorities of Decree No. 1/1985 issued by the Minister of the Interior and on relevant recourse procedures against alleged abuses. They asked whether there had been any cases in which the total period of detention prior to trial had exceeded 60 days and, if so, what the causes for the delay had been, and how it was determined whether pre-trial detention was justified. Information was also requested on the law and practice relating to detention in situations other than prison. In addition, it was asked how soon after arrest a person could contact a lawyer, and a person's family was notified; how protection against mistreatment was ensured for accused or suspected person; whether a detainee or mental patient was entitled to institute proceedings so that the court might decide without delay on the lawfulness of his detention; and how it was ensured that section 266 of the Hungarian Criminal Code, which made it illegal for a person capable of working to avoid work, did not serve as an instrument for compulsory labour. Members of the Committee wanted to know what the legal procedure was by which able-bodied persons who were unwilling to work were obliged to do so and whether they were deprived of social security benefits; they also asked for further information on the practice by which such persons were forbidden to leave their place of work of their own free will. They inquired whether there was any special procedure comparable to habeas corpus or amparo as a recourse against arbitrary detention in Hungary.

390. In his reply, the representative stated that Decree No. 1/1985 did not give policemen any more power than they had under the previous law concerning the police and that he was not aware of problems encountered in applying the Decree. He explained that under the Hungarian Criminal Code and Code of Criminal Procedure, the authorities could take a suspect into custody when he was caught in flagrante delicto, if his identity could not be established, or when there were grounds for confinement on remand. The initial period of custody could not exceed 72 hours, after which the suspect was released unless confinement on remand was ordered in specified cases. A dependant or other person named by the suspect, or, if no such person existed, the State organ, social organization or co-operative where the suspect worked, was informed without delay of the confinement on remand. The suspect was permitted to confer with counsel for the defence, orally without supervision and under supervision in writing. The representative stated that when the confinement had been ordered or approved by the prosecutor, it lasted until a decision had been taken by the court of first instance, but in any case it did not last more than one month. If the complexity of the case warranted it, the Chief District Prosecutor could extend that period by a further month, and the Chief Country Prosecutor by a third month. After the three-month period had elapsed, confinement on remand could be extended solely by the Prosecutor-General, who examined the justification for maintenance of the confinement order. After a period of one year, confinement

could be extended only by order of the Supreme Court. During 1985, confinement on remand had been terminated within one month in 35 per cent of cases, and within three to four months in 5.3 per cent of cases. In 96.8 per cent of all cases confinement on remand had been terminated within six months.

391. Responding to other questions, the representative explained the circumstances under which the police were entitled, pursuant to Decree No. 1/1985, to take a person to the police station and how long the duration of custody could be; he also provided information on measures taken by courts, in accordance with the Criminal Code, with regard to forced medical treatment in certain cases, such as when a person committed a violent crime or was a public danger and could not be punished because of his mental state. In addition, he pointed out that the Criminal Code and the Code of Criminal Procedure provided for the protection of offenders and alleged offenders at all stages of the proceedings and that Decree-Law No. 11 of 1979 included provisions for protection against mistreatment of pre-trial detainees. On the question of corrective or educative labour for persons unwilling to work, the representative stressed that the penalty was less severe than deprivation of liberty, that the provisions of the Labour Code also applied to such labour and that the persons concerned continued to receive their social security benefits in the normal way. He also explained that, although habeas corpus did not exist in his country, the public prosecutor responsible for the inquiry in a particular case nevertheless had special powers. When a person was arrested, the public prosecutor had to examine his case within 24 hours and decide whether there were grounds for keeping him in custody or, on the contrary, for releasing him.

Right to a fair trial

392. With reference to that issue, members of the Committee wished to receive information concerning legal guarantees with regard to the right of all persons to a fair and public hearing by a competent, independent and impartial tribunal; rules and practices relating to publicity surrounding trials and the public pronouncement of judgements; specific rules concerning the admission of the mass media to court hearings; and facilities to enable accused persons to obtain legal assistance. They asked in particular, what a judge's term of office was and in what circumstances he could be removed from office, whether special courts, as provided for in article 45 (2) of the Hungarian Constitution, had been set up and, if so, what cases they had dealt with, and whether the persons concerned enjoyed full legal guarantees when they appeared before such courts. Members of the Committee also asked whether there were excessive delays in the handling of civil cases in Hungary; what measures were taken by the Minister of Justice to regulate the behaviour of the media, particularly as regards observance of the rule of presumption of innocence; how the legal profession was organized and paid and how many lawyers were not officials of the State; what the relationship was between assessors and judges in the performance of their duties and whether assessors had the same rights and obligations as judges with regard to the procedure; whether Hungary had a simplified procedure, criminal or civil, for dealing with minor cases and whether there were full judicial guarantees under that procedure; whether judges could be removed from office solely for disciplinary reasons or also on political grounds; and what penalties there were for minor offences.

393. The representative of the State party said in answer to those questions that in Hungary all

citizens were tried by the same courts whatever their nationality and that they could use their mother tongue. He then explained the conditions to be met for the election of judges by the Presidential Council and the cases in which a judge could be removed from office at the decision of a disciplinary council. He added that judges were independent and answerable only to the law and that they enjoyed immunity in the performance of their duties except where the Presidential Council decided otherwise. Their term of office was unlimited. He also referred to the various rules guaranteeing the rights of suspects and accused persons and stated that, under the Constitution, hearings were held in open court except where otherwise provided by law. In addition, Act II of 1986 had authorized the Minister of Justice to establish the rules relating to communication in the context of judicial proceedings and, in collaboration with the Minister of the Interior and the Prosecutor General, the rules governing the inquiry stage of criminal cases. The decree concerning those rules was still being drafted. The representative went on to give information about the provisions of the Constitution and the Code of Criminal Procedure relating to the means by which accused persons could obtain legal assistance. With regard to the special courts that could be set up under article 45 (2) of the Constitution, he explained that they were primarily military courts, which applied certain special rules but otherwise followed the general procedure of the criminal courts. There were also conciliation boards in Hungary for industrial disputes. The civil courts were overloaded and there were not enough judges. In an attempt to improve the situation, the Hungary authorities had recently decided to raise judges' pay. Regarding observance of the rule of presumption of innocence by the media, the representative stated that the media were generally careful when reporting court hearings and only published information that had been verified. Any mistakes that were made, however, were subject to correction. He also explained that lawyers were organized in associations but were free to exercise their profession as they saw fit and could refuse to act for defendant, that assessors and judges had the same rights and obligations, that there were two procedures under the Code, one for serious offences and the other for minor ones, which were dealt with by administrative courts, that judges could not be removed from office because of their political opinions, and that the usual penalty for minor offences was a fine.

