

BELARUS

CCPR A/33/40 (1978)

521. The committee considered the initial report (CCPR/C/1/Add.27) submitted by the Byelorussian Soviet Socialist Republic at its 116th, 117th and 119th meetings on 30 and 31 October 1978 (CCPR/C/SR.116, 117 and 119).

522. The report was introduced by the representative of the State party who gave further information on certain questions dealt with in the report.

523. Referring to the Constitution of Byelorussia, adopted in April 1978, he stated that it confirmed the principle of socialist legality as a guiding principle in the activities of all State and public organizations. Observance of laws, and respect for the rules of socialist society were proclaimed a constitutional obligation of all citizens. In Byelorussia, provisions of international treaties were transformed into national legislation. Some legislative acts did not reproduce those provisions but provided for their application. The provisions of the most important international treaties concerning human rights, including the Covenant, had become legal norms in Byelorussia. The Constitution not merely confirmed human rights and fundamental freedoms but guaranteed their implementation. Equality of citizens was ensured in all fields of economic, political, social and cultural life. Human rights in Byelorussia were protected on the basis of civil, criminal and administrative procedures. Effective remedies were ensured to any person whose rights and freedoms had been infringed. Any legal guarantee implied legal responsibility of officials for infringement of human rights. The Constitution contained a number of provisions aimed at increasing efficiency of the Soviets, the most representative bodies of State power. Civil and political rights found further elaboration in the Constitution. Thus, the right to hold opinions was supplemented by guarantees of freedom of speech and of the press, and also by the right to criticize shortcomings in the activities of State bodies and public organizations.

524. Commenting on the report, members of the Committee commended its comprehensiveness as well as the relevance of the supplementary information given in the introductory statement of the representative. Further information was sought on the implementation of international treaties in Byelorussia, in particular of the Covenant; on the legislative system of the Byelorussian SSR and the interrelation between the Covenant and internal legislation, on how responsibility with regard to the Covenant was divided between the Soviet Union and the Byelorussian Republic, taking into account that not only the Soviet Union but also the Byelorussian SSR had assumed direct responsibility for the implementation of the Covenant; and on the scope of the jurisdiction of Byelorussia in relation to that of the Soviet Union on matters governed by the Covenant, in particular with regard to the degree of central control exercised by the Union Government on the one hand and the latitude left to the Byelorussian SSR to adopt legislative and other measures within its territory on the other hand. Members of the Committee asked whether it was possible to invoke provisions of the Covenant before State authorities and the courts, whether those provisions prevailed over internal norms in case of incompatibility, and what steps had been taken to publicize the text of the Covenant in order to inform citizens of its content. With regard to the asserting in the

report that “international co-operation among States in the field of human rights must primarily be directed towards the struggle against mass and gross violations of human rights”. Some members underlined the fact that it was also an international responsibility of each State party to the Covenant to ensure the enjoyment of the rights set forth in it to each individual in the territory of that State party. A question was asked on how the task of further development and perfection of legislation could be reconciled with the ultimate goal of the building of a classless society based on self-government.

525. Regarding article 1 of the Covenant, information was sought on the right to secession, on the practical realization of the right of the Byelorussian SSR to enter into relations with foreign States, conclude treaties with them, exchange diplomatic and consular representatives and take part in the work of international organizations, on the division of responsibilities between the Byelorussian SSR and the USSR and the position of executive power of the Byelorussian SSR within the USSR, as well as on the impact of the restrictions in article 34 of the Constitution on the practicability of the right to secession. The representative was also asked whether it would be possible for the Byelorussian SSR to adopt different standards for the implementation of the Covenant, be it more liberal or more restrictive, than those adopted by the Union.

526. With reference to article 2 of the Covenant, members of the Committee requested information on the manner in which equality of rights of citizens of the Byelorussian SSR and of other Union Republics was ensured, on guarantees against discrimination on political grounds, and on effective remedies in case of violations of human rights, taking into account the concurrent jurisdiction of the authorities of the USSR and the role of social organizations in protecting human rights.

527. Commenting on article 6 of the Covenant, some members asked what was the practice regarding the application of capital punishment in the Byelorussian SSR, for what specific crimes the death penalty was imposed, what was the meaning of “crimes against the State” in that regard, what were the aggravating circumstances which justified the death penalty, in how many cases it had been applied in recent years, and whether the Byelorussian SSR had considered abolishing it. A question was also asked as to what measures had been taken to reduce infant mortality.

528. In connection with articles 7 and 10 of the Covenant, information was sought on the mechanism of control in the Byelorussian SSR over the prohibition of torture, cruel, inhuman and degrading treatment or punishment. Members of the Committee asked what remedies were available to persons detained in penal or mental institutions who complained of wrongful detention or ill-treatment, whether the rules relating to solitary confinement were compatible with the provisions of the Covenant and whether any investigating commissions had been created in connection with conditions of life in prisons and corrective labour institutions.

529. Regarding article 8 of the Covenant, the unity of the right and the duty to work in the Byelorussian SSR was noted. Information was requested on the interrelation between the obligation to work and provisions of the Covenant, the extent to which the choice of jobs really lay with the authorities responsible for the direction of labour, the right not to work, the right of a member of a collective farm to unilaterally denounce his membership, and the right of the employer and the employee to cancel a labour contract.

530. With reference to article 9, information was sought on the guarantees of the right of citizens to freedom and personal inviolability, the circumstances in which persons could be subjected to preventive detention, the length of time persons could be held in custody pending trial, and whether there were persons in the Byelorussian SSR detained without trial for political reasons. The representative was asked whether the control of legality of deprivation of liberty was in the hands of the courts and whether the possibility of criminal punishment of judges for deliberate unjust sentences did not affect their independence and impartiality in the performance of their functions.

531. As regards article 12 of the Covenant, members of the Committee noted that the information contained in the report was rather brief on the right of an individual to leave his own country. They requested information on the provisions of the resolution of the Council of Ministers of the USSR of 22 September 1970, on the existence in the Byelorussian SSR of the right to leave the country as a legal right, on the restrictions of this right and their justification, on statistics concerning granting and withholding passports and visas and on sanctions, if any, in connexion with applications to leave the Byelorussian SSR for a foreign country.

532. With reference to article 13 of the Covenant, some members of the Committee expressed interest in the rights of aliens in the Byelorussian SSR, their status and the procedures available for protecting their rights. The representative was asked if citizens of other Union Republics were considered aliens, whether foreigners had legal capacity and ability, and what were the rights which were not extended to aliens living in Byelorussia.

533. Commenting on article 14 of the Covenant, members of the Committee asked how the independence and impartiality of tribunals was guaranteed, how the work of advocates and lawyers was organized in the Byelorussian SSR, how the right to a fair and public hearing was implemented in the Byelorussian SSR in practice, until what stage the right to consult a lawyer could be withheld, what were the exceptions when the accused could be tried in his absence, what were the cases and reasons for holding judicial proceedings in camera, how comrades' courts functioned in the Byelorussian SSR, and what was the role of those courts in relation to the protection of human rights. Further information was sought on the availability of the courts of Byelorussia to all the people and how the broad masses of the population actually participated in the conduct of public affairs, not only in time of elections but also on a daily basis.

534. With reference to article 17 of the Covenant, information was requested on how the inviolability of the dwellings of the citizens was guaranteed, on the possibility of entering dwellings in other instances than those mentioned in the report and on the text of the relevant laws in that respect.

535. In connection with article 18 of the Covenant, members of the Committee asked whether religious propaganda was allowed in the Byelorussian SSR on an equal footing with atheistic propaganda, how the rights of parents to transmit their convictions to their children was implemented and if the Decree of 23 June 1975, imposing far-reaching limitations on religious communities, was compatible with the Covenant.

536. As regards article 19 of the Covenant, information was sought on how the right to freedom of expression was implemented in practice. Questions were asked on the scope of restrictions with

regard to the right to hold and express opinions as provided for by the legislation of the Republic: What was their justification? To what extent was it possible to dissociate oneself from the dominating ideology of scientific communism or to promote ideas for change and improvement in the existing order although they were at variance with those of the régime., particularly in the field of human rights? Could article 48 of the Constitution proclaiming freedom of speech and of the press “in accordance with the interests of the people and in order to strengthen and develop the socialist system” be interpreted as limiting that freedom and being inconsistent with the Covenant? What kinds of literature were covered by restrictions under article 67 of the Criminal Code of the Byelorussian SSR? To what extent was “socialist realism applied to artistic and literary activity?

537. In connection with article 22 of the Covenant, some members asked whether it was possible to associate only with given organizations, if the fact that not everybody could enter the Communist Party was compatible with the Covenant and whether trade unions enjoyed the right of collective bargaining.

538. With reference to article 27 of the Covenant, it was noted that the report provided little information about the situation of minorities in the Byelorussian SSR. Information was requested on the legal status of Polish, Lithuanian and Jewish-speaking communities living in the Republic, and on measures taken to ensure the rights of those minorities. Members asked if they had their own schools and books, newspapers, radio and television services in their national languages.

539. The representative of the Byelorussian SSR commented on the observations and questions summarized in the preceding paragraphs. He pointed out that legislation of the Byelorussian SSR was included among matters covered by the jurisdiction of the Republic. In accordance with article 74 of the Constitution, Byelorussia participated in international treaties. Its obligations under international treaties, including the Covenant, were ensured by legislative acts which reproduced provisions of these treaties or provided for their direct application. The Covenant was published in the Byelorussian and Russian languages. The citizens could also study the text of the Covenant in the languages of Union Republics in public libraries. Legal education was organized in all secondary schools and higher educational institutions. Explaining the reference in the report concerning international co-operation in the struggle against mass and gross violations of human rights, he stated that the consistency of the struggle for peace and détente and against policies of aggression, colonialism and racism was, in the opinion of his Government, the determining factor for favourable conditions for effective activity in the field of human rights.

540. In connection with article 1 of the Covenant, the representative said that in accordance with article 69 of the Constitution, the Byelorussian SSR, which had frontiers with foreign States, had the right freely to secede from the USSR. Byelorussia had its own Ministry of Foreign Affairs, missions accredited to the United Nations and specialized agencies in New York, Paris and Geneva, participated in 60 international organizations, and was a party to 150 international treaties. As far as article 34 of the Constitution was concerned, it prohibited advocacy of racial or national exclusiveness and had nothing to do with the right to self-determination.

