



UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



Distr.
GENERAL

E/1980/6/Add.4
21 December 1979
ENGLISH
ORIGINAL: SPANISH

IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC,
SOCIAL AND CULTURAL RIGHTS

Reports submitted in accordance with Council resolution
1988 (LX) by States Parties to the Covenant concerning
rights covered by articles 10 to 12

CHILE

/26 September 1979/

Economic, social and cultural rights are protected under Chilean law by constitutional, legal and regulatory norms. The first type includes the Constitutional Acts, certain decree-laws issued by the Honourable Government Junta in the exercise of its constituent authority, and the provisions of the 1925 Political Constitution of the Republic of Chile; the second, or legal, type comprises the Codes of the Republic, those laws enacted prior to 11 September 1973, decree-laws issued by the Honourable Government Junta in the exercise of its legislative authority, decrees having the force of law issued by the President of the Republic, under delegation of authority from the National Congress, and international treaties signed and ratified by the Government of Chile; the third, or regulatory, type includes regulations and decrees issued by the President of the Republic in the exercise of his regulatory authority, as envisaged in the Political Constitution.

The rules established at a lower level are subordinate to those established at a higher level, both in terms of the authority on which they are based and in terms of their application.

Both the spirit and the letter of Chilean law respect acquired rights, i.e. those for which effective protection has always been necessary, regardless of the changes made in the legal and social structure of the country.

In considering constitutional texts, it should be noted that the 1925 Political Constitution is still in force, although it has been amended by Constitutional Acts and by decree-laws of a constitutional nature issued by the Honourable Government Junta.

Although several of the reports submitted by Chile to the United Nations, in particular, the report submitted in accordance with article 40 of the International

Covenant on Civil and Political Rights, have already drawn attention to this fact, it should be noted again, on this occasion, that all the provisions contained in the Covenant on Economic, Social and Cultural Rights were already embodied in Chilean positive legislation, even prior to the drafting of the Covenant. However, on 11 September 1976, the Government of Chile implemented Constitutional Act No. 3 which systematically and organically codifies the rights to which all the inhabitants of the country are entitled, without any special distinctions or other limitations except those arising from the general interests of the State or from respect for the rights of other citizens.

The following analysis of articles 10, 11 and 12 of the Covenant shows how Chilean law affords even broader protection of economic, social and cultural rights than that envisaged in the Covenant.

Article 10, paragraph 1

Since assuming power, the Government Junta of the Republic of Chile has focused special attention on the protection of families, mothers, children and young persons.

The "Declaration of Principles", formulated by the current Government on 11 March 1974, stipulates that the task of national reconstruction "should be based primarily on the family, for the family serves as a school of moral education, of self-sacrifice and generosity towards others and of profound patriotism".

In accordance with the theoretical concept thus defined, Constitutional Act No. 2, promulgated on 11 September 1976, which sets forth the essential bases of Chilean institutions, states in the third paragraph of article 2: "The family is the basic nucleus of society. The State shall protect the family and help to strengthen it."

Constitutional Act No. 3 on constitutional rights and duties, promulgated on the same date, also contains provisions governing this important subject.

The Civil Code, which dates from 1855, supplemented by acts on civil marriage (1884), civil registry (Act 4,808 of 1930), adoption (Act 7,613 of 1943) and the legitimation of adopted children (Act 16,346 of 1965) contain the basic rules of Chilean family law. This system is based on monogamy, freely agreed by both spouses and indissoluble (there are no provisions for divorce in Chile). Marriage generally gives rise to the joint ownership of property by both spouses, which is called sociedad conyugal and, which is managed by the husband; however, at the time of marriage or at any time thereafter, the spouses may, by mutual agreement, choose to adopt the system of separate property. Children may be legitimate (or legitimated), natural, simply illegitimate or adopted.

Legislation currently in force also includes a number of provisions to protect families in various ways, for example, the provisions that establish the social security system, the cash allowances for each dependant, tax exemptions and credits for the purchase of housing, and so forth. Special legislation governs the abandonment of the family and the payment of food allowances.

On the other hand, the country has various institutions, both State and private, which protect children and adolescents, and there is modern and effective legislation on the subject.

