

TUNISIA

CESCR E/1989/22

113. The initial report of Tunisia concerning the rights covered by articles 10 to 12 of the Covenant (E/1986/3/Add.9), was considered by the Committee at its 9th meeting, held on 10 February 1989 (E/C.12/1989/SR.9).

114. The report was introduced by the representative of the State party who highlighted some of the significant changes which had taken place since the change in the leadership of his country on 7 November 1987. Among the initial measures taken were a review of the Press Code, the authorization of activities by political parties, the abolition of the emergency courts and the freeing of political prisoners. The Constitution had also been revised so as to permit the normal functioning of democratic institutions, and legislative and presidential elections were planned. Furthermore, a more healthy social climate had been created in order to make possible the free exercise of trade-union rights.

General matters

115. With regard to the general framework within which the Covenant is implemented, members of the Committee wished to receive information on any significant changes which had occurred since the preparation of the report. Clarification was requested as to the meaning of the sentence in part I, section A, second paragraph of the report, according to which the Personal Status Code was considered to be “more consistent with Islamic law and more receptive to the requirements of progress”, in particular as far as the abolition of polygamy was concerned. In this connection, information was also requested on the practical application of the prohibition of polygamy and concerning the penalties to which men and women were liable in cases of bigamy. An explanation was sought of the meaning of the statement in the third paragraph of the same section of the report that polygamy was “an affront to human dignity”. Questions were also asked concerning the definition of the concept of modernity mentioned in the report, the possibility of a referendum on the interpretation of the Sharia by the Tunisian authorities and the reason for the non-participation of domestic servants in the Tunisian social security system. Members also asked for further information concerning the manner of preparation of the report. The ILO representative gave the Committee information concerning the ratification and application of relevant ILO conventions by Tunisia.

116. Replying to these questions, the representative of the State Party referred to the provisions of the Personal Status Code which had abolished polygamy. The Code had been adopted only after due reflection and after Islamic jurists had been consulted in order to ensure that the Code was not contrary to the Sharia. The interpretation thus adopted took full account of the requirements connected with development and demographic change. Although there had at first been some hesitation concerning it, the Code was now accepted by everyone in Tunisia. The statement that polygamy was an affront to human dignity was justified because a polygamous father was torn between several families and his children did not receive all the affection that was desirable, whereas a monogamous family offered a child a favourable context for his development. Under the Code, anyone bound by matrimony who married again without the previous marriage being dissolved was

liable to a penalty of imprisonment for one year and a fine of 240 dinars. However, since the adoption of the Code, no case of polygamy had been recorded. In his view, the Code was Tunisian society's fundamental instrument for the promotion of all social activities and was entirely in harmony with the provisions of articles 10 to 13 of the Covenant. The report had been prepared following consultation of the national bodies concerned and after submission to a committee of experts. In reply to the question concerning domestic servants, he said that, since such persons changed employers every two or three months, it was difficult for them to be covered by any social security scheme.

Article 10: Protection of the family, mothers and children

117. Members of the Committee wished to know whether it was assumed that a four-child family was considered ideal for the Tunisian society, why maternity leave of civil servants was twice as long as that in the private sector, whether the private sector provided adequate protection for pregnant women, and whether a child born out of wedlock was entitled to allowances in the same fashion as a child born in wedlock. Clarification was requested as to the compatibility with the Covenant and the relevant ILO conventions of the provision according to which the minimum age for employment in agricultural enterprises and activities was reduced to 13 years of age. Further information was also sought on the protection provided to children by the extended family, and in particular to abandoned children.

118. Members of the Committee also requested further information concerning the Tunisian concept of the family. In that connection they asked what was the role played by the father in the education of his children, what was the solution taken for the care of children in the event of divorce if one of the parents, not of the Muslim faith, lived abroad, and what was the legal system that applied in the case of divorce.

119. Information was also requested concerning the action taken by the Tunisian Government to promote equality of rights for men and women. Members asked what was the situation of women in rural areas, whether women enjoyed equality with men as regards the power to manage household assets, have a bank account or open a business, and whether parental authority was shared by the father and the mother.