Freedom of movement and expulsion of aliens

394. With reference to those issues, members of the Committee wished to receive information on remedies available in Hungary against the rejection of applications for passports to leave the country, restrictions on Hungarian citizens entering their country, special restrictions, if any, on the freedom of movement of aliens and on their choice of residence, and provisions governing the expulsion of aliens and the possibility of appeal against an expulsion order. They asked, in particular, how effective any remedy available against the rejection of applications for passports was and whether such matters were dealt with by the Ministry of the Interior or the Ministry of Foreign Affairs; what conditions Hungarian nationals had to meet in order to be authorized to return to Hungary; and what nature of complaint could be lodged against an expulsion order, with whom it could be lodged and in what way it did not constitute an appeal. They also asked for detailed explanations on the application of Decree No. 4 of 1985 issued by the Minister of the Interior, which authorized district police superintendents to restrict certain persons' freedom of movement, sometimes for two years or even more.

395. In answer to those questions the representative of the State party referred to the provisions of Decree-Law No. 20 of 1978 regulating the travel of Hungarian citizens abroad. He also explained that if a Hungarian citizen's application for a passport was rejected, he could appeal against that decision under Decree No. 6 of 1978 issued by the Ministry of the Interior and that a decision on the appeal had to be taken within 30 days by the authorities immediately superior to those which had rejected the application. He explained that in the last few years 0.9 per cent of the applications for passports had been rejected. In recent years the number of Hungarians living abroad who wished to return to Hungary had increased; the applicant had to provide proof that he had a guaranteed source of livelihood and his application had to be made voluntarily, not because he had been expelled from the country where he was living. He added that all persons legally resident in Hungary enjoyed freedom of movement without discrimination and that there was no restriction on aliens regarding their choice of residence, but that any alien who endangered the security of the State could be expelled without any right of appeal, expulsion orders being administrative acts. A complaint could, however, be lodged and would be considered by a senior official, who would have to decide whether it was justified. Furthermore, he stated that administrative measures provided for by Decree No. 4 of 1985 were necessary to combat crime and were directed against those who persistently behaved in a manner that endangered internal public order and the security of the country.

Right to privacy

396. With reference to that issue, members of the Committee requested clarification concerning the statement in paragraph 65 of the report that "violation of human dignity is also to be considered a violation of personal rights". Information was also requested on protection against arbitrary or unlawful interference with privacy, family and home, particularly with regard to postal and telephone communications. In addition, information was requested on Hungarian legislation with regard to abortion and on penalties for unauthorized abortion.

397. In his reply, the representative referred to the text of section 76 of Act IV of 1977 on the amendment of the Civil Code, which amplified the protection of personal rights as a result of the obligations undertaken by his country in ratifying the Covenant. He also stated that arbitrary or unlawful interference with privacy, whether committed by private individuals or by officials in the course of their duties, was considered to be a criminal act contrary to constitutional and other legal provisions. He added that abortion in Hungary was considered to be an offence. However, therapeutic abortion was permitted subject to authorization. Under the Criminal Code, unauthorized abortion was an offence which normally carried a penalty of deprivation of liberty for up to three years.

Freedom of thought, conscience and religion

398. With reference to those issues, members of the Committee noted that, in Hungary, religion was considered to be a private affair of citizens and asked whether parents could freely decide on the religious education of their children or whether an authorization was required. It was also asked why some religious groups in Hungary were exempt from military service while others were not,

whether the Hungarian Government had given any consideration to extending the exemption to groups other than those currently exempted, what the powers of the State Office for Church Affairs were and whether the Church was really independent.

399. In his reply, the representative referred to provisions of the Civil and Criminal Codes, which made it an offence to discriminate against persons on the grounds of religion, and to Decree No. 21 of 1957 relating to freedom of participation or non-participation in religious instruction. He stated that religious education was considered to be a private affair of citizens, who were ensured the right to have their children participate or not participate in religious instruction at elementary and secondary schools. In addition, the representative provided information on ecclesiastical educational institutions and publications concerning religion and noted that the State provided the Churches with substantial financial assistance. Furthermore, he stated that unarmed military service was provided for those whose religious creeds truly prohibited taking up arms, but that measure was not extended to religions which did not contain such a prohibition in their dogma. He added that the purpose of the State Office for Church Affairs was to co-ordinate the relationship between State and Church and its functions were defined by law. Monastic orders were independent and had the power of decision over their own activities.

Freedom of expression

400. Members of the Committee wished to know what controls were exercised on freedom of the press and the mass media in accordance with the law; what restrictions, if any, were imposed by courts or administrative authorities on the expression of political view; whether there had been cases in Hungary where persons might be arrested or detained on account of the political views which they had expressed; whether there were political prisoners who had not undergone trial; and whether peaceful advocacy of change in the socialist order was permitted under the law. In addition, it was asked how the provisions of article 19, paragraph 2, of the Covenant were implemented in Hungary and what means were available to an individual to influence opinion in a manner that could result in an amendment to the Constitution and the development of society. More detailed information was requested on the provisions of the Press Act of 1985 and it was asked, in particular, what justification existed for restricting the publication of periodicals to certain bodies such as State organs.

401. The representative of the State party, in his reply, referred to provisions of the Press Act of 1985 concerning the authorization relating to press publications and, in particular, to section 3 of the Act which stated that information published in the press should not infringe the constitutional order of Hungary, violate human rights or promote discrimination. He further stated that no one could be detained for holding political views. However, the major elements of the social order were laid down in the Constitution and any major change required an amendment to the Constitution. In addition, he explained that criticism of State institutions and the management of State enterprises appeared daily in the mass media and that foreign publications were available, but that their importation was subject to supervision by the President of the Information Office of the Council of Ministers. The Press Act of 1985 made no provision for the publication of periodicals by individuals, but the fact that a periodical had been started by an organization did not mean that the

opinions expressed in it were institutional ones.

Freedom of assembly and association

402. With reference to that issue, members of the Committee asked for information on the right to form political parties, trade unions and associations and groups to promote human rights, with particular reference to Decree-Law No. 29 of 1981. They asked, in particular, how it was possible to reconcile the spirit of article 22 of the Covenant with a system based on the principle of a single trade union, whether there were any legal provisions relating to the freedom of assembly, what the legal connotation of the preponderant role of the Hungarian Socialist Workers' Party was, and whether the majority of deputies as well as the head of Government had to come from the Party. They also asked which body was empowered to authorize the establishment of a new party, and what the conditions would be for its functioning.