Infants, children and adolescents are protected under many provisions, both constitutional and legal, including protection of the life of the unborn infant before birth. In that connexion, article 1, paragraph 1, second subparagraph of the previously mentioned Constitutional Act No. 2 reads: "The law protects the life of the unborn." The Civil Code states: "The law protects the life of the unborn. Accordingly, the judge, at the request of any person or de officio shall take any steps which he deems advisable to protect the existence of the unborn whenever he believes them to be endangered in any way."

"Any punishment of the mother which could threaten the life or health of the infant she is carrying in her womb shall be postponed until after the birth." (art. 75). The Penal Code provides that "the death penalty shall not be carried out against a pregnant woman, nor shall she be informed of the sentence imposed upon her, until 40 days after the birth" (art. 85). The Penal Code also punishes abortion (arts. 342 to 345) and the abandonment of children and helpless persons (arts. 346 to 352) by penalties privative of liberty.

In the area of assistance, the country has numerous institutions, both State and private, for protecting infants and adolescents, and for several decades has had extensive legislation on the subject. The current Government of Chile has taken an extremely important step in this regard by enacting new and progressive legislation on the matter. This legislation is contained in Decree-Law No. 2465 published in the Diario Oficial of 16 January 1979. It establishes the National Service for Minors (Servicio Nacional de Menores), a body subordinate to the Ministry of Justice and "responsible for carrying out any measures necessary to assist or protect the young people covered under this law and for promoting, directing, co-ordinating and technically supervising the work of public or private entities that assist it in carrying out its functions" (art. 1, para. 1).

Article 10, paragraph 2

Comments

With regard to the special protection which should be accorded to mothers during a reasonable period before and after childbirth, it should be noted that Decree-Law No. 2200, which makes provision for contracts of employment and the protection of workers, was promulgated on 1 May 1978 and entered into force on 15 June 1978, when it was published in the Diario Oficial.

In accordance with the provisions of article 2, paragraph 2 of this law, any discrimination, exclusion or preference based on race, colour, sex, religion, political opinion, nationality or social origin shall be contrary to the principles of labour law. No employer may consequently make the engagement of a worker conditional on any such factor.

Although the above-mentioned law governs labour relations within the private sector of the economy, in labour matters the majority of State companies also comply with the provisions made for the private sector. Nevertheless, article 94 of Decree-Law No. 2200 provides for the protection of maternity in all State services and undertakings and the private sector without exception; the protection is thus even broader than in the general provisions.

In addition to the texts of these laws included with this report, the following should be noted:

1. The paragraph on the protection of maternity applies to both the public and the private sector, as has been stated already.

2. In accordance with article 95, women workers are entitled to pre-natal leave for six weeks, and to post-natal leave for 12 weeks. These leaves may be supplemented by longer periods determined by the medical services.

3. During these mandatory periods of leave, including supplementary leave, a working woman shall receive cash benefit equal to her remuneration (art. 98 and art. 1 (transitory) final paragraph).

4. The working mother shall be entitled to leave and to the cash benefit in order to treat a child who, being under one year old, suffers from a serious illness.

5. As long as the contract remains in force, the mother cannot be dismissed for the entire period of pregnancy and up to one year after childbirth except with judicial authorization; such authorization can be given only if the worker commits one of the serious breaches of contract mentioned in article 14.

If any of the offences mentioned in article 15 are committed, no prior judicial authorization is required; however, the judge has the right to intervene at any time to resolve the matter at the request of one of the parties (art. 100).

6. During her pregnancy, the working woman cannot be employed on work which the competent authority considers detrimental to her health (art. 101).

7. Articles 102 et seq. cover the company's obligation to have adequate facilities for its workers' children under two years old and other related rights.

8. Decree-Law No. 2200 did not, as has been falsely stated, put an end to maternity leave; what it did was to recognize the validity of the short-term or fixed-term contracts of pregnant women who could not find work, because the legal provisions gave the contract a minimum duration varying from one year to over two years (nine months of pregnancy, three of post-natal leave plus one of supplementary leave). These benefits continue to apply, but it is legal to hire a pregnant woman for a shorter fixed term.

/...