541. Replying to questions under article 2 of the Covenant, the representative pointed out that article 32 of the Constitution, concerning the equality of citizens before the law, was in full conformity with the provisions of the Covenant and that there could be no discrimination of citizens

on political grounds. Further developing this provision, article 47 of the Constitution confirmed the right to criticize shortcomings in State and public bodies and prohibited persecution for criticism. In accordance with article 31 of the Constitution, citizens of other Union Republics residing in Byelorussia enjoyed equal rights with citizens of the Byelorussian SSR. Civil rights were protected by ordinary and arbitration courts and in certain cases by comrades' courts. Public and social organizations, especially trade unions, played an important role in protecting the rights of citizens.

542. Commenting on questions under article 6 of the Covenant, he stressed the fact that capital punishment in the Byelorussian SSR was an exceptional and provisional measure pending its abolition in future. It was applied for treason, espionage, terrorism, terrorist acts against representatives of foreign States, banditry, premeditated murder in aggravating circumstances, group rape or rape by a dangerous recidivist. Every article of the Criminal Code of the Byelorussian SSR envisaging the death penalty provided for an alternative in the form of a prison term. No crimes punished by the death penalty had been committed in the Byelorussian SSR during the last 10 to 15 years. As an example of "State crimes" involving capital punishment, he cited the crimes of two State criminals who had participated in the mass annihilation of Soviet citizens during the Second World War. The representative also described the measures designed to protect the health of the mother and child as a result of which infant mortality had been drastically reduced.

543. With regard to questions under articles 7 and 10 of the Covenant, the representative said that torture, cruel, inhuman and degrading treatment or punishment were not tolerated in Byelorussian legislation or practice. It was prohibited to compel the accused to give evidence or apply to him coercive measures on pain of punishment under the Criminal Code. Norms prohibiting cruel and degrading treatment covered those in prisons or corrective labour institutions whose régime was determined by the Labour Corrective Code of the Byelorussian SSR. Procurators had the responsibility of controlling observance of laws when sentences were executed. Solitary confinement for 15 days, and for a maximum of one year, was applied in exceptional cases for gross violations of the régime when serving a sentence. Observation committees consisting of representatives of Soviets, trade unions, the Young Communist League and other public and social organizations participated in controlling the activities of institutions and bodies executing sentences of the courts.

544. Replying to questions under article 8, he said that the obligation to work as a civil duty for persons capable of working was in full conformity with the provisions of the Covenant. In accordance with article 38 of the Constitution, citizens had the right to choose their trade or profession or type of work in accordance with their inclinations, abilities, training and education, taking into account the needs of society. An employee could not be dismissed without the consent of the trade union committee. A citizen had the right to cancel any labour contract or his membership in a collective farm.

545. In response to questions under article 9 of the Covenant, the representative stated that under the Code of Criminal Procedure a person suspected of having committed a crime could be detained for a period of time not exceeding three days. Detention as a preventive measure could not exceed nine months. After a case had been transmitted to the court, all questions connected with deprivation of liberty were settled by the court and the procurator had no power in relation to the court. The Criminal Code of the Byelorussian SSR did not endanger the position of judges because

it provided for their criminal responsibility not for erroneous arrests or detentions but for deliberate unjust sentences, decisions and rulings. There were no political prisoners in the Byelorussian SSR and there had been no trials for political reasons.

546. With regard to article 12 of the Covenant, he stated that, although currently there was no necessity for inhabitants of the Byelorussian SSR to go abroad to seek a better life, there were cases when some persons requested permission to leave the country, mainly because of family reasons. In such cases, all the applications were considered on the basis of the resolution of the Council of Ministers of the USSR of 22 September 1970. If, in rare cases, the permission was refused, it was in full conformity with the law and provisions of the Covenant and was justified by reasons of State security, public order, property or family rights. There were no other restrictions and there were no sanctions in connection with applications for permission to leave the country.

547. In connection with questions under article 13 of the Covenant, the representative pointed out that in accordance with the Civil Code of the Byelorussian SSR, foreigners enjoyed legal capacity on a equal footing with Soviet citizens. Under article 35 of the Constitution, citizens of other countries and stateless persons in the Byelorussian SSR were guaranteed the rights and freedoms provided by law including the right to apply to a court and other State bodies for protection of their personal property, family and other rights. Foreigners could not form parties, vote or be elected.

548. Commenting on questions under article 14 of the Covenant, the representative stressed that the impartiality of judges in all the courts of Byelorussia was ensured by the fact that they were elected, independent, subject only to the law, and heard cases in conditions excluding any outside influence on them. Colleges of advocates were available to give legal assistance to citizens and organizations. Their organization and procedure were determined by the Constitution, by the law on the legal structure of the Byelorussian SSR and by the Statute regulating the bar of the Byelorussian SSR. A legal counsel could participate in an investigation from the moment of accusation. The presumption of innocence was one of the fundamental principles of criminal law. Hearings in all the courts were public, with a few exceptions in order to safeguard State secrets or to avoid dissemination of information on intimate aspects of life. However, the decisions of courts were always announced publicly. Comrades' courts were not included in the judicial system of the Republic. They were elected social bodies pursuing the aim of prevention of crimes and that of educating people in accordance with the rules of socialist society. People's assessors in courts were, like judges, responsible and accountable to their electors and could be recalled by them. They had all the rights of judges, were independent and subject only to the law.

549. Replying to questions under article 17 of the Covenant, he said that, in accordance with article 53 of the Constitution, citizens of the Byelorussian SSR were guaranteed inviolability of the home. No one could, without lawful grounds, enter a home against the will of those residing in it. Dwellings could be entered by authorized persons only when pursuing those suspected of having committed crimes and in order to prevent violations of public order and security of citizens. If a citizen considered that the inviolability of his home had been violated he could appeal to the procurator who was obliged to protect his interests.

550. With regard to article 18 of the Covenant, the representative stated that freedom of conscience, that is, the right to profess or not to profess any religion, was a constitutional principle. The church

was separated from the State and the school from the church in the Byelorussian SSR. The legislation did not prohibit religious teaching of children by their parents, nor did it prohibit their attending religious services. There was a new provision in the Constitution according to which incitement to hostility or hatred on religious grounds was prohibited. The provision was meant to protect the rights of individuals, irrespective of their attitude towards religion, and to prevent incitement to hatred among different religions, and was directed against anti-social manifestations under cover of religion. Religious communities had the right to publish religious literature, maintain religious educational institutions and produce objects of religious worship.

551. Commenting on questions under article 19 of the Covenant, he said that any citizen could not only hold personal opinions but also criticize short-comings in the work of State bodies and public organizations. Exercise of political freedoms was ensured by putting public buildings, streets and squares at the disposal of the working people and their organizations for meetings and demonstrations, by broad dissemination of information, and by the opportunity to use the press, television and radio. Article 48 of the Constitution implied that those freedoms could not be abused to the detriment of the interest of people and of the socialist system. There were no laws allowing persecution for any opinions including political ones. The Criminal Code provided for criminal responsibility for actions aimed at undermining the socialist system.

552. With regard to article 22 of the Covenant, he pointed out that the Communist Party, uniting the most conscientious representatives of workers, peasants and the intelligentsia, had deep roots in the population masses. Trade unions were not registered in the Byelorussian SSR and citizens had the right to freely form trade unions which were the widest form of association of the working people. Trade unions participated in planning the development of the national economy, they represented workers and civil servants before State and economic bodies and managed the State social insurance.

553. Replying to questions under article 27 of the Covenant, he said that people of Polish, Lithuanian and Jewish origin did not occupy specific regions and lived in various towns and villages of the Byelorussian SSR together with people of other nationalities. All of them participated in the political, economic, social and cultural life on an equal footing and had equal rights. It was the duty of every citizen of the Byelorussian SSR to respect the national dignity of other citizens and to strengthen friendship between the nations and nationalities of the Soviet State.

554. The representative expressed the willingness of his Government to continue its co-operation with the Committee on questions relating to the implementation of the Covenant in the Byelorussian SSR.

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320. In pursuance of paragraph (j) of the statement on its duties under article 40 of the Covenant, adopted at its eleventh session (CCPR/C/18), and the guidelines, adopted at its thirteenth session regarding the form and contents of reports from State parties (CCPR/C/20), the Committee, prior to its twenty-third session, entrusted a working group with the review of the information so far submitted by the Government of the Byelorussian Soviet Socialist Republic in order to identify those matters which it would seem most helpful to discuss with the representatives of the reporting State. The working group prepared a list of issues to be taken up in connection with the consideration of the second periodic report with the representatives of the Byelorussian SSR. The list, supplemented by the Committee, was transmitted to the representatives of the reporting State prior to their appearance before the Committee and appropriate explanations on the procedure to be followed (i.e. that the representatives of the Byelorussian Soviet Socialist Republic would be asked to comment on the issues listed, section by section, and to reply to members additional questions, if any) were given to them.

321. The Committee considered the second periodic report of the Byelorussian Soviet Socialist Republic (CCPR/C/28/Add.4) at its 568th, 569th and 571st meetings held on 7 and 8 November 1984 (CCPR/C/SR.568, 569 and 571).

322. The report was introduced by the representative of the State party who said that the second report reflected the major facets of the economic and political development of the Byelorussian SSR - including the adoption of legislative and statutory measures for strengthening the legal foundations of the Soviet system and consolidating the legal and practical guarantees of rights and freedoms for everyone - which had take place since the Committee's consideration of the first periodic report of his country in 1978.

323. The representative provided detailed information regarding the composition of the Supreme and local soviets of the Republic and cited legislation adopted on 11 February 1982 by the Presidium of the Supreme Soviet of the Byelorussian SSR which regulated the functions and activities of deputies and the procedures for public meetings at which the instructions given by the electorate to their deputies were discussed and defined. In that connection, he drew attention to one of the distinguishing features of socialist society, namely, the entity which human rights formed for it and the achievement of human rights through the active participation of the workers in directing the affairs of the State and society.

324. He drew the Committee's attention to the fact that 1984 marked the fortieth anniversary of his country's liberation from the forces of fascism and that one quarter of the population of the Byelorussian SSR had died in the course of the Second World War. The anniversary had provided an opportunity for a renewed expression of the desire of the people of the Byelorussian SSR for peace, security and the elimination of any risk of nuclear war. He felt that the enjoyment of all rights and freedoms and the development of international co-operation could only take place under conditions of peace and security.