120. With regard to the protection of children, information was also sought on the practical situation of natural children and the legal protection granted them, on the number of abandoned children and on the powers of the childrens' judges.

121. Replying to the many questions addressed to him, the representative of the State party described the various measures which had been taken to protect and strengthen the family unit. In the large urban centres at least, the nuclear family was the basic unit of Tunisian society. The Government had taken many measures to ensure the advancement of women, including the adoption of rules requiring the bride's consent to be married, fixing a minimum age for marriage and providing a system of tutelage to protect her if the circumstances so warranted. Maternity protection was based on family planning which sought to establish a balance between the country's demographic growth and its economic and social development objectives. It had thus been recommended - although no compelling rules had been laid down in that respect - that no family

should have more than four children. Maternity leave of civil servants was longer than that in the private sector because the economic constraints were not the same in the two cases. Because of this, two months of maternity pay on full pay were allowed in the public sector, whereas only one month was allowed in the private sector, although that leave could be extended if the mother's health so warranted.

122. With reference to the protection of children, the representative placed emphasis on the principle that every child in Tunisia should have a relationship of filiation. The Higher Council for Children had been given the task of preparing a general policy for children and had begun to study matters such as the adjustment of working hours for mothers to enable them to reconcile their occupational and family obligations. Replying to the question concerning the minimum working age, he said that the children who worked in agriculture were generally children with school problems whose parents preferred to keep them on the family farm. The Government was dealing with the problem of homeless children from the angle of prevention. Family-type hostels had been set up to take care of such children and to create a more natural environment for them. The National Institute for the Protection of Children had recorded an average of 400 children abandoned annually, some 250 of whom were taken in by social welfare centres. Explaining the law under which natural children inherited only from their mother or from her family, he said that that rule was intended to allow the child a minimum of protection by enabling him to bear his mother's name and inherit her property.

123. Replying to the questions asked concerning divorce, the representative said that divorce could be pronounced only by the courts and that repudiation was prohibited. In the event of divorce, care of the children was given either to the father or to the mother, according to the best interests of the child. In the particular case where the mother lived abroad, some arrangement was sought which would permit the establishment of a visiting right for the parent who did not have care of the child, regardless of the child's place of residence.

Article 11: Right to an adequate standard of living

124. Members of the Committee wished to receive further information on the efforts undertaken by the Government to ensure the right to an adequate standard of living. It was asked what had been the results of the mechanisms established to set up fixed prices to the benefits of disadvantaged groups, how did the law which guaranteed the right to food function, what had been the impact of recent adjustments policies on the prices of basic foodstuffs and on the enjoyment of the rights to adequate food for everyone, and what the average daily calorie intake was in Tunisia. Further information was also sought on the activities of the Equalization Fund, on the extent of homeless, and on any other difficulties encountered with regard to the right to housing.

125. Information was also requested concerning the system of land holding in Tunisia, the ratio of the farming population to the overall population, the right to adequate clothing and the water supply available in rural areas. It was also asked whether there was still under-nourishment in Tunisia, what was the situation of the most marginalized strata of society and whether the phenomenon of extreme poverty was to be found in the country.

126. Replying to these questions, the representative of the State party said that the National Institute

of Nutrition had laid down standards for the minimum daily calorie intake. This had been set at an average of 2,275 calories and up to 2,452 calories in large urban centres. There were State-subsidized social solidarity centres which furnished an adequate food ration to children of school and pre-school age from needy families. Furthermore, Tunisia had an Equalization Fund (Caisse générale de compensation) which subsidized the prices of basic foodstuffs. However, the economic adjustment programme recently undertaken aimed at a liberalization of prices, while at the same time providing measures in favour of low-income families.

127. Regarding the right to housing, programmes had been established in co-operation with the World Bank for the improvement of housing and the elimination of rudimentary dwellings. Those were to be replaced by decent accommodation. In 1987 the Government had set itself a target of construction of 95,000 dwellings and 29,000 had already been completed. The right to own private property was guaranteed by law. A supply of drinking water was provided throughout the country, even in the most remote rural areas.