403. In his reply, the representative stated that policies in Hungary were carried out through representative organs of the State, constituted on an elected basis by both Party and non-Party members. All Party organizations functioned strictly within the framework of the Constitution. The Hungarian Socialist Workers' Party had the right to put forward legislative proposals and played a particularly important role in the adoption and execution of policy decisions. In its basic documents, the Party elaborated the main trends of society's development. However, its decisions and programmes did not have a normative character. Decree-Law No. 29 of 1981 on associations laid down certain requirements and restrictions, in the interests of national security, for the establishment of new parties and associations. Many independent trade unions existed in all major branches of the economic life of Hungary and the Central Council co-ordinated trade-union activities. There were no restrictions on the establishment of new trade unions or human rights groups. Freedom of assembly was guaranteed under the Constitution in a manner conforming to the interests of socialism and the people. No prior permission was required for the holding of assemblies except under the Act on National Defence, dealing with situations that jeopardized the security of the State, or under the Act on Public Health in accordance with which assemblies might be prohibited in time of epidemics. The police were empowered to interfere in an assembly only when it endangered public order.

Right to participate in the conduct of public affairs

404. With reference to that issue, members of the Committee wished to receive information concerning the exercise of, and restrictions on, political rights, and legislation and practice regarding access to public office. It was asked, in particular, whether the Hungarian Government considered Party affairs to be the same as public affairs and, if so, whether every citizen had the right and opportunity to take part in the conduct of Party Affairs, under what circumstances a court might issue an interdiction on participation in public affairs, and whether, in the Hungarian political system, a member of parliament met with his entire electorate at regular intervals or with a committee that had been set up to represent the electorate at large.

405. In his reply, the representative stated that all adult citizens of his country had the right to vote

and to be elected and that the most important offices were held by election. Deputies were required to meet with their electorate regularly to report on their work and deputies who did not justify the confidence of their constituencies could be recalled at any time on the proposal of 10 per cent of the electors, provided that the proposal was approved by a vote of more than 50 per cent of the electorate. The main forms of the direct exercise of political rights in Hungary involved participation in the activities of the Socialist Workers' Party, social organizations, or work collectives as well as in public affairs management. The rules governing the handling of proposals concerning the public interest were set forth in Act I of 1977. A person did not have the right to vote if he was insane, had been prohibited from participating in public affairs by a court, or was serving a term of imprisonment. In accordance with the Criminal Code, interdiction from public affairs was a supplementary punishment and could be applied only together with a principal punishment. Posts in the public administration were held by nomination and recourse to labour arbitration committees was available to those who were refused access to or removed from public office. Certain conditions, which were laid down in the organizational regulations of the Party, had to be met for membership in the Hungarian Socialist Workers' Party.

Rights of minorities

406. With reference to that issue, members of the Committee asked how the rights provided for in article 27 of the Covenant were ensured and requested relevant statistics. They also asked how large the minority population and each major group were and, in particular, whether Hungary had any special laws setting forth the rights of minorities, what the situation was for religious minorities such as the Jews and ethnic minorities such as the Gypsies, and whether a citizen who did not speak Hungarian was entitled to use his own language in court.

407. In reply, the representative of the State party referred to the provisions of article 61 of the Hungarian Constitution and the Criminal Code, which guaranteed respect for the rights of nationalities, but he explained that there was no specific law on minorities. He also gave information on the latest Hungarian population census, which had been conducted in 1980, on the groups of the population that spoke a language other than Hungarian, on a study by the Ministry of Education and Culture concerning the educational and cultural needs of such groups, on the various nationalities in Hungary that were grouped in national federations, and on the Hungarian Government's legislative measures and development plans designed to ensure equal rights for all nationalities and to preserve their identity as national groups. In addition, he gave detailed information on the Gypsies and the measures taken by the Government to improve their living conditions. As far as the Jews in Hungary were concerned, he observed that they could not be regarded as a minority, but merely as representatives of a religion, and that their situation was governed by other articles of the Covenant rather than article 27. He assured the Committee that citizens belonging to the different nationalities were entitled to use their own languages in court and to have the assistance of an interpreter.

General observations

408. Members of the Committee thanked the Hungarian delegation for its co-operation and for its

detailed answers, which had provided substantial information demonstrating the achievements of Hungary in implementing the Covenant. They welcomed the frank and constructive approach of the representative of the State party, who had replied with great clarity and precision. The fruitful dialogue that had been established with the Committee on the occasion of the consideration of the second periodic report of Hungary had enabled the Committee to become better acquainted with the specific means and measures applied in Hungary in the implementation of the provisions of the Covenant.

409. While sharing that appreciation, some members continued to have doubts regarding the implementation of certain articles of the Covenant and the effectiveness of certain legislation in practice. They expressed the wish that in future more information should be provided on the practical application of the laws. Other members stressed that the dialogue with Hungary had been helpful for the Committee in developing a better understanding of the implementation of the Covenant within a socialist country.

410. Concluding the Committee's consideration of the second periodic report on Hungary, the Chairman expressed the hope that the dialogue established with that State party would serve as an example for the Committee's future work.

CCPR A/48/40 (1993)

617. The Committee considered the third periodic report of Hungary (CCPR/C/64/Add.7 and HRI/CORE/1/Add.11) from its 1240th to its 1242nd meetings, held on 15 and 16 July 1993 (CCPR/C/SR.1240, 1241 and 1242). (For the composition of the delegation, see annex XI.)

618. The report was introduced by the representative of the State party, who reminded the Committee that Hungary had undergone profound changes since the submission of its second periodic report. Reviewing the current status of legislation, the representative stated that an amendment to the Constitution and to the Act on the election of members of Parliament envisaged that Hungarian citizens living abroad might vote and, in certain conditions, be eligible for election. The representative also stated that it was planned to guarantee, in the near future, the possibility of unrestricted recourse to the courts against any administrative decision. With regard to the establishment of the Constitutional Court, which was of crucial significance in guaranteeing the rights embodied in the Covenant, its functions had already been decided by legislation adopted by the Parliament on 1 June 1993 and comprised, *inter alia*, verification of the conformity of domestic law with the Constitution and the international obligations entered into by Hungary. A bill had been tabled to amend the Act organizing the Constitutional Court, in order to authorize the courts to refer to it if they considered a provision of domestic legislation to be incompatible with the international obligations of Hungary. In 1993, the institution of the power of protest of the Chief Public Prosecutor or the President of the Supreme Court had been declared unconstitutional and replaced by the review procedure, which might be initiated by interested parties against final court decisions in the case of alleged violation of certain substantive and procedural provisions.

619. With regard to article 6 of the Covenant, the Parliament had recently enacted new legislation regulating abortion, providing for stricter conditions. In respect of article 7 of the Covenant, the representative mentioned the adoption of a law amending the Act on the enforcement of punishment, which entered into force on 15 April 1993 and considerably extended the rights of prisoners. In connection with article 8 of the Covenant, the representative reported the abolition of the penalty of re-educative labour.