Article 10, paragraph 3

Comments

Decree-Law No. 2200 of 1979 also contains special provisions on young people and other general provisions, the following aspects of which should be stressed since they apply to the subject of the international instrument being discussed:

1. Title II of this law covers the capacity to contract and other provisions relating to the work of young persons aged 15, if they have obtained permission from their guardians, or aged 14 if they have obtained that permission, completed their compulsory schooling and their health and development are not endangered (art.23).

2. Under the provisions of article 24 of this law, persons under 18 years of age shall not be admitted to employment underground, to work requiring great effort or to activities that might be dangerous to their health, safety or morals.

3. It is illegal for persons under 18 years of age to be employed on night work in any industrial establishment between 10 p.m. and 7 a.m., except in those establishments where only members of the family are employed under the authority of one of them (art. 29).

Article 11, paragraph 1

Commentary

Constitutional Act No. 3, article 1, paragraph 20, as amended by Decree-Law No. 2755, paragraph 3, states that every person shall have the right freely to choose his work and the right to fair remuneration ensuring him and his family at least a standard of living compatible with human dignity.

The above provision amended article 10, paragraph 14 of the 1925 Political Constitution of the State, introducing an important element - that of "human dignity" - which fully complies with the spirit and letter of article 11, paragraph 1 of the Covenant.

The Chilean Government, in accordance with the constitutional and legal precepts governing such matters, has implemented a labour plan of action, which constantly increases the number of people benefiting from an appropriate standard of living and a gradual improvement in their living conditions.

In the field of housing, the Supreme Government, through the Ministry of Housing and Urban Development, approved in March 1979 the so-called "National policy for housing and urban development" as part of its national policy of economic and social development.

Although the main documents containing the aforementioned national policy accompany this report, it should be pointed out that the policy is based on the following general principles.

/...

1. The State recognizes and endorses the fact that families acquire housing through their own efforts and savings.

By this principle, housing is no longer a State gift, the fruit of the sacrifices of many used to benefit a privileged minority - a view which has condemned a large part of our population to live in unnecessarily poor conditions. Rather it is the fruit of individual efforts, supported by the State in the case of the lowest income sectors.

2. The housing policy is compatible with the policies of urban and socio-economic development postulated by the Supreme Government.

The Government's policy therefore corresponds to the reality of the country. It provides an effective instrument whereby the objectives and goals established by its development policies may be attained. The housing policy is not merely concerned with its own sector, but forms an integral part of the Supreme Government's urban development, economic and social policies.

3. The State should play a secondary role in housing. It is for the private sector to marshal resources and means to meet aspirations for housing.

The building and marketing of housing should be the exclusive responsibility of the private sector. The State should only assume such responsibilities as a last resort, when it is clear that the machinery set up is not operating effectively, and then merely until difficulties are ironed out.

The State retains an appropriate role, which it may not relinquish, in determining standards, planning and supervising. At a secondary level it assists the lowest income sectors in solving their housing problems.

The Supreme Government has entrusted several public bodies with responsibility for its food policy. These include the National Council for Grants and Educational Assistance, a subordinate body of the Ministry of Education; the National Council for Nursery Schools, an independent body linked to the Government through the Ministry of the Interior; the National Food and Nutrition Council, a subordinate body of the Ministry of Public Health; and the National Council for the Nutrition of Children (COMIN), which is also part of the health sector.

Documents showing the progress made by Chile in these areas are attached to this report to provide an over-all view of the role of the aforementioned bodies, and of their objectives and attainments.

Furthermore, it is important to stress that the Chilean Government has established the concept of the minimum wage to meet the basic needs of the population, as part of a continued improvement of living conditions. This minimum wage is automatically adjusted by law. Such adjustments will be made on three predetermined dates in 1979, and on other occasions, if the increase in the cost of living exceeds 15 per cent since the last adjustment.

/...

All these increases match the increase in the consumer price index. This index has been revised with effect from January 1979 so that it will provide a more faithful reflection of the real costs of items included in the population's consumption pattern.

It should be added that the promulgation of Decree-Law 2758 of 6 July 1979 initiates the collective bargaining negotiations applicable to both private and State enterprises.

It is important to point out that under this legislation an employer may not offer his workers remuneration of a lesser purchasing power, starting with the last increase, than that laid down in their contracts. Provision must be made for indexing clauses in collective bargaining agreements.