325. Members of the Committee expressed their appreciation to the Government of the

Byelorussian SSR for its second periodic report and for the additional information provided by the representative of the reporting State.

Constitutional and legal framework within which the Covenant is implemented

326. With reference to that issue, members of the Committee wished to receive information on any significant changes relevant to the implementation of the Covenant since the previous report; promotional activities concerning the Covenant and factors and difficulties, if any, affecting the implementation of the Covenant. They also wished to receive information on the division of responsibility between the USSR and the Byelorussian SSR for implementation of the Covenant; the methods used to inform Byelorussian citizens of the rights affirmed in the Covenant, whether the teaching of law at university level included courses on the Covenant and the role of the Committee, whether a citizen could invoke the Covenant before an administrative authority or a court when he considered that one of the rights conferred therein had been infringed and whether the Covenant had been published in the Republic.

327. The representative explained that, since the initial report had been considered by the Committee in 1978, the Republic had enacted new legislation designed to improve and develop the enjoyment of civil and political rights covering such matters as elections to the Supreme Soviet of the Byelorussian SSR, local soviets, the judicial structure and people's courts at the regional level; the removal of judges at the regional level; the acquisition of Byelorussian citizenship; instructions for deputies; and the colleges of advocates and citizens' organizations. Since many breaches of the law could be attributed to an inadequate knowledge of the laws and regulations on the part of officials or citizens, a major public education effort had also been undertaken. The Soviet legal system drew on the very nature of socialist society, with its attachment to the principles of legality, equality, mutual respect and responsibility towards the people. However, it must be borne in mind that the construction of socialist society was accompanied by specified problems and difficulties, both domestic and international in nature. The arms race triggered off by imperialist circles did not merely pursue military objectives but also sought to exhaust the Soviet Union, to deprive it of the material resources needed to solve economic and social problems. Socialism was a dynamic social system developing through the resolution of contradictions and difficulties. The free confrontation of views and broad discussion were normal phenomena recognized by law and approved by the public as a means of solving immediate problems in all fields of life. However, the main principle underlying decision-making was the subordination of the minority to the majority, with guarantees for both.

328. With regard to the division of responsibility between the USSR and the Byelorussian SSR for implementation of the Covenant, he noted that the question was regulated by the provisions of the Soviet Constitution relating to the establishment of legislative norms, that socialist federalism fully guaranteed the sovereign rights of the federal republics and that the areas of competence of the Byelorussian SSR were listed in article 70 of its Constitution. By virtue of that article and its general responsibility for legislative enactments and implementation, the Byelorussian SSR assumed direct responsibility for the obligations it had assumed upon becoming a party to the Covenant.

329. Regarding the extent to which information about the Covenant was disseminated, the representative said that in all schools providing general education pupils studied the basic principles

of law under a 35-hour programme; in technical schools and in special educational institutions the programme comprised 110 hours. At university law faculties the Covenant was studied individually. The Covenant was reproduced in full in the latest book on the treaties to which the Byelorussian SSR was a party; citizens of the Republic were fully entitled to invoke its provisions before the courts or before administrative authorities.

330. Regarding the implementation of article 56 of the Constitution, he stated that any interested party was entitled to have recourse to the courts for the protection of a right that had been violated or was being disputed, that a court must take up a case if a person turned to it for the defense of his rights or legally protected interests and that in cases arising under administrative law citizens could submit complaints and declarations.

Non-discrimination, particularly in regard to “political or other opinion” and the position of members of the Communist Party as compared with non-members

331. With reference to that issue, members of the Committee wished to receive information on the implementation of article 2, paragraph 1, and articles 25 and 26 of the Covenant.

332. In that connection, the representative stated that the equal rights of citizens were guaranteed by the Constitution in all fields of economic, political, social and cultural life, that all citizens were equal before the law and that women had equal access with men to education and vocational training, employment, remuneration and promotion and to social, political and cultural activities. The equality of spouses in family life was guaranteed and marriage could be contracted only with the mutual consent of the spouses. Further, the law provided protection and material and moral support to women enabling them to combine work with motherhood. Members of the Communist Party were not privileged in relation to citizens who did not belong to the Party and they were required to exercise their rights and to discharge their obligations like all other citizens.

Right to life and the application of the death penalty

333. With regard to that issue, members of the Committee wished to receive information regarding the position of the Byelorussian SSR on the general comments of the Committee to article 6 of the Covenant, on how many times the death penalty had been applied in the course of the past five years, whether the Byelorussian SSR was contemplating abolishing the death penalty and whether the environment in the Republic was protected by administrative or legislative measures.

334. In his reply, the representative of the reporting State said that his country had supported all General Assembly resolutions on ending the arms race, limiting the proliferation of nuclear arms and eliminating any threat of nuclear war. It had sponsored a resolution on the inalienable right to life at the thirty-ninth session of the General Assembly. His delegation fully endorsed the general comments made by the Committee during the current session concerning article 6 of the Covenant.

335. Replying to other questions, the representative stated that during the past six years the death sentence had been pronounced only for premeditated murder with aggravating circumstances and for very serious crimes, but that it was not mandatory. He also explained that the environment was a major concern of the Byelorussian SSR and that the Criminal Code established criminal liability

for pollution of air, water and crops as well as for unlawful felling of trees.

Liberty and security of the person

336. Members of the Committee wished to receive information on the circumstances and periods for which persons might be held in preventive detention without being charged with a criminal offence, detention in institutions other than prisons, remedies available to persons (and their relatives) who believed that they were being detained wrongfully, the observance of article 9, paragraphs 2, 3 and 4, of the Covenant, the maximum period for which persons might be detained pending trial, the contact between arrested persons and lawyers and the promptness with which the families of arrested persons were informed of an arrest.

337. In addition, members requested information on the criteria for determining when a case was so complex as to require the extension of the period of pre-trial detention, whether the period of pre-trial detention was taken into consideration when the verdict was delivered, whether the limitation on the period of pre-trial detention was also applicable in the case of lesser offences, such as immigration infractions, and whether a suspect could refuse to answer questions put to him at the time of arrest by the procurator.

338. The representative of the reporting State said that constitutional guarantees regarding the security of the person were set forth in detail and developed in many legal instruments such as the Code of Criminal Procedure and the Byelorussian Judiciary Act. Under article 7 of the Code of Criminal Procedure, for example, the procurator was required to release anyone detained longer than the prescribed time-limit. Article 3 of the Code limited liability to criminal prosecution only to authors of crimes committed deliberately or through negligence.

339. Legislation concerning pre-trial detention empowered the organs responsible for the investigation to arrest anyone suspected of a crime normally punished by deprivation of liberty in cases where he had been caught in flagrant delicto where he had been recognized by witnesses or victims, or where evidence of guilt had been found on his person or at his domicile. The period of pre-trial detention might be extended up to a maximum of nine months in very complex cases, but sanctions envisaged in the course of the preliminary investigation might be cancelled or amended by decision of the court during the trial. Moreover, suspects or their families could lodge complaints against the organs responsible for the inquiry or investigation and the examining magistrate or the procurator was required to consider such complaints within 24 hours.

340. The representative also stated that arrested persons enjoyed many other rights, including the right to be informed of the reasons for their arrest and the charges against them, the right to provide evidence and to be informed of the conclusions of the preliminary investigation, the right to be assisted by a defense counsel and the right to appeal any adverse judgement. The organs responsible for the preliminary investigation were required to transmit their files to the procurator who must either confirm the penalty or release the accused person, notifying his family immediately of the decision taken. If necessary, the children of an arrested or sentenced person were entrusted to an organization or other members of the family by a court order and measures were taken to protect his property. Finally, legislation guaranteed the right of any accused person to be assisted by a defense counsel in the course of the investigation as well as at the trial itself and there was no limit on the

number and length of interviews between defense counsel and his client.

341. Replying to other questions, the representative stated that the maximum period of pre-trial arrest was nine months, but as a rule it only lasted two months, that during the past decade courts had not made use of the nine-month period and that the period of pre-trial arrest was deducted from the sentence if the person was convicted and in the case of acquittal the person was compensated.

342. Finally, the representative explained that the accused had the right to make a statement but was not obliged to do so and that he was presumed innocent, the onus of proof being on the investigators and the court.

Treatment of prisoners and other detainees

343. With reference to that issue, members of the Committee wished to know whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with and whether prison and corrective labour camp regulations and directives were made known to and were accessible to prisoners. Information was also requested on arrangements for the supervision of prisons and other places of detention, procedures for receiving and investigating complaints by detainees and new measures introduced pursuant to the Decrees dated 29 March 1977 and 16 December 1982 of the Presidium of the Supreme Soviet of the Byelorussian SSR.

344. In addition, members of the Committee wished to receive clarification with regard to the amendment of article 48-1 of the Criminal Code, as to what form the relevant administrative processes took, what guarantees were applicable to those processes and what the consequences of such administrative processes were for the accused person. Additional information was sought as to whether accused juveniles were subject to the same rules and protected by the same guarantees as adults, whether there were different régimes of detention within each centre or a single régime, whether the administration of the various categories came under different authorities and on what basis people were placed in different categories whether detainees generally served their sentences in the Byelorussian SSR or in other parts of the territory of the USSR, what rules governed solitary confinement, the dimensions of cells and the time a person could be detained in isolation and whether judges inspected prisons and labour camps. Finally, it was asked whether the individual against whom administrative measures had been taken had the right to a court hearing.

345. Replying to the questions, the representative stated that the criminal legislation of the Byelorussian SSR laid down in detail the procedure for the preliminary investigation, detention and arrest of suspects and accused persons and for the examination of witnesses, victims and third parties. The law provided numerous guarantees to prevent the use of force against suspects or accused or convicted persons, including the separation of adults from minors and men from women. Persons sentenced to deprivation of liberty were permitted to purchase food, books and newspapers with money earned in prison and were granted short and long visits from relatives and short periods of release from prison (up to seven days). They could hold interviews with their lawyers, were required to work an eight-hour day, with one day's rest per week, and were paid by the quality and quantity of their output in accordance with the rates applied in the national economy. Unskilled workers received obligatory vocational training. Prophylactic care was provided in strict compliance with health regulations. The régimes at corrective labour colonies were categorized as normal,

intensive, strict and special; minors served their sentences in educational labour colonies; while women prisoners served their sentences in normal-régime corrective colonies. The representative stressed that all those provisions of the Corrective Labour Code and other legislation complied with the Standard Minimum Rules for the Treatment of Prisoners.