620. In relation to article 9 of the Covenant, a bill had been tabled in the Parliament to strengthen the rights guaranteed in this article, stipulating that anyone arrested on suspicion of having committed a criminal offence should be brought before a judge within 72 hours. Another bill would be submitted to the Parliament in the autumn of 1993 to guarantee that deprivation of liberty might take effect only following a judicial decision.

Constitutional and legal framework within which the Covenant is implemented, state of emergency, non-discrimination, equality of the sexes, protection of the family and children and rights of persons belonging to minorities

621. In connection with these issues, the Committee inquired what was the position of the Covenant in the Hungarian legal system and whether individuals could invoke the provisions of the Covenant

directly before the courts and other State bodies; information was requested on how a conflict between the provisions of the Covenant and domestic law would be resolved. The question was raised of the extent to which the provisions of the Covenant had been taken into account in the formulation of various new legal instruments. Information was requested on the role, mandate and powers of the Constitutional Court, including the resolution of a dispute in the event of contradictions between domestic legislation and the Covenant. Members of the Committee also requested information on the meaning of article 70/k of the Constitution guaranteeing access to the courts. The Committee inquired whether the office of the Ombudsman for Civil Rights had already been established and what powers and functions were envisaged for that office. Members also requested information on the new administrative and judicial structures and on any possible changes in the status of the magistrature. Inquiries were also made about the links now existing between the legal order and the administrative court and, in particular, the nature of the "power to protest" of the Chief Public Prosecutor. The Committee also wished to be informed of the measures taken to disseminate information on the rights recognized in the Covenant and on the first Optional Protocol thereto, and to inform the public of the consideration by the Committee of the report of Hungary. Additional information was requested about efforts deployed to include human rights in school programmes and to secure instruction on them as part of the training of members of the police and magistrates.

622. In connection with article 4 of the Covenant, members of the Committee wished to be informed of the current status and content of the bill relating to rules applicable during a state of emergency, and the main differences compared with the system previously enforced; they asked whether the bill incorporated the provisions of article 4, paragraph 1, of the Covenant, the conditions in which a state of emergency might be decreed, and whether the new rules would comply with the principles of non-discrimination embodied in the Covenant.

623. Additional information was requested on the status of refugees and the problems which certain asylum-seekers are said to have encountered as well as acts of violence or discrimination allegedly involving foreigners. It was asked whether legislative provisions and practical measures had been taken to prevent the resurgence of reprehensible acts committed in the past and to prevent the constitution or reconstitution of groups aiming to destroy the very idea of human rights and democracy; information was also requested on the fate of the files of the secret services that operated under the former régime and on the way in which victims of human rights violations committed in the past had been able to obtain compensation. It was also asked whether former officials incurred any discrimination, including in matters of access to public service. Information had also been requested on the status of women and the efforts to strengthen their role in the conduct of public affairs. It had been asked whether the laws establishing special protection for women did not involve the likelihood of discrimination, by automatically excluding women from certain jobs. Finally, it was asked whether Roma (gypsies) were still victims of discrimination and, if that was so, whether the authorities were considering taking measures to improve the lot of those persons.

624. With regard to article 27 of the Covenant, members of the Committee had asked for statistical information on the size of the ethnic, religious and linguistic minorities and had inquired about their status in law and in practice; they had also asked for information on the current status and content

of the bill on the rights of national and ethnic minorities mentioned in paragraph 137 of the report.

625. Replying to the questions, the representative of the State party said that any international treaty had to be transformed into domestic law by means of an act of Parliament or a governmental decree. In the event of conflict between an international instrument and a domestic law, the solution depended on the position, in the hierarchy of laws, of the act by which the instrument was promulgated. If the domestic law was of the same rank or of lower rank than the act, it was annulled by the Constitutional Court. If, however, it occupied a higher rank, the Constitutional Court could only call upon the organ responsible for concluding the international agreement to correct the conflict. The wording of the legal instruments cited in paragraph 7 of the report was very close to that of the Covenant, and the preamble to several new laws contained a specific reference to the provisions of the Covenant. The functions of the Constitutional Court, whose members were appointed by the Parliament, were regulatory (verification of the conformity of laws and bills with the Constitution); the Court also had a preventive role and ensured that no unconstitutional law came into force; it could also receive complaints from individuals who considered themselves to be victims of violations of their rights as a result of the application of unconstitutional provisions, and, if appropriate, annul certain legal decisions. Article 70/k of the Constitution concerning access to the courts should be considered as a kind of guideline for the legislator.

626. The representative explained that, as a general rule, the outcome of a negative review of an administrative decision was the annulment of that decision or, in certain circumstances, its modification. The Government had set up special departments to handle appeals against administrative decisions within the framework of the Hungarian judicial system.

627. On the subject of human rights education, booklets and other publications about human rights instruments were available. Human rights formed a special subject in the curricula of Hungarian universities. Training courses on human rights were regularly organized for members of the legal profession, medical doctors and prison staff.

628. The text of the Covenant and that of the first Optional Protocol had been published in the Official Gazette. The Hungarian Centre for Human Rights played a very important role in disseminating information on the rights set forth in the Covenant and in the first Optional Protocol which, like all other international human rights instruments, formed part of the curricula of the faculties of law. Human rights were also part of the primary education programme. The activities of the non-governmental organizations also contributed to the collective awareness of human rights standards. The public at large and the entities that had taken part in the preparation of the report would be duly informed of the consideration of the report. Furthermore, a Human Rights Commission had been established within the Parliament.

629. In accordance with Act LIX of 1993, the functions of the Ombudsman were to investigate complaints of civil rights violations, and once those violations were proved, to take measures to rectify them. The Ombudsman was required to be a lawyer elected by a two-thirds majority of the Parliament, on the proposal of the President of the Republic. The Ombudsman had powers similar to those of magistrates. In the event of violation of constitutional rights, the Ombudsman applied

to the competent body for the purposes of compensation. The Ombudsman also had the power to refer to the Constitutional Court in order to ascertain the compatibility of any legislative act with the Constitution or international treaties.

630. As far as the provisions of article 4 of the Covenant were concerned, the representative stated that there were a number of deficiencies in Hungarian legislation and that a bill containing provisions which would regulate in greater detail the measures to be taken in the case of a state of emergency was under study.

631. As to the status of refugees, the statement in paragraph 14 of the report, that "persons considered as refugees shall be deemed to be Hungarian citizens for the purposes of application of law" was not entirely correct with regard, for instance, to the right to vote or employment in posts for which Hungarian citizenship was a legal requirement. The expulsion of refugees from Hungary was prohibited except for reasons of national security and public order.