Article 11, paragraph 2

Commentary

The Government has been particularly concerned to establish a framework to promote the material and spiritual development of workers and the general economic development of the population. Numerous measures have been adopted, including the establishment of the National Training and Employment Service, whose Statute is contained in Decree-Law No. 1446 of 1976.

This State Service is entrusted with promoting vocational training for workers with a view to improving their personal position within the enterprise, and with increasing the latter's productivity and economic growth in general. To that end major tax incentives have been offered to enterprises which provide training for their workers. At the same time the Service has been awarding at least 50,000 grants per annum to as many workers.

The regulations for training and employment, as provided for in the aforementioned Decree-Law No. 1446, article 1, paragraph 2, will apply to workers in the private sector. Nevertheless, public sector enterprises will be able to join the system with the prior agreement of their respective councils or, failing that, with the authorization of the Ministry to which they are subordinate or which links them with the Supreme Government.

Finally, it should be pointed out that the system covers workers currently in employment, dismissed public employees and unemployed persons seeking work for the first time.

Article 12, paragraph 1

Comments

The right recognized in article 12, paragraph 1 is set forth in article 1, paragraph 19 of Constitutional Act No. 3 which guarantees the right to health of all people and reads as follows:

/...

Article 12, paragraph 2 (b)

Comments

Without prejudice to the possibility of attaching to this report the legal provisions relating to the improvement of all aspects of environmental and industrial hygiene, attention should be drawn to Act No. 16,744 concerning industrial accidents and occupational diseases which was published in the Diario Oficial on 1 February 1968. The Act entered into force on that date and regulated this important aspect of social security previously covered by numerous legal and regulatory provisions.

According to this Act, it is compulsory for companies to participate in specialized insurance schemes and to provide their employees with an adequate system of accident insurance and rehabilitation in the event that accidents should occur. Social insurance against industrial accidents and occupational diseases is compulsory and covers the following persons:

1. All persons, including domestic servants and apprentices, working in another person's service, irrespective of the work they do, whether manual or non-manual, or the type of establishment, institution, service or person by which or by whom they are employed;
2. Public officials employed in the civil service of the State or by a municipality or local government institution;
3. Students having to do work that represents a source of income for the school;
4. Self-employed persons and workers who are members of the employer's family;
5. All students attending public and private educational establishments against accidents sustained in the course of their studies or the performance of practical training work.

Lastly, it should be pointed out that workers participate together with the employers in the management of these insurance schemes and in each individual establishment through joint committees. The National Health Service is responsible for overseeing the work carried out.

The agencies exercising these functions shall be private, non-profit-making and their main purpose shall be to provide accident insurance on a permanent basis.

Decree-Law No. 2200, to which we referred above, reiterates and expands still further the rules relating to worker protection. Indeed, all matters relating to the subject are regulated under title IX, articles 86 to 119 inclusive of this law.

The general rule concerning worker protection is referred to in broad terms in article 86 of the above-mentioned law which reads as follows:

/...

Article 12, paragraph 2 (d)

Comments

As we stated with regard to Article 12, paragraph 1 of the Covenant, health is a constitutional right guaranteed to all the inhabitants of the Republic.

Just recently, a major break-through in health legislation was achieved with the enactment of Decree-Law No. 2763, published in the Diario Oficial on 3 August 1979.

This Decree-Law reorganizes the Ministry of Health and related institutions, establishing a national system of Health Services which will give the population effective access to health care in the manner provided for by the Constitution, permitting the faithful and efficient implementation of policies in this area and the exercise of the State's responsibility for reallocating resources in accordance with the real needs of each region in the interests of homogeneous development.

Under article 1 of the aforementioned Decree-Law, the Ministry of Health and the various other bodies envisaged by that law will exercise the State's function of guaranteeing free and equal access to health promotion, protection and recovery and the rehabilitation of the sick, and will co-ordinate, supervise and, where necessary, carry out such activities.

The new health law creates four legal entities dependent on the Ministry of Health: the National Health Fund, the Chilean Institute of Public Health, the Health Services system and the Supply Centre of the National System of Health Services. These entities will be functionally decentralized public services with their own legal status and funds.