346. With regard to labour camp regulations and their accessibility to prisoners, he noted that the time-table at corrective labour institutions must include time for work, rest, study and political education and that all regulations were posted at easily accessible points.

347. The representative stated that the supervision of prisons and other places of detention was the responsibility of the Office of the Procurator of the Republic, who was required to put an end to any contravention of the law, to bring guilty persons to justice and to take necessary corrective action. Procurators were obliged to make regular visits to prisons and to examine prisoners' complaints. In accordance with article 9 of the Corrective Labour Code, the general public had a part to play in supervising the institutions and bodies responsible for the execution of sentences of imprisonment.

348. With regard to new measures introduced by the Decrees dated 29 March 1977 and 16 December 1982 of the Presidium of the Supreme Soviet of the Byelorussian SSR, the representative explained that the Decree of 1977 did away with criminal liability in respect of acts of minor hooliganism repeated within the space of a year and introduced suspended sentences in the case of minors sentenced to less than three years' imprisonment for a first offence where such persons could be rehabilitated without isolation from society. It also substituted administrative for criminal proceedings in the case of offences which did not involve great social danger, made provision for the conditional commutation of a sentence or the imposition of a less severe punishment and introduced a number of other changes. The Decree of 16 December 1982 extended the possibility of suspended sentences to almost all those sentenced to terms of imprisonment not exceeding three years and significantly widened the use of fines and of corrective labour at the offender's place of work, deleting the sentence of deprivation of liberty from a number of articles in the Criminal Code.

349. Replying to additional questions raised, the representative said that, in conformity with the amendment to article 48-1 of the Criminal Code, a person who had committed a minor crime punishable by not more than one year's deprivation of liberty might be freed from criminal liability and held liable administratively if it was seen that he could be reformed and rehabilitated more effectively without the imposition of a criminal penalty; the alternative administrative procedure might involve a fine of up to 100 roubles.

350. With regard to accused juveniles, he stated that article 10 of the Criminal Code defined minors for purposes of the law as persons under the age of 18. Minors served their sentences separately from adult prisoners in educational corrective labour camps where they were held under less stringent conditions, being entitled to receive more visits, more parcels and transfers of money. The decision to transfer a convicted person who had reached the age of 18 while serving his sentence to an adult corrective establishment could only be taken by a court.

351. The representative stressed that the aim of all corrective treatment was to rehabilitate the offender and to instil honesty. Finally, he noted that visits by relatives were granted to all prisoners that each centre applied single régime, that the Corrective Labour Code permitted prisoners to be

held in solitary confinement only as punishment and for not more than 15 days and that systematic visits were made by judges, especially in connection with the granting of conditional release or mitigation of sentence.

Right to fair trial and equality before the law

352. With reference to that issue, members of the Committee wished to receive information on the legal guarantees with regard to the right of all persons to a fair and public hearing by a competent, independent and impartial tribunal, on relevant rules and practices concerning the publicity of trials and the public pronouncement of judgements as required by article 14, paragraph 1, of the Covenant, on specific rules concerning the admission of the mass media to court hearings, on facilities to enable accused persons to obtain legal assistance and to exercise their right to defense and further information concerning the draft Byelorussian code on administrative violations.

353. Members also requested further information on the procedure for removing judges from office, the tenure of judges and whether judges could be dismissed in an arbitrary manner that could affect their independence and impartiality.

354. The representative of the reporting State explained that district and municipal people's courts dealt with the vast majority of civil and criminal cases, the highest body being the Supreme Court. The Constitution and other legislation guaranteed the right to an open, fair and impartial hearing in an independent court. Cases were heard on a collegiate basis; in courts of the first instance, hearings took place before a judge and two independent and elected people's assessors. Judges in both the people's courts and the Supreme Court were elected by general, equal and direct suffrage and secret ballot for terms of five years. Judges and people's assessors could be removed from office if they did not carry out their tasks satisfactorily or proved unworthy of their responsibilities according to a procedure set out in a Decree of 26 November 1981.

355. Proceedings in all courts were open to the public except in cases involving State secrets, crimes committed by minors, sex crimes or other crimes when it was necessary to protect the privacy of those involved. Any citizen over the age of 16 had the right to be present at a court hearing and cases could be covered in the news media. There was no legal provision to prevent press correspondents from covering trials.

356. The Constitution and other legislation guaranteed a person's right to legal protection against violation of his honor, dignity, life, health, freedom and property and State bodies were obliged to ensure that accused persons had the possibility of defending themselves by all legal means. Accused persons had the right to know the substance of the accusation, to submit evidence, to lodge an appeal, to be provided with details of the case after completion of the investigation, to participate in the court hearing and to contest the acts and decisions of the investigator, the procurator and the court. The accused also had the right to choose counsel and in cases involving minors or handicapped persons counsel was appointed immediately the accusation was made. Defense counsel was bound to use all legal means to determine the circumstances of the case and to give the accused the necessary legal assistance.

357. With regard to the question of the draft Byelorussian code on administrative violations, he said

that the draft code would shortly be completed and was expected to be discussed at the forthcoming session of the Supreme Soviet of the Byelorussian SSR in December 1984.

Freedom of movement

358. With reference to that issue, members of the Committee wished to receive information on the restrictions on the freedom of citizens to leave the country for travel abroad or for emigration.

359. With regard to the emigration of Jewish families from the Soviet Union, some members wished to know the general policy in the Byelorussian SSR, how many applications had been made in recent years, and on what grounds the public authorities could deny a visa for travel abroad.

360. The representative of the reporting State noted that thousands of Byelorussian citizens traveled to foreign countries every year as tourists, on official mission, in connection with cultural, technical or scientific events, or to study or visit relations living abroad. Requests for travel abroad with a view to permanent residence were made basically for reasons of family reunification or as a result of marriage to a foreigner. All such applications were made to the visa sections of the offices of internal affairs of the executive committees of regional soviets of people's deputies and were considered in the normal manner and in accordance with the law. In accordance with article 12 of the Covenant, the right to leave was subject solely to such limitations as were laid down by law and as were necessary to protect national security, public order, public health or morals or the rights and freedom of others. The exit permit process at times required the prior settlement of property and family questions and other matters involving other people.

361. Replying to questions raised concerning exit permits for citizens of Jewish origin, the representative said that the question was dealt with by the appropriate authorities on the basis of all-Union legislation. During the previous 40 years, more than 11,000 people of Jewish origin had emigrated from the Byelorussian SSR, but the number of requests to leave had decreased in recent years, no doubt because those who wished to leave had already done so.

Interference with privacy, particularly with regard to postal and telephone communications

362. With reference to that issue, the representative of the Byelorussian SSR explained that, under article 55 of the Constitution, respect for the individual and protection of the rights and freedoms of citizens was the duty of all State bodies, public organizations and officials and that, under article 54, the privacy of citizens and of their correspondence, telephone conversations and telegraphic communications was protected by law. Under article 173 of the Code of Criminal Procedure of the Republic, the interception of correspondence was allowed in exceptional cases but only on the basis of a warrant from the procurator or by court order. There was no legislation in the Republic that empowered any State organ or any individual to tap telephone conversations. Under article 135 of the Criminal Code of the Republic, criminal liability could be incurred for violation of confidentiality of correspondence, telephone conversations and telegraphic communications.

Freedom of thought, conscience and religion

363. With regard to that issue, members of the Committee wished to receive relevant information

on what the position of the authorities would be if a group of parents asked for religious education to be taught in schools and in regard to religious propaganda, whether there were laws and regulations controlling the practice of religion, whether any prosecutions had been brought under such laws and whether there were any religious groups which were in conflict with the authorities in the Republic under the relevant laws and regulations.

364. In his reply, the representative referred to various constitutional and legislative provisions under which freedom of thought, conscience and religion were guaranteed. He noted in that connection the existence of special legal norms which provided that any person who obstructed the performance of religious rites would incur liability, provided those rites did not disturb public order or constitute an infringement of the rights of citizens. A Decree of 1966 also provided that if on the ground of his attitude towards religion any citizen was refused employment or entry into an educational establishment, was dismissed from employment or deprived of any legal privileges or suffered any other significant restriction of his rights as a citizen, criminal liability would be incurred under article 139 of the Criminal Code.

365. Thus believers were provided with all the necessary conditions to profess their religion, but the State also required that they comply unconditionally with Soviet law. Under that law, meetings of believers were not to be used to make political statements directed against the interests of the State and believers must not be encouraged to neglect their obligations as citizens or to engage in practices that could damage their health.

366. Currently, there were 10 religious faiths in the Republic. No one had ever been prosecuted for his religious beliefs and such prosecution would be unconstitutional by virtue of article 50 of the Constitution. Education was a secular matter which excluded the influence of the Church, and the establishment of religious schools for children was therefore not permitted. Religious education could, however, be obtained in special institutions which could be attended by adults and children could receive religious instruction from their parents. Churches were open to all, as was the teaching given therein, and religious literature was available. There was no justification therefore for the view that religious propaganda was not specifically provided for.

Freedom of expression

367. With reference to that issue, members of the Committee wished to receive information on controls exercised on freedom of the press and the mass media in cases where persons were arrested or detained for expressing political views and on restrictions on political debate. They also asked to what extent an individual was permitted, in private and in public, to express his disagreement with the existing order and to propagate ideas for peaceful change even if those ideas were at variance with those of the régime, and whether the penal provisions against slander could not be misused to suppress criticism. Further information on the freedom of assembly and freedom of the press was also requested.

368. Replying to those questions, the representative of the State party said that any citizen of the Byelorussian SSR was free not only to hold his own opinions, but also to criticize shortcomings in the work of State organs and public organizations. Officials had an obligation to consider workers' proposals and statements within a fixed period of time, to reply to them and take the necessary

action. Victimization for the expression of criticism was prohibited and persons guilty of it were liable in law. Freedom of the press in the Byelorussian SSR was guaranteed by the Constitution and found its primary expression in the absence of the material dependence of newspapers and magazines on private owners. Newspapers and journals were issued by party organizations, government departments, trade unions, artistic associations, scientific and technical societies etc. The only restrictions imposed on the Soviet press by law were the it must not engage in war propaganda or incitement to racial or national hatred, offend the feelings of believers, publish pornography, incite persons to violence and the undermining of Soviet power or publish material contrary to the truth. The spirit of those restrictions did not contravene article 19, paragraph 3, of the Covenant and they were considered to be reasonable and necessary.