632. Negative attitudes towards aliens and minorities were to be found only among small groups. Where xenophobia reached the stage of qualifying as criminal activity, the authorities would institute legal proceedings. As to the Roma (gypsies), they represented a social rather than a minority problem, and the Government had passed measures affording them financial support. With regard to women, the representative stated that although their participation in the high echelons of political life and the administration was less than might be desired, they were well represented in the legal profession where, for example, 60 to 70 per cent of all judges were women.

633. Concerning the compensation of victims of past human rights violations, investigations had been seriously hampered by the unreliability and, in some cases, non-availability of the files. Two draft bills had been tabled in the Parliament, which dealt with the disqualification from high office of persons responsible for such human rights violations. As to criminal liability for human rights violations, the Government had drafted a bill whereby prosecutions could be brought in cases where the statute of limitations did not apply, for instance, to war crimes and crime against humanity. Furthermore, as a reaction to the old system of one-party dictatorship, article 3 of the Constitution stated that parties should not exercise power directly.

634. With regard to the rights of persons belonging to minorities, the representative provided some information on the size of these minorities, the largest of which was formed by the Roma (gypsies) of whom there were 600,000. Afterwards came the German (220,000), Slovak (110,000), Croatian (80,000-90,000), Romanian (25,000) and Serbian (5,000) minorities. There were also Bulgarian, Polish, Greek, Armenian, Ruthenian and Ukrainian minorities. On 7 July 1993, Parliament had adopted the Act on the rights of national and ethnic minorities which condemned any discrimination against the minorities. At the present time, 13 minorities complied with the criteria set by this law for defining national and ethnic minorities. The law established a distinction between the individual rights and the collective rights of the minorities. It made provision for the establishment of autonomous local authorities for the minorities. Children belonging to a minority had the right to receive education in their mother tongue in separate establishments and the law also provided that the history of the minority and the study of its traditions would be incorporated in school

programmes. Special arrangements had to be made in the sphere of education and training in order to overcome the handicap suffered by the Roma (gypsy) population in those spheres. Moreover, in accordance with this law, everyone had the right to use his own language in civil, administrative and criminal proceedings, in the National Assembly and within the autonomous local authorities. The current law regulating the election of members of Parliament did not contain any provision on the representation of minorities in the Parliament, but an amendment to this law, providing for adequate representation of the minorities, had been submitted to Parliament. Finally, under a constitutional amendment of 1990, the authority of the Commissioner for national and ethnic minority rights of the National Assembly was exercised through a body consisting of a representative of each national and ethnic group. However, other kinds of bodies acting as the "ombudsman for the minorities" were currently under study.

Right to life, prohibition of slavery, servitude and forced labour, liberty and security of person and treatment of prisoners and other detainees

635. In connection with those issues, the Committee wished to know whether, in view of the decision of the Constitutional Court declaring the death penalty unconstitutional, the death penalty had been abolished, and whether consideration had been given to accession to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; what were the rules and regulations governing the use of weapons by the police and security forces, and how the rather broad concept of "unavoidable necessity", under which the use of firearms was permitted, was interpreted; whether there had been any violations of these rules and regulations and, if so, what measures had been taken to prevent their recurrence; what concrete measures had been taken to ensure the observance of article 7 of the Covenant, and whether torture was recognized as a criminal offence; whether confessions or testimony obtained under duress could be used in court proceedings; whether any complaints mechanism existed for dealing with allegations of ill-treatment, torture or deaths of persons held in custody, and what proceedings were taken to investigate such complaints.

636. Members of the Committee also requested additional information on the circumstances under which a person may be sentenced to community service. They wished to know whether temporary compulsory medical treatment included deprivation of liberty, and under which conditions such treatment took place. They requested clarification on the reasons for extending the duration of remand in custody from 72 hours to 5 days and the period prior to a defendant being brought before a judge from 6 to 8 days, and on the meaning of the term "as soon as possible" in article 55, paragraph 2, of the Constitution. In this regard, they inquired whether the provision was compatible with article 9, paragraph 3, of the Covenant.

637. They also wished to know whether Hungarian legislation guaranteed that anyone arrested was informed at the time of arrest of the reasons for such action, as stipulated in article 9, paragraph 2, of the Covenant. It was also asked what legislative and practical measures existed to combat the problem of drug addiction. In addition, members wished to know whether a detainee could have any recourse, comparable to habeas corpus or amparo, against arbitrary detention; what were the current status and content of the draft law governing the enforcement of punishment; what were the

arrangements for the supervision of places of detention and the procedures for receiving and investigating complaints; whether young offenders and female detainees were confined in separate quarters, and whether they had equal access to educational and training facilities and open prisons.

638. In his response, the representative of the State party said that as a result of the relevant decision of the Constitutional Court, the death penalty had been abolished. Ratification of the Second Optional Protocol to the Covenant was currently being discussed in the Parliament and would hopefully be done in the autumn of 1993. The use of weapons by the police was permitted only under certain circumstances and subject to established conditions; the new Bill on the Police contained a sub-chapter on rules governing the use of firearms. Special training courses were organized for police officers in order to study the legal provisions governing the use of weapons. If the rules for the use of firearms were not respected and criminal negligence could be established, criminal proceedings could be initiated in addition to an administrative investigation.

639. With regard to the provisions of article 7 of the Covenant, the Code of Criminal Procedure had been amended in 1989 to ensure respect for personal freedom and other constitutional rights. A specific rule explicitly provided for the exclusion of any evidence obtained in violation of the provisions of the Criminal Code. The Criminal Code included several offences less serious than torture. Community service was intended to function as an alternative to imprisonment for terms of up to one year or to fines. Temporary compulsory medical treatment could be a coercive measure as an alternative to custody in remand or a penal measure for insane offenders. It was implemented in the Forensic Institute for the Observation of Mental Illness, and implied deprivation of liberty. Compulsory coercive and penal medical treatment was supervised by the Ministry of Social Welfare and administered according to provisions more or less identical to those applying to any hospital for the mentally ill. The reason for changes in the duration of remand in custody was that, as from 1989, pre-trial detention ceased to be the responsibility of the prosecutor but instead was ordered by the courts. The relevant legislation had been amended to bring it into line with article 9, paragraph 3, of the Covenant. The reason for extending the time-limit from six to eight days was that a six-day deadline did not allow time for adequate preparation of the court proceedings. Various laws dealing with detention explicitly mentioned the obligation to inform the detainee of the reason for detention. The drug problem had been serious for some years already and the Government had stepped up efforts to deal with it, both as regards detection and policing in general and as regards the education and treatment of addicts.