Article 12: Right to physical and mental health

128. Members of the Committee wished to receive statistical information on the population covered by the various institutions mentioned in the report in connection with the right to health. They also wished to know what were the shares of the public and private sectors in the provision of medical care, what proportion of the national budget was devoted to public health and whether Tunisia was experiencing problems connected with drug addiction and transmission of the AIDS virus.

129. In his reply, the representative said that treatment was now available in Tunisia for all illnesses, including those requiring the most advanced technology. All citizens now enjoyed the right to health, the compulsory vaccination programme covered 97 per cent of Tunisian children, there was a doctor for every 2,127 inhabitants, there were approximately 16,000 hospital beds, 50 per cent of the inhabitants of the country benefited from the social security system and 45 per cent of the population received free medical care; only 5 per cent received no assistance. Owing to the development of tourism and the population's contacts with foreigners, there were some cases of drug addiction and AIDS in Tunisia, but they were still rare. Nevertheless, in accordance with WHO directives, the Government had established a programme for the detection and prevention of AIDS. Tunisia's total expenditure on public health amounted to 350 million dinars or 8 per cent of the national budget.

Concluding observations

130. Concluding their consideration of the report of Tunisia, the members thanked the representative of the State party for his oral presentation and for the additional information he had provided. They noted with satisfaction that he had given detailed answers to the questions put to him and had been frank in describing the changes that had taken place recently in Tunisian society. It was nevertheless regretted that detailed information, especially of a statistical nature, had been furnished neither on the subject of the most vulnerable sector of Tunisian society nor on the difficulties still experienced in realizing the rights to which the report referred.

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153. The Committee considered the second periodic report of Tunisia concerning the rights covered by articles 1 to 15 of the Covenant (E/1990/6/Add.14) at its 17th to 19th meetings held on 6 and 7 May 1999, and adopted, at its 27th meeting, held on 14 May 1999, the following concluding observations.

A. Introduction

154. The Committee expresses its appreciation for the detailed report submitted by the State party and the comprehensive answers provided by the delegation in response to the Committee's questions and comments. These contributed to a highly constructive dialogue between the Committee and the State party.

B. Positive aspects

155. The Committee notes with satisfaction the importance attached to economic, social and cultural rights by the State party and the indication by the delegation that many new laws and modifications of existing laws were inspired by the obligations assumed under the Covenant. The Committee further expresses satisfaction that the rights provided for in the Covenant are part of the law of Tunisia by virtue of the provision of its Constitution that an international treaty ratified by Tunisia becomes part of domestic law.

156. The Committee welcomes the achievements in the field of better promotion and protection of the economic, social and cultural rights of women, as a result of which women are able to participate in the economic and political life of the nation, including by owning property, engaging in economic transactions, voting and being elected to public office. In addition, these achievements have contributed positively to family life by making polygamy illegal and have further promoted equality between men and women by removing all legal recognition of so-called "crimes of honour".

157. The Committee welcomes the success achieved in the promotion of sustainable human development, as evidenced by the reduction in the number of persons living below the national poverty line, the increase in life expectancy, the decrease in illiteracy and the decrease in infant mortality, as indicated by the overall human development index. The Committee notes with satisfaction that social welfare expenditure increased by as much as 20 per cent of the State budget between 1986 and 1996, which made many of these advances possible. Furthermore, 20 per cent of the national budget is devoted to education.

158. The Committee notes with interest the establishment in 1993 of the National Solidarity Fund through which contributions from individuals and enterprises are channelled to projects aimed at the development of remote regions and areas, enabling their inhabitants to have access to basic infrastructural facilities and utilities and to better create and manage their own sources of income.

159. The Committee welcomes the Act of 29 July 1991, which legislates free and compulsory school education for all children from 6 to 16 years of age, as well as the supplementary support

extended to schools and to needy students that is necessary to make it a reality. It welcomes the fact that, today, 99 per cent of all children in Tunisia attend primary school. It also welcomes the considerable assistance being provided to students at the higher learning level including through grants, loans and health-care and meal subsidies.