369. Finally, the representative noted that article 67 of the Criminal Code, which provided for punishment of slanderous and libelous attacks on the Soviet State structure, also specified the limitations in that respect and that article 28 of the Criminal Code also gave a specific definition of libel as consisting of manifestly false statements or deliberate belittlement of the worth of the individual, expressed in an indecent manner.

Freedom of assembly and association

370. On that issue, members of the Committee wished to receive information in particular on the right to form political parties, trade unions, associations and groups to promote human rights and other special interests.

371. In reply, the representative of the reporting State said that there were special provisions whereby citizens could hold gatherings in their homes as a form of direct participation in public and State Affairs and that there were no restrictions on the freedom of association other than those provided in the Criminal Code of the Republic.

Protection of family and children

372. Members of the Committee requested information on the right of citizens to marry aliens and on the revised section V of the Byelorussian Marriages and Family Code.

373. In his reply, the representative of the State party explained that amendments to the Marriages and Family Code had been proposed with a view to bringing it into line with the Act of Citizenship of the USSR. Section V of the Code dealt with the application to foreign and stateless persons of Soviet legislation on marriage and the family. In particular, it governed the rights and duties of foreigners and stateless persons within marriage and in family affairs; marriage between a Soviet citizen and a foreigner and between foreigners on the territory of the Byelorussian SSR; the conclusion of marriage between Soviet citizens in Byelorussian consular institutions; recognition of marriages concluded outside the Byelorussian SSR' dissolution of marriages between Soviet and foreign citizens; recognition of paternity, guardianship, registration of civil acts of family and marriage and recognition of documents issued in foreign States. Section V of the Code also dealt with the question of the marriage and family laws of other States and related international treaties.

Exercise and restriction of political rights

374. With reference to that issue, members of the Committee wished to receive information on people's control committees in the Republic and why they had been found necessary.

375. The representative replied that the functions of the organs of people's control were to monitor the implementation of economic and social development plans, to ensure the economic use of human and material resources, to combat waste, to promote and encourage the scientific organization of work and to supervise the progress of work in economic enterprises. In the case of persons guilty of a violation or breach of the law, the organs of people's control endeavoured to encourage criticism and to discuss with such persons the errors of their ways. Any material on misappropriation by officials under investigation by the organs of people's control was sent to the Procurator's Office for a decision on whether criminal proceedings should be instituted. The members of the organs of people's control were elected for periods of two years at general assemblies of workers.

Rights of minorities

376. Members of the Committee wished to receive information regarding the demographic composition of the population of the Byelorussian SSR, the languages taught and the measures taken to preserve the culture of minority groups. Information was also requested on the situation of the Polish, Lithuanian and Jewish communities in the Republic.

377. Replying to those questions, the representative said that citizens of more than 80 nations lived and worked in the Byelorussian SSR. According to the 1979 census, there were 7,569,000 persons of Byelorussian origin (80 per cent of the population), 1,134,000 persons of Russian origin (12 per cent), 403,000 of Polish origin (4 per cent), 231,000 of Ukrainian origin (2.5 per cent), 135,000 persons of Jewish origin (1.4 per cent) and 61,000 persons of other origins (0.7 per cent).

378. With regard to legislation, he noted that the Constitution of the Byelorussian SSR stipulated that any direct or indirect restriction on the rights or privileges of citizens on the ground of race or nationality was punishable by law. All citizens regardless of origin participated in the political, economic, social and cultural life of the country on an equal footing and enjoyed equal rights and freedoms. Persons of different national origins did not live apart from others in any way.

379. Persons of Polish, Jewish and Lithuanian origin were entitled to enjoy their particular, culture, profess their religion and use their native language. There were no special schools for such persons, however, simply because they did not live in concentrated groups but were scattered throughout the Republic. Furthermore, the number of families whose members belonged to different nationalities was constantly on the increase and had grown by 200,000 during the preceding decade.

General observations

380. Members of the Committee thanked the delegation of the Byelorussian SSR for the spirit of co-operation in which the information requested had been supplied and which members of the Committee wished to consider in depth.

381. Concluding the consideration of the second periodic report of the Byelorussian SSR, the

Chairman thanked the delegation for its co-operation with members of the Committee.

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519. The Committee considered the third periodic report of Belarus (CCPR/C/52/Add.8) at its 1151st to 1153rd meetings, held on 14 and 15 July 1992 (CCPR/C/SR.1151-1153). (For the composition of the delegation, see annex VIII.).

520. The report was introduced by the representative of the State party, who emphasized that since the consideration of the second periodic report and the preparation of the third periodic report in July 1990, enormous changes had taken place in the political, social and economic life of Belarus. The representative drew attention to the new legislation adopted or being prepared by the national Parliament, thus specifying the constitutional and legal framework for the implementation of the Covenant. In particular, he mentioned a new electoral act, a nationality act adopted in 1991, an act on referendums of 13 June 1991, an act on the basic principles of the people's power of 27 February 1991, an act amending the monopoly of the Communist Party and introducing a multiparty system and acts on military service, together with a range of economic laws.

521. The requirements for the publication and entry into force of all legislative texts adopted by the Supreme Soviet were also provided for in a law which made their publication mandatory within 10 days of their adoption. International treaties concluded by Belarus also had to be published in the newspapers, in Belarusian and in Russian so that each citizen might be informed of them.

522. The Declaration of State Sovereignty by Belarus, adopted by the Supreme Soviet at its first session on 27 July 1990, was the cornerstone of the new political system emerging in Belarus. A law of 25 August 1991 had given the Declaration the rank of a constitutional law. It was an extremely significant document which had not had any equivalent in 70 years of Soviet power. In particular, the Declaration proclaimed the supremacy of the rule of law and the independence of the Republic in relations with other countries.

523. The representative said that pending the adoption of the new Constitution, which was currently being prepared, and one of whose basic features was that it took account of all the international obligations assumed by Belarus, the current Constitution, as amended, remained in force and the legislation of the former Union of Soviet Socialist Republics still applied, provided it was not incompatible with the national Constitution.

524. The representative of Belarus told the Committee that on 14 January 1992 the Supreme Soviet had ratified the Optional Protocol to the International Covenant and had made the declaration provided for in article 41 of the Covenant. He also said that Belarus had announced its intention to declare its territory a nuclear-weapon-free zone and, ultimately, to become a neutral State.

Constitutional and legal framework within which the Covenant is implemented; right to self-determination; non-discrimination and equality of the sexes; and rights of persons belonging to minorities

525. Regarding those issues, the members of the Committee asked what had been the legal and practical consequences of the dissolution of the Soviet Union and the establishment of the

Commonwealth of Independent States for the implementation of the rights set forth in the Covenant, and their enjoyment by individuals; whether there had been any changes regarding the remedies available to individuals who considered they had been victims of a violation of their rights under the covenant; what was the status of the Covenant under domestic law; and what had been the impact on the actual implementation of the Covenant of the adoption of the Act on the Status of Judges of 4 August 1989, the Contempt of Court Act of 2 November 1989 and the Foundations of Legislation on the Judicial System of 17 November 1989. They also asked for clarification of the new systems of power being established in Belarus; of the measures taken or contemplated to ensure consistency between any new constitutional provisions or other legal instruments and the Covenant; of the activities undertaken to enhance the role and status of women; and what improvements had occurred in the situation of minorities since the consideration of the second periodic report.

526. In addition, members of the Committee sought further information with respect to the provisions of the draft Constitution and made numerous comments thereon. They wished to know, *inter alia*, what effect the disappearance of the Supreme Court of the former USSR had had on the status and functioning of the Supreme Court of Belarus; why the right to vote was denied to people in custody under procedures established under criminal procedural law; whether, pending new legislation, the criminal legislation of the former USSR was still in force; and whether Jewish people, perceived elsewhere in the world as a religious minority, continued to be qualified, as under earlier Soviet law, as a national minority. Clarification was also requested on the selection and nomination of judges, their career structure and the disciplinary measures to which they were subject; on the role actually played by the Procurator's Office, especially with respect to the courts; on the role of the police, and on the procedure for appeal against decisions and actions of State bodies or officials, as well as against death sentences passed by the Supreme Court of Belarus. In addition, they wished to know whether domestic legislation that contravened the Covenant would be declared null and void and whether the Covenant would be applied directly in the courts.

527. In reply, the representative of the State party said that the dissolution of the USSR had given rise to economic disruptions, but as far as the rights of citizens were concerned, there had been an enormous step forward. After the ratification of the Covenant, many texts had been adopted to guarantee the exercise of human rights. At present, those guarantees were being expanded and increased. Nearly all the laws enacted since 1990 included a provision stating that, if a particular question was not covered by a law, the international rule applied. The draft of the new Constitution on which the Committee members had based their comments had been revised several times and was already out of date. The latest draft was designed to reflect as much of the experience of other countries as possible, so that a workable Constitution would be produced. Pending the adoption of new legislation, the laws of the former USSR were still in force, provided that they did not flagrantly contradict the direction being taken by the new Republic. In other cases, Belarus had applied the provisions of international standards such as the Covenant. Belarus was committed to respecting its international obligations under the treaties to which it was a party; therefore, there was no need to incorporate the Covenant into the Constitution. Concerning the withdrawal of voting rights from persons in detention, the Ministry of Justice would endeavor to ensure that the anomaly was removed in the new legislation. The legislation affecting the activities of procurators had not been changed; however, in practice, procurators merely offered their opinions in their capacity as prosecuting counsel acting on behalf of the State. There were plans to place the Procurator's Office under the authority of the Ministry of Justice in order to remove its influence over the courts

altogether.

528. There was as yet no Administrative Court in Belarus and the law currently in force regarding violations of citizens' rights was that of the former Soviet Union. One of several possibilities being considered was action by a collegiate body, which could be appealed against. The new Criminal Code was still at the drafting stage.