640. All persons held in detention who were suspected of a criminal offence had access to habeas corpus. There were only a few types of detainees for whom judicial review was not allowed under current legislation, but a draft bill would shortly be submitted to the Parliament to make adequate provision for such cases. The law on the enforcement of punishment had entered into force on 15 April 1993. It had increased the rights of prisoners, including the right to appeal against decisions by the prison institution. It also encouraged greater contact between prisoners, their families and the community at large. According to the new law, the correctional judge procedure had been more closely aligned with ordinary criminal procedure. Places of detention were supervised by public prosecutors at least once a month. The public prosecutors considered complaints lodged by inmates and were entitled to initiate proceedings against employees of the institution in cases of suspected

negligence. Detainees could also appeal to the courts against decisions ordering solitary confinement, and request less severe treatment. A complaints mechanism existed to deal with allegations of ill-treatment by the police and, since 1990, such complaints were no longer dealt with by the military courts but by the ordinary courts. Special prisons existed for juvenile offenders and females, where conditions were less strict than in other prisons.

Right to a fair trial

641. With regard to that issue, the Committee wished to know what guarantees existed for the independence and impartiality of the judiciary. They sought clarification on the status and content of the Bill on the establishment of administrative courts, which had been submitted to the Parliament in December 1989, and about the meaning of the term "quasi-offences", and asked whether they were cognizable by courts. Clarification was also requested on the absence in the Constitution and other recent Hungarian legislation of sufficient legal safeguards as guaranteed by article 14, paragraph 3, of the Covenant.

642. Members of the Committee requested further information on the tenure of judges elected to the Constitutional Court and on the position of the legal profession and on the free legal aid system in Hungary.

643. In reply, the representative of the State party said that all decisions relating to the appointment of judges and the expiry of their terms of office were taken by the President of the Republic, and that the Ministry of Justice no longer had any responsibility with regard to nominations, except for the right to appoint the presidents of county courts. In addition, the financial independence of the judiciary from the executive was guaranteed by law; the system for the promotion and remuneration of judges was governed solely by law; judges were appointed by the President of the Republic on the proposal of the Ministry of Justice with the approval of the Judicial Council; judges enjoyed immunity from prosecution and could not be arrested and taken into custody nor be the subject of criminal proceedings without the authorization of the President of the Republic. The Bill on the establishment of administrative courts had not yet been submitted to Parliament and administrative cases were thus dealt with by the ordinary courts for the time being. "Quasi-offences", which might also be termed regulatory offences or administrative infractions, were at present dealt with by administrative agencies. A bill would soon be submitted to Parliament which, if enacted, would provide for judicial review with some exceptions in respect of such offences. The situation of the legal profession in Hungary had changed considerably in the past two years. The new legislation allowed for any law graduate with professional qualifications and suitable legal premises to join the Bar. Lawyers now acted as individuals rather than as partners under the "work collectives" of the former régime, and such changes had affected the provision of legal aid; individual lawyers appointed to provide legal aid could not always be relied upon, and therefore the whole system would have to be reviewed.

Freedom of movement and expulsion of aliens, right to privacy, freedom of religion, expression, assembly and association and right to participate in the conduct of public affairs

644. On those issues, the Committee wished to have further information on the restrictions that had been lifted and those that remained with regard to the right to leave and return to the country freely, particularly those applicable to persons in possession of State secrets; on how it could be determined a priori that a person was "unlikely to integrate into society" so that he could be denied an immigration permit; on the law and practice relating to permissible interference with the right to privacy, in particular by the secret service; on registration or any other procedure relating to recognition of different religious denominations by the authorities and on the content of Law-Decree No. 17 of 1989 regulating the functioning of religious orders; on the cases in which a permit concerning the activity of the press could be refused or a publication prohibited and on the status and content of the new "more liberal" regulations awaiting consideration by the Parliament at the time of the submission of the report; on the cases in which a press organ could be fined for violation of personal rights; on the ownership of the media; on the specific conditions under which the provisions relating to the right of foreign nationals to vote in local elections were applied; and on the conditions under which a court could bar a citizen from participating in public affairs.

645. The members of the Committee wished to be informed about the criteria for the expulsion of an alien considered undesirable; the remedies available to an individual against arbitrary interference with his privacy; the principles governing the collection, storage and use of personal data held by the State; the existence of censorship in Hungary; the modifications to the law concerning incitement against the community; the meaning of the prohibition by the Act on the Freedom of Association of the establishment of organizations offending the Constitution; the present position of trade unions; and the provisions of Act VII of 1989 forbidding strikes in certain circumstances.

646. The representative of the State party, replying to these questions, said that the fundamental right to go abroad and return to the country was established in Hungarian law. Under earlier legislation it had been subject to many restrictions, and there had been many grounds on which a passport could be refused. The new law, while maintaining certain restrictions, which might be criticized, had introduced an important improvement in the right to request review by a judicial body of the authorities' refusal to issue a passport. Similarly, the new provisions represented considerable progress in that they spelt out the grounds on which a passport could be refused. The "State secrets" possession of which could be grounds for refusing someone a passport were not just military ones, but the Act of 1989 on the subject was in the process of being revised. The law concerning refusal of a residence permit to a person unlikely to integrate into Hungarian society dated from 1989; under it persons were regarded as unlikely to integrate if they had received no schooling, did not speak the language and were not familiar with Hungarian traditions and democratic institutions. The expulsion of an alien could be ordered by a court, as a penalty in addition to the basic sentence, where the person was guilty of a criminal offence; it could also be ordered by the administrative authority, whose decision could be reviewed by a court. The bill on the police and the national security forces would give the courts the power to order expulsion. The Act of 1990 on the use of certain methods by the secret service specified offences for the prevention and detection of which the security services could use devices and methods without the awareness of the person concerned. Under the draft legislation relating to the police and national security, modifications were to be made to the existing regulations. An act had been adopted in 1992 to ensure protection of personal data, particularly those described as "special", and it contained very strict provisions forbidding the

collection and use of such "special" data.

647. A new act had been adopted on freedom of religion and the churches, which included a special chapter on the registration of churches or religious denominations. Registration was carried out by the county courts having territorial competence. The obligation for religious organizations to register arose from the fact that as bodies corporate they could enter into contracts. Act No. II of 1986, amended by Act No. LXV of 1990, proclaimed the right to express opinions and publish intellectual works through the press, on condition that they did not violate the constitutional order, that they did not commit an offence or incite others to do so, that they were not contrary to public morality and that they did not infringe the rights of the individual. Under a draft act at present under consideration, the restriction relating to public morality would be abolished, as would the present power of the Procurator to suspend a publication. The Criminal Code specified the offences that could be committed through the press. Apart from criminal liability, there was also civil liability; the draft act introduced a special rule under which the press could be obliged in civil proceedings to pay damages of up to 15 million forints.

648. The ban on the establishment of associations "offending the Constitution and organs of the armed forces" could not be explained without reference to the previous political régime. The legal provisions governing the right to strike denied the exercise of that right to members of the judicial administration, the armed forces and law-enforcement bodies.