160. The Committee notes with satisfaction the efforts being made in the area of environmental protection, including in the framework of the Ninth Economic and Social Development Plan (1997-2001). It notes the increased budget for this purpose in the Ninth Plan which will be used, *inter alia*, for the development of equipment to combat pollution, for better management of waste, for the use of waste water in agricultural production and for combating desertification.

C. Factors and difficulties impeding the implementation of the Covenant

161. The Committee notes the assertion of the State party that difficulties in the implementation of the Covenant are attributable to external factors linked to the international environment.

162. The Committee regrets that no further explanation was provided on the possible existence of other internal difficulties, such as high unemployment, the slowing economic growth in recent years or social or political tensions.

D. Principal subjects of concern

163. The Committee regrets that the ample information presented on the legislative, institutional and policy framework for the protection of each right was not supported by information on case law, which would have provided further insight on the actual state of implementation of those rights.

164. The Committee notes that, despite constitutional guarantees, the State organs for the promotion and protection of human rights are concentrated within the executive branch of government and that none of them are empowered to review complaints of violations of the rights provided for in the Covenant. The Committee is concerned that this compromises the independence of these institutions, including that of the judiciary, and the justiciability of economic, social and cultural rights.

165. The Committee is concerned that, despite the efforts of the State party, inequalities between men and women continue to persist, including with regard to access to positions of responsibility and to remuneration. It is particularly concerned that, according to the laws on inheritance, females are entitled to receive only half of the inheritance of males. While the State party believes that domestic violence in Tunisia is rare, the Committee is concerned about the scarcity of official data on this phenomenon.

166. With respect to article 6 of the Covenant, the Committee is concerned that, despite the priority given to job creation in national development plans, a high level of unemployment of approximately 15.6 per cent persisted in 1998, of which approximately 40 per cent consisted of persons unemployed for over one year.

167. With regard to article 8 of the Covenant, the Committee notes with concern the existence of

only one confederation of trade unions in Tunisia, the Union générale tunisienne du travail. The Committee expresses concern that a single trade union confederation representing the diverse range of all Tunisian workers may not be able to represent the plurality of their views. In particular, the Committee draws attention to the regulations requiring that all strikes be authorized by this single union, which severely curtails the rights to strike and to freedom of association.

168. The Committee is concerned about the disparities of living standards, especially with regard to education, health, life expectancy, child mortality, access to piped water and electricity and employment, to be found between the prosperous north—east coast of Tunisia and the underdeveloped north—west, between the interior of the country and the south, and between the towns and rural areas.

169. With respect to articles 3 and 13 of the Covenant, despite the marked progress in the area of education, the Committee notes that illiteracy still affects one third of the population, 42 per cent of women and 23 per cent of men, and that serious disparities continue to exist between the literacy rates of boys and girls at all age levels and between urban and rural areas. It also notes the serious problem of school drop-out, and especially that half of those enrolled in primary schools do not continue with secondary education. In this regard, the Committee is concerned about students who drop out at the end of the first cycle of basic education, of whom, according to the delegation, 90 per cent had “exhausted their right to retake courses”. The Committee is also concerned about the discrepancy between the age fixed in law for the completion of mandatory education, which is 16 years, and the minimum age for employment, which is 15 years for the manufacturing sector and 13 years for the agricultural sector. This discrepancy might encourage adolescents to drop out of secondary school.

170. The Committee is concerned about the manner in which knowledge of human rights is currently being imparted in Tunisian schools. It is also seriously concerned that the police presence on university campuses may infringe on the freedoms necessary for academic and cultural expression, which the State party is obliged to respect under article 15 of the Covenant.

171. The Committee expresses concern over the censorship exercised on cultural productions. It remains unclear as to the role of the Theatrical Guidance Board, which is said not to censor the theatre but to assist drama groups presenting their productions for the first time.