529. The representative said that 77 nationalities currently lived together in Belarus. The four main minorities were Ukrainians, Russians, Poles and Jews. A draft law on the question of minorities would probably be adopted on second readings at the autumn session of Parliament. Members of national minorities in Belarus enjoyed the same rights as all other citizens of the Republic. There were about 700,000 Jews in Belarus and they possessed their own religious institutions and schools, although perhaps not as many as they would like. The State placed no obstacles in the way of such institutions.

530. He informed the Committee that legislative provisions on the status of women, pregnancy and children had been amended considerably, and in that connection cited the law of 28 June 1992.

Right to life, treatment of prisoners and other detainees, and liberty and security of the person

531. With respect to these issues, the members of the Committee wished to know about the current status of planned criminal legislation designed to reduce significantly the number of crimes for which capital punishment could be ordered; how often and for what crimes the death penalty had been imposed and carried out since the consideration of the second periodic report; and whether any consideration had been given in Belarus to the abolition of the death penalty and accession to the Second Optional Protocol to the Covenant. They also requested further information on safeguards against torture and other impermissible methods of investigation; on the changes made to the Code of Criminal Procedure and the Corrective Labour Code relating to the implementation of article 10 of the Covenant; on the conditions of detention in colony settlements and corrective labour colonies, and on the compliance of their authorities with United Nations Standard Minimum Rules for the Treatment of Prisoners; on the conditions of person held in punishment or disciplinary isolation units or in solitary confinement; on the existence of penal sanctions consisting only of forced labour, and on the compatibility of any such legislation with article 8 of the Covenant; on measures taken to restructure the work of the militia and other police institutions, with a view to better protecting the interests of the State and the rights of citizens; and on experience to date with the actual implementation of the Decrees adopted in July 1987 and January 1988 regulating conditions and procedures for providing psychiatric care.

532. The representative of the State party, replying to the questions raised, said that under the proposed new criminal law of Belarus the number of crimes for which capital punishment could be ordered had been reduced from 38 to 4: deliberate murder with aggravating circumstances; rape with serious consequences; the kidnaping of a child; and acts of terrorism with aggravating circumstances. The abolition of the death penalty was an aspiration widely shared, but a majority still favored its maintenance. In Parliament, a majority of deputies also favored its retention for grave offences. Comparatively few persons had been sentenced to death since 1985, ranging from 17 to 21 cases per year. In 25 to 30 per cent of such cases, the sentence had been commuted to

deprivation of liberty. There had been an increase recently in the crime rate, which might be connected with the current economic situation, but there had not been any proportional increase in the number of persons sentenced to capital punishment. In 1991, there had been 600 murders in Belarus, which was an increase of 200 over the previous year, but only 20 persons had been sentenced to death. Torture was strictly prohibited under the Code of Criminal Procedure and its actual or threatened use was a punishable offence.

533. With respect to conditions of detention, the representative described various types of régimes applied - general, hard, strict and special - according to the seriousness of the offence committed. He explained that colony settlements were places of deprivation of freedom where educational activities were conducted in conjunction with corrective labour. Such colonies were reserved for persons who had committed only offences of negligence without serious consequences. The Government was determined to do all in its power to achieve full compliance with the Standard Minimum Rules for the Treatment of Prisoners. Solitary confinement was applied only in cases of persistent disobedience and only when all other means had been tried and failed. The maximum period of confinement was 15 days in disciplinary isolation units or colonies and 6 months in most prisons. No penal sanctions consisting only of forced labour were imposed by the courts; therefore, there was no contravention of article 8 of the Covenant. There had been much discussion concerning the restructuring of the militia with a view to making it more democratic, but work on new laws and regulations was not yet completed. In accordance with the Decrees of July 1987 and January 1988 on psychiatric care, the relevant institutions had been notified by the Ministry of the Interior that they would henceforth operate under the authority of the Ministry of Health. Under article 124-2 of the Penal Code, it was a criminal offence for a person known to be of sound mind to be placed in a psychiatric institution. That provision had been in force for the past three years, and since then no case had arisen where such action had allegedly taken place.

Right to a fair trial

534. With regard to that issue, members of the Committee requested additional information on the right to defense introduced by article 7 of the Foundations of Legislation on the Judicial System of 17 November 1989; on the free legal aid system in Belarus; on measures that had been taken to ensure that trials were genuinely public, allowing access to all those interested, including representatives of the local and foreign press; and on the procedure for the appointment of judges.

535. In his reply, the representative said that the Foundations of Legislation on the Judicial System provided valuable guarantees to detainees. In that connection, strengthening the powers of the defense and ensuring the attendance of a defense lawyer from the moment of detention, arrest or charge had been of particular importance. A detainee could request the services of any lawyer desired and, if that did not prove feasible, the services of another lawyer were provided. In the case of minors or where severe sentences might be imposed, the presence of a defense lawyer was compulsory. The fees chargeable by lawyers were subject to regulation and, in the case of certain categories of defendants, such as invalids, the unemployed or persons in poor health, legal services were provided without charge. Hearings were held in public, and the press, including foreign journalists, could attend, except in certain types of cases where confidentiality was essential or where the accused requested the exclusion of the press on grounds that the judges might be improperly influenced. Judges had security of tenure and enjoyed good salaries, which helped to

ensure their independence.

Freedom of movement and expulsion of aliens, right to be recognized as a person before the law, freedom of religion and expression

536. With regard to these issues the members of the Committee asked about the current status and content of legislation on entry to and departure from the territory; for information on the actual implementation of the Decree of 25 August 1987 relating to measures taken against foreign nationals for preventing infection with the AIDS virus, particularly as to required medical examinations and appropriate coercive measures; for information concerning the law and practices relating to permissible interference with the right to privacy; for details on limitations, if any, on freedom of conscience and religion; and for details on the situation in Belarus of the right to seek, receive and impart information and ideas of all kinds. They also inquired how citizenship of Belarus was acquired by former citizens of the USSR and their descendants; whether there was a danger that the number of stateless persons would increase; and whether conscientious objection to armed service was tolerated and regulated by law.

537. Members also asked whether the Soviet law of 1990 restricting the right of anyone in possession of State secrets to leave the territory was still in force, and pointed out that such provisions would be contrary not only to the provisions of the Covenant, but also inadmissible in a democratic State. Members of the Committee noted that Belarus still required an exit visa, and said that the requirement was disturbing, as such a measure was clearly indicative of an undemocratic system of government. They inquired whether the authorities of Belarus planned to review the need to maintain that requirement. They also asked if citizens would henceforth merely require a passport in order to travel abroad freely; whether they still needed an invitation in order to travel abroad; and whether they could appeal to the courts if they were refused permission to leave the country. Members asked whether the system of residence permits (propiska) was still in force and if so, whether there were plans to abolish it.

538. Concerning the acquisition of citizenship by descendants, members asked whether the new legislative provisions distinguished between the father and the mother for the transmission of nationality to children and whether persons of Russian or former Soviet origin living in Belarus could acquire citizenship of Belarus and on what conditions. Members also asked for further information on freedom of expression and access to the media. In particular, they inquired whether any specific measures had been adopted for the privatization of television and the radio, which were still a State monopoly; whether citizens of Belarus were able to purchase foreign newspapers and magazines, and whether the authorities of Belarus had tacitly authorized Belarusian or foreign journalists or certain groups of citizens freely to consult the archives of administrative departments. They also asked whether citizens whose honor or dignity had been injured by the contents of an article in any form of publication had the right to obtain redress.

539. Members of the Committee also asked for more detailed information on the admission to hospital of some Belarusian citizens suffering from AIDS, on the situation of conscientious objectors, and on the possibilities of a review of article 119 of the Penal code, pursuant to which homosexuality was illegal and persons found guilty of homosexual practices were liable to a penalty of up to five years' imprisonment.

540. Replying to the questions raised, the representative of the State party explained that the Soviet law relating to entry into and departure from the territory was applied. The new Belarusian law, which had gone through a first reading in Parliament, would come into force in July 1993. The bill contained progressive provisions which were in conformity with the Covenant. The requirement for an exit visa had been abolished in the case of diplomats and official delegations, although it had been maintained for individuals. In the future, those restrictions should be abolished. The question of prohibition on the departure of persons in possession of State secrets was complex, but the situation had, nevertheless, changed considerably. Even though the Soviet law on entry and departure was still in force in Belarus, it was no longer strictly applied and no citizens was actually prevented from leaving Belarus on those grounds. If an exit visa was denied, an appeal could be made to the courts. In that respect, practice had overtaken the legislation being prepared. The new type of passport would indicate only the holder's citizenship but no longer state his nationality. The authorities intended to abolish the residence permit (propiska) towards the middle of 1993. Any person of Russian or other origin living in the Republic had become a Belarusian citizen when the law on citizenship had been adopted.

541. Regarding permissible interference of privacy, the representative pointed out that full information on the topic had been provided in the initial report (CCPR/C/1/Add.27); since then the situation had, in general, changed little. However, some amendments had been made to the Code of Criminal Procedure in order better to guarantee the right to privacy. There were criminal penalties for breaches of the provisions protecting privacy, in particular in articles 124, 135 and 136 of the Penal Code.

542. Regarding freedom of conscience, the representative said that a bill on freedom of conscience was currently being considered by the competent authorities. Virtually all the property confiscated from the Church had been returned to it. The Supreme Soviet had recently issued a decree declaring the principal Catholic and Orthodox festivals to be public holidays. The right to seek, receive and impart information was virtually unrestricted in Belarus, except when matters of national security or professional secrecy were at stake. Foreign publications were on sale freely in Belarus; Radio Liberty, which had previously been considered a subversive radio station, had recently been accredited with the Ministry of Foreign Affairs. Belarusian legislation stipulated that, if a person was the victim of libel or defamation in the media, he could take the matter to the courts and demand rectification of the information as well as the appropriate redress.

543. The representative also said that current legislation made no provision for the right to refuse to perform military service on religious grounds, although practice - as in many other spheres - was ahead of current legislation: those who refused to bear arms were assigned to special units. The new bill on military service made provision for conscripts to refuse to perform military service on religious grounds. Articles 118 and 119 of the Penal code, relating to immoral behavior towards minors, were still applicable. A bill on homosexuality was being examined, and if it was adopted criminal penalties would be applied only in respect of acts involving violence against minors or persons in a position of dependence. As to the admission into hospital of people suffering from AIDS, he emphasized that the individuals concerned were people who refused to have a medical examination, although they were suspected of carrying the virus. The Republic did not yet have its own legislation on the matter, which was the reason it applied the laws of the former USSR.