649. The right of non-nationals to vote in local elections applied to aliens resident in Hungary for at least five years who were registered on the electoral roll. The ban on electoral campaigning in the workplace was explained by the situation that had existed in the past, when the Communist Party had cells at workplaces; the ban applied to organizations, not individuals. A ban on participation in public affairs was an additional punishment that a court was free to impose or not on any person sentenced to an enforceable term of imprisonment for a wilful offence.

Concluding observations by individual members

650. The members of the Committee thanked the Hungarian delegation for its detailed statement and for the excellent spirit in which its dialogue with the Committee had been conducted. They stressed the competence with which the delegation had described the present situation in Hungary. The members of the Committee had been able to note the efforts being made by Hungary to fulfil its obligations under the Covenant and to carry forward the process of transition on which the country had embarked. Progress had obviously been made in the protection of human rights, and many steps had been taken to adapt the Hungarian judicial system to the needs arising from the profound changes that had taken place in the country.

651. Some members of the Committee suggested that the general reservation entered by Hungary upon ratifying the Covenant should be withdrawn. They also noted that certain provisions of the Covenant had not been given constitutional status but as yet had only the force of law. Concern was in particular expressed about the order of precedence between the Constitution, the Covenant and domestic law, the compatibility of those various provisions and the role of the Constitutional Court

in dealing with any conflict between them; other subjects of concern arose in connection with the provisions of articles 9 and 14 of the Covenant, which were not fully guaranteed by Hungarian law at present, particularly with regard to the maximum period of police custody and pre-trial detention; with the limitations on the exercise of the right to leave the country, which were considered to be still too numerous; with the low level of participation by women in political life; with violence due to ethnic antagonism or xenophobia; with the possible danger of discrimination inherent in some provisions of the new Labour Code; and with the fact that individuals were not able to appeal to the courts against administrative divisions.

652. The members of the Committee also stressed the importance of publicizing the provisions of the Covenant and its first Optional Protocol among the population in general and judicial circles in particular. They considered that human rights education should begin in primary school and be the subject of specific programmes at university and that a special effort should be made with regard to law-enforcement personnel.

653. The representative of the State party thanked members of the Committee for the highly constructive dialogue they had conducted with his delegation. He would transmit all the observations made by members of the Committee to the Hungarian Government.

654. Concluding the Committee's consideration of the third periodic report of Hungary, the Chairman joined with other members of the Committee in thanking the Hungarian delegation for its cooperation. Adding that he agreed with most of the comments and views put forward by members, he expressed the hope that the dialogue would continue in a spirit of cooperation.

Comments of the Committee

655. At its 1259th meeting (forty-eighth session), held on 28 July 1993, the Committee adopted the following comments.

Introduction

656. The Committee welcomes the third periodic report of Hungary, and expresses its appreciation to the State party for the constructive dialogue engaged through a high-ranking delegation. The report covered the important changes which have taken place in that country since its transition to a multi-party democracy. Although the report did not provide sufficient information on the implementation of the Covenant in practice and on the factors and difficulties affecting its implementation, the very comprehensive additional information provided in the introductory statement, and in the replies given by the Hungarian delegation to the questions raised by the Committee, has enabled the Committee to have a clearer picture of the overall situation in the country as to its compliance with the obligations under the International Covenant on Civil and Political Rights.

Positive aspects

657. The Committee notes with satisfaction that extensive reforms are currently under way in Hungary towards the development of a new legal order and the establishment of democratic institutions. The new legal framework which is emerging allows for an increasing recognition of the human rights provisions set forth in the Covenant and a better implementation of the obligations under it.

658. The Committee notes with particular satisfaction the recent adoption of a law on the rights of national and ethnic minorities; the provision according to which non-nationals permanently settled in Hungary are entitled to vote in local elections; the recently introduced legislative changes aimed at ensuring a better access to the courts; the Act on the Parliamentary Ombudsman for civil rights, as well as the draft legislation on states of emergency, which takes into account the provisions of article 4 of the Covenant. These and other recent developments clearly illustrate the commitment of the Government of Hungary to comply with its obligations under the Covenant and to establish the legal machinery for the protection and enjoyment of fundamental human rights.

Factors and difficulties impeding the application of the Convention

659. The Committee notes that remnants of the authoritarian rule cannot be easily overcome and recognizes that much remains to be done, especially in the fields of education and training to better familiarize judges, practicing lawyers, law-enforcement officials, and the public at large with the rights enshrined in the Covenant. The Committee urges the State Party to intensify its efforts so as to ensure that the various problems faced during the present transitional period do not delay the implementation of civil and political rights, in particular the freedom of association and participation in the conduct of public affairs.

Principal subjects of concern

660. The Committee expresses its concern over the fact that the Constitution and domestic law do not incorporate all the rights enshrined in the Covenant, and that the status of the Covenant in the Hungarian legal system is not clearly defined. In particular, the Committee is concerned about the eventual conflict between a provision of the Covenant which has not been incorporated into the Constitution and a provision of domestic law.

661. The Committee is also concerned about the provisions of the Hungarian legislation relating to pre-trial detention and the procedure for bringing a defendant to trial and about excessive duration of pre-trial detentions. These norms do not fully conform with the relevant provisions of articles 9 and 14 of the Covenant. The absence of an administrative court is also a matter of concern; it must be noted, however, that in principle administrative decisions can be appealed to the ordinary courts and that currently there is a draft bill before the Parliament concerning the establishment of administrative courts.

662. Similarly, the Committee wishes to express its concern about the use of excessive force by the police, especially against foreigners residing in Hungary and asylum-seekers held in detention. The Committee further expresses concern about the grounds on which access to passports and travel

abroad can be restricted, in particular, the provision relating to holders of State secrets.

663. Concern was also expressed about the provisions allowing for the expulsion of aliens from Hungary and the extent of discretion in immigration law. Another area of concern is the very low participation of women in the decision-making process and the conduct of public affairs.

664. The Committee finally expresses its concern over the persistent pattern of prejudice and discriminatory attitudes towards certain minorities including, in particular, the Roma (gypsies), as well as the occurrence of some incidents arising from hostility and xenophobia towards aliens.

Suggestions and recommendations

665. The Committee recommends that the State party should ensure that the provisions of the Covenant be fully incorporated into domestic law or be given direct effect. The Committee also emphasizes that the texts of the Covenant and the first Optional Protocol should be widely publicized so that the judiciary, the relevant governmental agencies, and the general public are made fully aware of the rights enshrined in the provisions of these instruments. Adequate training in human rights norms should be provided for members of the judiciary and the legal profession, as well as police and prison officials, and human rights education should be included in the school and university curricula. Positive measures should be taken to involve women in political participation and decision-making. Laws on entry, residence, detention, and expulsion of aliens need a thorough review. The Committee also recommends that attention be paid in the present and future legislation, and in practice to ensure that any limitations on human rights are strictly in conformity with those permissible under the Covenant.