The National Health Fund will be the legal successor to the National Medical Service for Non-Medical Workers and the National Health Service and will have the same rights and obligations.

The Institute of Public Health will serve as a national reference laboratory in the fields of microbiology, immunology, dietetics, pharmacology, clinical laboratory studies, environmental pollution and occupational health.

The Health Services will be the legal successors to the National Health Service and the National Medical Service for Non-Manual Workers within their respective fields of competence, and will have the same rights and obligations as those bodies for the purposes of performing their functions.

The Supply Centre of the National System of Health Services will provide medicines, instruments and other supplies required by the organizations, entities, establishments and persons belonging to or registered with the system in order to carry out health promotion, protection or recovery activities and rehabilitation of the sick, for the sole purpose of implementing the plans and programmes of the Ministry of Health and of other public bodies whose institutional aims include the provision of health services to their recipients.

/...

"An employer shall take all the necessary measures to provide effective protection for his workers' lives and health.

"He shall also have the necessary facilities available to provide prompt and suitable medical, pharmaceutical and hospital care for any worker who is injured."

The following specific rules to ensure industrial and environmental hygiene are among those contained in the legal provisions to which we referred above:

(1) It is prohibited to sleep in work places.

(2) It is prohibited to eat in work places, and the necessary areas must be fitted out for that purpose.

(3) The Ministry of Public Health must introduce such minimum hygiene and safety measures as the work and workers' health demand.

(4) With a view to implementing paragraph 3 above, the Ministry of Health may provide for competent officials to visit work places at the times and on the occasions which it deems fit. It must fix the time-limit within which the reforms or measures referred to above must be carried out.

For a practical illustration of this report, especially with regard to environmental hygiene, we refer to the Ministry of Health report submitted to the Pan-American Sanitary Conference, pages 40 and 41 of which go into this subject in depth.

Article 12, paragraph 2 (c)

Comments

Through its dependent organs, the National Health Service and the National Medical Service for Non-Manual Workers, the Ministry of Public Health has undertaken extensive work for the prevention and treatment of epidemic, endemic, occupational and other diseases, through its preventive medicine and curative medicine plans.

Without prejudice to the documents describing the current health situation in Chile which we have annexed to this report, it should be pointed out that over the past 10 years there has been a decline in the mortality rates for all kinds of diseases. This trend, like the situation in most other areas of health, is the result of improved economic and social conditions, more widespread education, broader health service cover, the availability of new and better antibiotics and, in particular, the vaccination programmes incorporated into regular health activities.

For the purposes of illustration, it should be noted that the intensive poliomyelitis vaccination programme has yielded such excellent results that, since 1975, there have been no cases of that disease.

/...

List of reference materials annexed to the report*

1. Ministry of Agriculture - Office of Agricultural Planning: Report on Chilean agriculture during the years 1973-1978.
2. Ministry of Health - XXth Panamerican Sanitary Conference, St. George, Grenada, September-October 1978: Report of the Government of Chile.
3. Ministry of Health - National Food and Nutrition Council: Main food and nutrition programmes in Chile.
4. Ministry of Health, 1977: Health Policies
5. Ministry of Health: Report presented to the workshop on "Financing of Health Care in Latin America", Melgar, Colombia, April 1979.
6. National Council for Nursery Schools: working paper - background for the Congress of Nursery Schools and Kindergartens, Córdoba, Argentina.
7. Department of Planning and Programme: report.
8. Ministry of Housing and Urban Development: National Housing and Urban Development Policy.
9. Ministry of Housing and Urban Development: Description of the Housing and Urban Development Sector - Summary of its functions.
10. Ministry of Labour and Social Security - National Training and Employment Service: Training and Employment Statute - updated and revised text.
11. Act No. 16744, 23 January 1968: Employment Injuries and Occupational Diseases.
12. Decree-Law No. 2200, 1 May 1978: Rules Governing Contracts of Employment and the Protection of Workers.
13. Decree-Law No. 2465, 10 January 1979: Organic Law of the National Department of Minors.
14. Diario Oficial of the Republic of Chile No. 30363, 15 May 1979, and No. 30431, 3 August 1979.

* These reference materials can be consulted in the Secretariat archives in the original Spanish, as received from the Government of Chile.