Freedom of assembly and association and right to participate in the conduct of public affairs

544. Regarding those rights, the members of the Committee asked about the outcome of the discussion on “improving the legal regulation of conditions and procedures for holding peaceful assemblies, processions and demonstrations” and what further steps had been taken. They also requested information on the laws and regulations governing the right to strike and what the practice was in that regard, as well as information on the laws and regulations governing the founding, registration and financing of political parties and whether multiparty elections at the State and local level were to be expected.

545. Committee members also asked for details of the reasons for the refusal to register the Communist Party and of its influence and importance in Belarus. They also asked for clarification of the organizational aspects of the “nationwide discussions”.

546. In his reply, the representative of the State party said that in 1988 his country had adopted provisions concerning the organization of demonstrations pursuant to which, permission, which was granted in 99 per cent of cases, was necessary to organize meetings. One could appeal against a refusal. In practice, there were very many meetings, processions and demonstrations in Belarus and they were organized with or without permission. Regarding the right to strike, the Soviet law was still in force. A bill on the subject prepared by the Ministry of Justice contained no restrictions applicable to people participating in strikes.

547. At the end of 1990, Parliament had adopted provisional measures concerning the registration of social and political organizations and associations. So far 8 political parties, 8 socio-political movements and 400 other social associations had been registered. No applications had been rejected, except that of the Communist Party of Belarus. Registration of the Party, which currently had 60,000 members, had been refused not for political reasons, but because of shortcomings and technical errors in the documents submitted with the applications. The Supreme Court had, nevertheless, decided that the Communist Party of Belarus should be registered, and that had been done in June 1992. The representative provided the clarification requested in respect of the nationwide discussions and referendums. Since 1990, only one referendum had been held to decide whether the population of Belarus was in favor of the preservation of the USSR. Although the vote had been in favor of its preservation, the USSR had nevertheless ceased to exist.

Concluding observations by individual members

548. The members of the Committee thanked the delegation of Belarus for the detailed introduction to its report and for the sincerity and honesty with which it had replied to the many questions put by the Committee. The replies had been to the point and had concerned not only legislation but also practice. They drew attention to the delegation’s competent presentation of the present situation in Belarus and the commendable spirit that had marked the dialogue between the Committee and the State party’s delegation. The members of the Committee had been able to ascertain that unquestionable progress had been made towards effectively ensuring civil and political rights, and voiced the hope that the forward-looking trend would continue.

549. At the same time, the members of the Committee stressed that Belarus was at a turning-point,

and pointed out that the dialogue had revealed shortcomings in current legislation, attributable to the fact that it was still essentially based on the legislation of the former USSR; that the legal system as a whole was under review; and that it was encouraging to hear the delegation state that the experience of democratic countries, particularly in the field of human rights, would be studied and made use of in order to reinforce legal safeguards for civil and political rights. They were gratified by the intentions expressed which held out hope of progress in such important fields as the reform of the Penal Code and the Code of Criminal Procedure, the status of judges, the organization of the judiciary and the reform of police organization.

550. The members of the Committee also said that it was to be hoped that the new legislation, and especially the new Constitution currently being prepared, would take into account not only the provisions of the Covenant and of the other international human rights instruments, but also the relevant observations made by the Committee. In particular, the members of the Committee failed to see why the former Republics of the USSR, including Belarus, still showed a disconcerting reluctance to bring legislation concerning freedom of movement into line with the Covenant. In particular, they failed to understand why they continued to deny individuals the right to leave the country on the grounds that they were in possession of State secrets, despite the fact that the criterion laid down by article 12, paragraph 3, of the Covenant was perfectly clear. The same was true of the exit visa and the system of residence permit (propiska). They were also deeply concerned about the number of offences that carried the death penalty, and hoped that the number would be reduced to four, as the delegation had announced.

551. The representative of the State party thanked the members of the Committee for the understanding they had shown of the situation in Belarus and assured the Committee that he would do his utmost to ensure that the new laws would meet with its satisfaction. In any case, he would transmit all the constructive remarks that had been made to the Government.

552. The Chairman of the Committee thanked the delegation of Belarus for the frankness with which it had explained and updated a report that already contained a wealth of information; the task had been all the easier as there had been numerous upheavals in the period that had elapsed since the report had been submitted. The extremely constructive dialogue with the Committee had shed light both on positive aspects and on grounds for concern, which, it was to be hoped, would be taken into account in the legislative and constitutional review. The retention of the classification of persons belonging to any religion, in particular the Jewish faith, as a distinct nationality was considered to be without justification.

Comments of the Committee

553. As indicated in paragraph 45 above, the Committee, at its 1123rd meeting, held on 24 March 1992, decided that henceforth, at the conclusion of the consideration of a State party's report, it would adopt comments reflecting the views of the Committee as a whole.

554. In accordance with that decision, at its 1172nd meeting, held on 29 July 1992, the Committee adopted the following comments.

Introduction

555. The Committee expresses its appreciation to the State party for its report and for engaging, through a high-ranking delegation, in a constructive and frank dialogue with the Committee. The wealth of additional information provided in the introductory statement and in the replies given by the delegation of Belarus to the questions raised by the Committee and by individual members allowed the Committee to have a clearer picture of the overall situation in the country at a turning-point in its history as it makes the transition towards a multiparty democracy.

556. The report and the additional information that was subsequently provided enabled the Committee to obtain a comprehensive view of the State party's compliance with the obligations undertaken under the International Covenant and the human rights standards set forth therein.

1. Positive aspects

557. The Committee notes with satisfaction that there has been clear progress in securing civil and political rights in Belarus since the consideration of the second periodic report, and especially since the submission of the third periodic report in July 1990. It is particularly noteworthy that the reforms in Belarus are being handled in a manner that allows a propitious social and political environment for the further protection and promotion of human rights.

558. The Committee also notes with satisfaction that recently enacted laws, notably the Law on Citizenship, are of a liberal character, demonstrating the Government's intention to restructure society in accordance with basic democratic principles. Existing laws, for example those relating to national minorities, are also generally being applied in a manner compatible with the Covenant. Additionally, it welcomes the readiness of the Government of Belarus to make use of the experiences of established democracies with respect to the promotion and protection of human rights.

2. Factors and difficulties impeding the implementation of the Covenant

559. The Committee notes that the heritage of the negative aspects of the past could not be rectified overnight and that much remains to be done to make irreversible the process of introducing a multiparty democracy and strengthening the rule of law. The Committee also notes that Belarus continues to face various problems during the present period of transition that make the task of implementing civil and political rights particularly difficult. In this connection, it also notes that the Government's efforts in restructuring the existing legal system have at times been hampered by certain lacunae in national legislation as well as by continuing resort to legislation of the former régime.

3. Principal subjects of concern

560. The Committee expresses concern about the fact that certain drafts pending before the legislature do not fully conform with the provisions of the Covenant, particularly with respect to freedom of movement. Problems in this regard relate, in particular, to grounds on which passports may be issued, and to clauses dealing with exit visas, particularly in respect of holders of State secrets - which are incompatible with article 12, paragraph 3, of the Covenant. The Committee is also concerned as to the planned retention of the internal residence permit (propiska) system. The

retention of the death penalty for many offences, even though limited in application, is also of concern to the Committee. The retention of the classification of persons belonging to any religion, in particular the Jewish faith, as a distinct nationality is also without justification. In many areas not covered by new legislation, much depends on the good will of the authorities, with the danger still present that the latter would be unduly influenced by certain attitudes inherited from the past.

4. Suggestions and recommendations

561. The Committee considers it to be particularly important that constitutional and legislative reforms should be expedited and that they should be in full conformity with the existing international standards enshrined in the International Covenant on Civil and Political Rights. In drafting new legislation affecting human rights, special attention should be paid to the establishment of effective judicial guarantees for the safeguard of civil and political rights. Attention should be paid in all legislation to ensure that any limitations on human rights are in strict conformity with the limitations to those rights permitted in the Covenant. Existing provisions limiting or restricting freedom of movement, including the requirement for exit visas and the clause relating to holders of State secrets, should be eliminated from pending legislation to bring it fully into conformity with article 12, paragraph 3, of the Covenant.

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137. The Committee considered the fourth periodic report of Belarus (CCPR/C/84/Add.4 and Add.7) at its 1632nd and 1633rd meetings, on 30 October 1997, and at its 1643rd meeting, on 6 November 1997, adopted the following observations.

1. Introduction

138. The Committee welcomes the submission of the fourth periodic report of Belarus, although it notes that the report did not comply with its guidelines concerning the form and content of periodic reports. While regretting that the report lacks sufficient information on the enjoyment of human rights by the people and the implementation of the provisions of the Covenant in law and in practice, the Committee expresses its appreciation to the delegation for the answers it provided to its questions, which to some extent enabled it to obtain a clearer picture of the human rights situation in the country, as well as for the additional written information submitted by the State party.

139. The information submitted by a number of local non-governmental organizations assisted the Committee in its understanding of the human rights situation in the State party.

2. Factors and difficulties affecting the implementation of the Covenant

140. The Committee notes that 20 per cent of the national budget has to be devoted to alleviating the consequences of the Chernobyl disaster, and its particularly harsh effects on children.

3. Positive aspects

141. The Committee notes the various steps taken to improve the situation of women in Belarus, particularly in the labour market, and it welcomes the creation of a Women's Crisis Centre to shelter women victims of rape or domestic violence. The Committee also welcomes the statistics provided by the delegation on the participation of women in the labour force in the private and public sectors, although it regrets that they were not disaggregated so as to reveal the number of women occupying senior posts.

142. The Committee welcomes the decision of the constitutional Court, recognizing the supremacy of the Covenant over domestic law by declaring the retroactive application of a criminal law invalid, in accordance with article 15 of the Covenant.

4. Subjects of concern and the Committee's recommendations

143. The Committee notes with concern that remnants of the former totalitarian rule persist and that the human rights situation in Belarus has deteriorated significantly since the Committee's consideration of the State party's third periodic report in 1992. The Committee notes in particular the persistence of political attitudes that are intolerant of dissent or criticism and adverse to the promotion and full protection of human rights, the lack of legislative limits on the powers of the executive, and the growing concentration of powers, including legislative powers, in the hands of

the executive, without judicial control.