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(80) Hungary

(1) The Committee considered the fourth periodic report of Hungary (CCPR/C/HUN/2000/4) at its 1993rd and 1994th meetings, held on 22 March 2002, and adopted the following concluding observations at its 2005th meeting (seventy-fourth session), held on 2 April 2002.

Introduction

(2) The Committee welcomes the State party's fourth periodic report and the constructive discussion it had with the State party delegation. It appreciates the additional details and statistical data provided by the delegation as a supplement to the information contained in the report. It observes that it would have been helpful if this information had been included in the report itself, so as to permit a more considered examination by the Committee.

Positive aspects

(3) The Committee commends the State party for the substantial progress it has made in strengthening democratic institutions within its jurisdiction. It welcomes the legislative measures and other steps towards establishing and consolidating a human rights regime which have been taken since the submission of its last report. It particularly notes the establishment of a framework for minority protection and minority electoral representation.

(4) The Committee welcomes the contribution of the Constitutional Court in resolving conflicts between national legislation and obligations under the Covenant.

(5) The Committee takes note of assurances given by the State party that measures to combat terrorism will respect Covenant guarantees.

Principal subjects of concern and recommendations

(6) While the Covenant is incorporated into the domestic legal order and is directly applicable before the Hungarian courts, not all Covenant rights are ensured in practice. The Committee is also concerned that, notwithstanding article 26 of the Covenant, there is no comprehensive legislative provision against discrimination.

The State party is requested to take steps to enact comprehensive anti-discrimination legislation (article 26 of the Covenant).

(7) The Committee is deeply concerned at the situation of the Roma people who, despite various steps taken by the State party, remain disadvantaged in almost all aspects of life covered by the Covenant. The Committee particularly regrets ongoing discrimination against Roma with regard to employment, housing, education, social security and participation in public life. The excessively

high number of Roma in prisons, reports of their ill-treatment in police custody and the continuing existence of separate schools are also ongoing sources of concern to the Committee.

The State party should strengthen measures for improving the situation of the Roma people. In addition to further legislative steps, the training of officials, in particular the police, is strongly recommended, as is a vigorous campaign to alter public attitudes vis-à-vis the Roma people. The State party should also discontinue the placement of Roma children in special schools or special classes and give priority to measures that will enable them to benefit from regular schools and classes (articles 26 and 27 of the Covenant).

(8) The Committee regrets that, under the new Criminal Procedure Act, short-term arrest of up to 12 hours remains possible. It expresses its concern both at the length of the initial pre-trial detention phase (up to 72 hours) and the difficulties experienced by detainees in contacting their families and obtaining access to a lawyer, especially if the detained person cannot afford to engage private counsel. Further, the Committee is deeply concerned at ongoing pre-trial detention on police premises and the high risk of ill-treatment which it entails. It also greatly regrets that pre-trial detention of up to three years is provided for under the Act.

The State party should reconsider removing these provisions from the new Criminal Procedure Act, especially those permitting detention in police stations for more than 48 hours. The State party should ensure that its law and practice are compatible with article 9 of the Covenant. It should also bring to the attention of judges the particular risk of ill-treatment in police premises, and take appropriate measures to ensure detainees' rights to contact their families and obtain legal assistance (articles 7, 9 and 14 of the Covenant).

(9) The Committee is concerned at the low participation of women in political life and at their segregation in the labour market, as well as their low representation in senior levels of government and in the private sector.

The State party should implement positive measures in order to give effect to its Covenant obligations to ensure the equal participation of women in both the public and private sectors (article 3 of the Covenant).

(10) The Committee regrets continuing reports of violence against women, including rape and sexual harassment.

The State party should take more vigorous measures to encourage the development of a culture of human rights and to ban violence against women; in this context, training and education in human rights are essential at all levels and in all sectors of society. In particular, the State party should take measures to encourage women to report domestic violence to the authorities, and to make police officers more sensitive in their handling of allegations of rape and its psychological effects on the victim. It should also consider enacting further legislation to deal with domestic violence, including the introduction of restraining orders as a means of separating women from violent male family members; and

it should provide shelters and other support for victims of domestic violence (articles 3, 7 and 9 of the Covenant).

(11) The Committee is concerned at the high maternal mortality rate in Hungary and the fact that the State party does not provide sufficient support for family planning through effective means of contraception.

The State party should take steps to protect women's life and health, through more effective family planning and contraception (article 6 of the Covenant).

(12) The Committee is concerned at the high number of reports of ill-treatment by law enforcement agencies, the limited number of investigations carried out by the State party in such cases, and the very limited number of convictions in those cases which are investigated.

The State party should take measures to educate law enforcement officials and judges with a view to preventing such treatment and, when it occurs, should ensure careful investigation and prosecution where necessary. It should also establish an independent system of investigation of complaints of abuses by law enforcement officials (article 7 of the Covenant).

(13) The Committee is concerned that, notwithstanding the construction of new prison facilities, there is continuing overcrowding in prisons.

The State party should take steps to reduce the grounds for detention provided for by law, to promote alternatives to detention, and to construct additional prison facilities as needed (article 10 of the Covenant).

(14) The Committee notes with concern discriminatory practices with respect to the registration of certain religious groups in Hungary and the limited protection accorded to the religious rights of asylum-seekers and prisoners. It further notes that the restitution of Church property has not been completed in a timely manner. Finally, it observes that educational programmes concerning religious tolerance and non-discrimination on the basis of religion or conviction are inadequate.

The State party should ensure that religious organizations are treated in a manner that is compatible with the Covenant; it should reinforce the protection of religious rights of asylum-seekers and prisoners; it should complete the process of restitution of Church property without discrimination; and it should undertake educational programmes designed to promote tolerance and the elimination of discrimination on the grounds of religion and conviction (articles 18 and 26 of the Covenant).

(15) The Committee regrets the lack of information from the State party on measures undertaken to ensure the implementation in practice of its obligations under article 19 of the Covenant.

The State party should provide adequate information on this issue in its next periodic report.

(16) The State party should widely publicize the text of its fourth periodic report and the present concluding observations.

(17) Pursuant to rule 70, paragraph 5, of the Committee's rules of procedure, the State party should furnish within one year information on any action it has taken in the light of the Committee's observations and recommendations on the situation of the Roma people (para. 7) and pre-trial detention in police premises (para. 8). The Committee requests that information on the remainder of its recommendations be included in the fifth periodic report, due to be submitted by 1 April 2007.