E. Suggestions and recommendations

172. Regarding the role of national human rights institutions in the protection of economic, social and cultural rights, the Committee draws attention to its General Comment No. 10 (1998) on the subject, in which it notes that, in many cases, such an institution is established by the Government, enjoys an important degree of autonomy from the executive and the legislature, takes full account of international human rights standards applicable to the country concerned, and is mandated to perform various activities designed to promote and protect human rights, including economic, social and cultural rights. Its activities may include monitoring compliance with specific rights recognized under the Covenant and providing reports thereon to the public authorities and civil society, and examining complaints alleging infringements of applicable economic, social and cultural rights standards within the State. In General Comment No. 10, the Committee calls upon States parties

to ensure that the mandates accorded to all national human rights institutions include appropriate attention to economic, social and cultural rights. Accordingly, the Committee recommends that Tunisia review its national human rights institutions in the light of this general comment.

173. The Committee strongly recommends that all men, women and children of both sexes should be enabled to enjoy the right to inherit on a basis of equality.

174. The Committee suggests that the State party consider ways of monitoring more closely the incidence of domestic violence, in the light of which it may need to re-examine its law and policies on this phenomenon.

175. The Committee recommends that the State party continue its efforts, including through the National Solidarity Fund, to achieve balance in the development of urban and rural areas. As the Fund appears to play an important role in rural development, updated information is requested in the third periodic report.

176. With respect to the general framework within which human rights are protected and promoted, the Committee considers an independent judiciary to be an essential instrument for the protection of economic, social and cultural rights and therefore requests that information be included on the matter in the third periodic report.

177. The Committee recommends that continued attention be paid to the problem of unemployment, particularly long-term unemployment. It encourages the State party, when reviewing its vocational training programmes or establishing new institutions of higher learning, to take into consideration the needs of the economy so as to maximize the employment potential of graduates. In addition, in view of the assertion that Tunisian law reflects the main concerns of ILO Convention No. 158 (1982) concerning Termination of Employment at the Initiative of the Employer, the Committee strongly recommends that this Convention be ratified by the State party. The Committee recommends that the State party take the necessary measures to ensure that sentences of forced labour may not be imposed for crimes of conscience or for participation in strikes declared to be illegal.

178. The Committee recommends that the procedures that have led to the association of trade unions within a single confederation be reviewed with a view to guaranteeing, in law and in practice, the right to strike and protection against infringement of trade union freedoms.

179. The Committee recommends that the State party develop an immediate national plan of action in order to reduce the disparities of living standards that exist between the various regions.

180. The Committee recommends that the State party continue to make efforts to guarantee a basic education to all children, including those that fail to keep pace with their peers. It recommends that the problem areas identified in the studies undertaken by the State party on the phenomenon of drop-out, including inadequacy of pedagogical tools, excessive numbers of students per class and per teacher, lack of interest on the part of parents in sending their children to school and distance between school and home, be addressed, particularly in the less developed rural areas. The Committee urges the State party to take all necessary corrective measures, including revising

the minimum age of employment, particularly in agriculture, to address the problem of students dropping out of colleges and secondary schools. Further, with regard to article 13 of the Covenant, the Committee encourages the State party to endeavour to establish separate courses on human rights, particularly at the university level, to make possible in-depth instruction on human rights. The Committee requests that information on the activities of the National Commission for Human Rights Education be included in the third periodic report.

181. The Committee expresses concern at the censorship exercised on cultural productions. It recommends that the criteria for censorship be made transparent, in law and in practice, and made fully compatible with the right of all persons to take part in cultural life.

182. The Committee requests information in the third periodic report on relevant case law that would aid its assessment of the implementation of all the rights provided for under the Covenant. It also requests specific information relating to any obstacles encountered in the implementation of the Covenant and expresses hope that the report will be submitted in a timely manner.

183. Finally, the Committee requests the State party to ensure the wide dissemination in Tunisia of its present concluding observations and to inform the Committee in its third periodic report of steps taken to implement those recommendations.