144. The Committee notes with concern that the number of crimes for which the death penalty is applicable under the Criminal Code is still very high, and that decrees defining new crimes punishable by death, such as Presidential Decree No. 21 of 21 October 1997, have recently been enacted. The Committee expresses its serious concern at the very high number of death sentences actually carried out. Furthermore, the Committee is also concerned at the secrecy surrounding the procedures relating to the death penalty at all stages. Therefore:

The Committee recommends that the application of the death penalty be restricted to the most serious crimes, as provided for in article 6, paragraph 2, of the Covenant, and that its abolition be considered by the State party at an early date. To that end the Committee recommends that a thorough review of relevant legislation and decrees be undertaken to ensure their compliance with the Covenant and, in doing so, due account be taken of the Committee's General Comment No. 6 (16) and of the Committee's jurisprudence establishing that the imposition of the death penalty following a trial which does not comply with the requirements of article 14 of the Covenant violates article 6.

145. The Committee expresses its concern about numerous allegations of ill-treatment of persons by police and other law enforcement officials during peaceful demonstrations and on arrest and detention, and about the high number of cases in which police and other security officials resort to the use of weapons. Noting that investigations of such abuses are not conducted by an independent mechanism and that the number of prosecutions and convictions in these cases is very low, the Committee expresses concern that these phenomena may lead to impunity for members of the police and other security officials. Therefore:

The Committee recommends that, in order to combat impunity, steps be taken to ensure that all allegations of ill-treatment and unlawful use of weapons by security and police officials be promptly and impartially investigated by an independent body, that the perpetrators be prosecuted and punished, and that the victims be compensated. Moreover, in accordance with paragraph 10 of the Committee's General Comment No. 20 (44) on article 7 of the Covenant, "enforcement personnel, (...) police officers and any other persons involved in the custody or treatment of any individual subjected to any form of arrest, detention or imprisonment must receive appropriate instruction and training" concerning the ban on torture and other cruel, inhuman or degrading treatment prohibited by article 7 and the observance of other human rights norms.

146. The Committee notes with concern that pre-trial detention may last up to 18 months, and that the competence to decide upon the continuance of pre-trial detention lies with the Procurator and not with a judge, which is incompatible with article 9, paragraph 3, of the Covenant. The Committee also notes with regret that it has not been clarified in the report or in the course of the discussion whether proceedings before a court challenging the lawfulness of the detention, in accordance with article 9, paragraph 4, of the Covenant, are available to persons thus detained. In this regard:

The Committee recommends that the laws and regulations relating to pre-trial detention be reviewed as a matter of priority so as to comply with the requirements of article 9 of the Covenant.

147. The Committee further notes with concern that the supervision of places of detention, by virtue of the Law of the Procurator's Office, is under the competence of the Procurator's Office, and that there exists no independent mechanism competent to receive and investigate complaints by detainees. Moreover, the Committee expresses its concern at the overall conditions of detention in prisons, in particular with respect to overcrowding, and wishes to emphasize that the existence of "punishment cells" and the fact that food rations are reduced for detainees placed in such cells, the pressovchiki in prison cells, and the conditions of detention of prisoners sentenced to death, are matters of particular concern. Therefore:

The Committee recommends that steps be taken to improve prison conditions, including conditions for prisoners on death row, and that in so doing account be taken of the Committee's General Comment No. 21 (44) on article 10 of the Covenant and the United Nations Minimum Standard Rules for the Treatment of Prisoners. The Committee recommends in particular that the practice of "punishment cells", in which particularly harsh conditions are imposed on prisoners, and the use of pressovchiki, are contrary to the Covenant, and recommends that their use be abolished.

148. With respect to the freedom of movement and the right to choose one's residence, the Committee reiterates the concerns it expressed during the consideration of the State party's third periodic report in regard to the retention of the Propiska (residents' permit) system used under the previous regime. The Committee also expresses its concern about the number of unreasonable restrictions imposed by article 5 of the Procedure for Entry to and Exit from the Republic of Belarus by Citizens of the Republic of Belarus Act on the freedom of citizens to leave the country, some of them being vaguely defined and open to wide interpretation by the authorities and therefore susceptible of abuse, such as possession of State secrets, refusal to discharge obligations, or ongoing proceedings in case of a civil suit. Therefore:

The Committee recommends that measures be taken to ensure that article 12 of the Covenant is fully complied with, and it urges the State party to repeal the Propiska system.

149. The Committee notes with concern that the procedures relating to tenure, disciplining and dismissal of judges at all levels do not comply with the principle of independence and impartiality of the judiciary. The Committee is particularly concerned that the judges of the Constitutional Court and Supreme Court can be dismissed by the President of the Republic without any safeguards. The Committee also notes with concern the allegation that two judges were dismissed by the President of the Republic on the ground that in the discharge of their judicial functions they failed to impose and collect a fine imposed by the executive. Furthermore, the Committee is concerned at the failure of the President of the Republic to respect the decisions of the Constitutional Court and to observe the rule of law.

150. The Committee also notes with concern the adoption of the Presidential Decree on the Activities of Lawyers and Notaries of 3 May 1997, which gives competence to the Ministry of Justice for licensing lawyers and obliges them, in order to be able to practise, to be members of a centralized Collegium controlled by the Ministry, thus undermining the independence of lawyers. In this regard:

The Committee stresses that the independence of the judiciary and the legal profession is essential

for a sound administration of justice and for the maintenance of democracy and the rule of law. The Committee urges the State party to take all appropriate measures, including review of the Constitution and the laws, in order to ensure that judges and lawyers are independent of any political or other external pressure. The attention of the State party is drawn in this connection to the 1985 Basic Principles on the Independence of the Judiciary and the 1990 Basic Principles on the Role of Lawyers, adopted by the United Nations General Assembly.

151. The Committee expresses concern about reports of arbitrary infringements of the right to privacy, in particular of abuses by the authorities in regard to wire-tapping and house searches. Moreover, the Committee notes with concern that, under article 20 of the Law on Investigative Activities, decisions on the legality of such activities are in the competence of the General Procurator, without a court review. Therefore:

The Committee recommends that investigative activities affecting the right to privacy be conducted in accordance with article 17 of the Covenant, and that the competence to decide upon requests for and the legality of such activities be transferred to the courts.

152. The Committee notes the statement of the delegation of Belarus that legislation on conscientious objection to military service is envisaged. In this regard:

The Committee recommends that a law exempting conscientious objectors from compulsory military service and providing for alternative civil service of equivalent length be passed at an early date in compliance with article 18 of the Covenant and the Committee's General Comment No. 22 (48).

153. The Committee expresses its deep concern about the numerous and serious infringements of the right to freedom of expression. In particular, the fact that most publishing, distribution and broadcasting facilities are State owned, and that editors-in-chief of State-supported newspapers are State employees, effectively exposes the media to strong political pressure and undermines its independence. The many restrictions imposed on the media, in particular the vaguely defined offences, are incompatible with article 19, paragraph 3, of the Covenant. The Committee also notes that as a result of the provisions of Presidential Decree No. 218 of 18 March 1997, the freedom to import and export information, either through the print or audio-visual media, is severely restricted. Furthermore, the Committee expresses concern about reports of harassment and intimidation of local and foreign journalists by the authorities and the denial of access to public broadcasting facilities by political opponents to the Government. Therefore:

The Committee urges the State party to take all necessary measures, legislative as well as administrative, in order to remove these restrictions on freedom of expression, which are incompatible with its obligations under article 19 of the Covenant, as a matter of priority.

154. The Committee also expresses its concern about severe restrictions imposed on the right to freedom of assembly which are not in compliance with the Covenant. The Committee notes in particular that applications for permits to hold demonstrations are required to be submitted 15 days prior to the demonstration and are often denied by the authorities, and that Decree No. 5 of 5 March 1997 imposes strict limits on the organization and preparation of demonstrations, lays down rules to be observed by demonstrators, and bans the use of posters, banners or flags that "insult the honour

and dignity of officials of State organs" or which "are aimed at damaging the State and public order and the rights and legal interests of citizens". These restrictions cannot be regarded as necessary in a democratic society to protect the values mentioned in article 21 of the Covenant. Therefore:

The Committee recommends that the right of peaceful assembly be fully protected and guaranteed in Belarus in law and in practice and that limitations thereon be strictly in compliance with article 21 of the Covenant, and that Decree No. 5 of 5 March 1997 be repealed or modified so as to be in compliance with that article.

155. With respect to article 22 of the Covenant, the Committee is also concerned about the difficulties arising from the registration procedures to which non-governmental organizations and trade unions are subjected. The Committee also expresses concern about reports of cases of intimidation and harassment of human rights activists by the authorities, including their arrest and the closure of the offices of certain non-governmental organizations. In this regard:

The Committee, reiterating that the free functioning of non-governmental organizations is essential for the protection of human rights and dissemination of information in regard to human rights among the people, recommends that laws, regulations and administrative practices relating to their registration and activities be reviewed without delay in order that their establishment and free operation may be facilitated in accordance with article 22 of the Covenant.

156. The Committee, while noting that under the Citizens' Communications Act of 6 June 1996 communications may be addressed to State organs, expresses concern that there is no independent mechanism competent to investigate and monitor allegations of human rights violations in Belarus. It also expresses concern at the lack of publicity in regard to the availability of the procedure under the Optional Protocol to the Covenant to victims of violations of their rights under the Covenant, though the right to have recourse to international complaints procedures has been given constitutional protection in Belarus. Therefore:

The Committee recommends that steps be taken to expedite the planned establishment of an Ombudsman's Office and to ensure that he/she has effective powers to investigate complaints of violations of human rights. Information on the individual communications procedure under the Optional Protocol should be disseminated among the public at large, and in particular among prisoners (including prisoners on death row) and other detainees and members of the legal profession, and education on the full extent of their human rights should be made available to the population at large. A mechanism should be established to ensure the implementation of the Views expressed by the Committee under the Optional Protocol to the Covenant.

157. The Committee draws the attention of the Government of Belarus to the provisions of the guidelines regarding the form and contents of periodic reports from States parties, and requests that its next periodic report, due on 7 November 2001, contain material which responds to all the present concluding observations. The Committee further requests that these concluding observations be widely disseminated among the public at large in all parts of Belarus.