

BULGARIA

CCPR A/34/40 (1979)

110. At its 131st, 132nd and 133rd meetings, on 13 and 16 April 1979, the Committee considered the initial report (CCPR/C/1/Add.30) submitted by Bulgaria (CCPR/C/SR.131-133).

111. The report was introduced by the representative of the State party, who highlighted the over-all policy of his Government with regard to the promotion and observance of civil and political rights enshrined in the Covenant.

112. The representative of Bulgaria pointed out that, before ratifying the Covenant, the competent authorities had examined Bulgarian legislation to verify that all the rights and freedoms stipulated in the Covenant were covered in the appropriate national laws. When the 1971 Constitution had been drafted, account had been taken of the country's international obligations and, specifically, of its obligations under the Covenant. In general, international instruments were not applied directly, but through internal legislation. He stressed that in Bulgarian legal and administrative practice, however, account was taken of the rule that, in the case of doubt, internal legal provisions should be interpreted in the light of the international obligations of the State.

113. The representative of Bulgaria emphasized that his country could be considered an ethnically homogeneous one, since more than 92 per cent of its population was of the same ethnic origin. Membership of a minority group did not place persons in an unfavourable position since all citizens enjoyed the same rights without distinction.

114. With reference to the statement in the report that rights and liberties cannot be exercised to the detriment of the public interest, one member pointed out that the public interest was a concept which was capable of extremely restrictive application to the detriment of the freedom of the individual. Noting that the Covenant sought primarily to ensure that the interests of the individual were protected and were infringed upon only within certain limits in his relations with the State, the member asked how the Government of Bulgaria saw the balance between the right of the individual and the interests of the State and society. It was also pointed out that the individual needed to know what rights he possessed in order to be able to secure them and the question was asked how the people of Bulgaria were made aware of the provisions on civil and political rights and whether the Covenant had been published in Bulgaria in languages which the people could understand.

115. Noting that no mention was made in the report or in the relevant article of the Constitution of any provision prohibiting discrimination on the basis of political opinion, some members asked how this omission could be reconciled with the provisions of articles 2 (1), 3 and 26 of the Covenant.

116. Commenting on article 2 of the Covenant, several members raised questions in connection with the right of any person who considered that his rights as recognized in the Covenant were infringed on to have an effective remedy determined by competent judicial, administrative or legislative authorities. Could such a person invoke the provisions of the Covenant without having to fear any

penal sanctions, even though the Covenant had not been incorporated into the domestic legal order of Bulgaria? Were people assisted or actually encouraged to avail themselves of the remedies provided for in the Covenant? Were they provided with free legal aid and independent advice? In what way did the office of the Procurator-General monitor the exercise of civil and political rights and maintain the legal order? Did the Penal Code contain specific provisions covering violations by public officials of the rights and freedoms recognized in the Covenant? Could any citizen demand the prosecution of an administrative agent or institute proceedings against him for damages if the Procurator did not act? What recourse would be open to an individual seeking to bring about a change in a law under which his rights were subject to more severe restrictions than permitted by the Covenant? Information was sought on the role of the Control Committee of the People and State, referred to in the report, with regard to the administration's observance of political rights and freedoms and on the "Act on Administrative Procedure" as a means to strengthen legality and protect individual rights.

117. Recognizing that the Bulgarian Constitution had guaranteed equal rights for men and women, one member asked what form that equality took in practice and what proportion of office-holders in Government and Parliament were women.

118. In connection with the right to life provided for in article 6 of the Covenant, information was requested on the efforts that were being made to reduce infant mortality in both rural and urban areas and on the legal provisions governing the protection and improvement of public health. Satisfaction was expressed at the fact that the Penal Code permitted the death penalty only as an exceptional measure. Information was requested on the crimes to which the death penalty was applicable and whether these included crimes against the national economy. Some statistics were also sought on the application of the death penalty since the entry into force of the Covenant.

119. With reference to article 7 of the Covenant, it was noted that, whereas the Constitution guaranteed the inviolability of the human person, the Code of Criminal Procedure prohibited the use of coercion against citizens participating in criminal proceedings except in the cases provided for in that Code and in accordance with the procedures laid down therein. Information was sought on the specific situations in which this exception was applied and on the types of coercion the said Code referred to. Information was also requested on the procedures under which individuals could be confined in an institution for the mentally ill.

120. It was noted that the prohibition of slavery and similar practices was not explicitly embodied in legislation, as required under article 8 of the Covenant. Questions were asked on how the concept of compulsory labour was understood in Bulgaria since under the Constitution every able-bodied citizen was obliged to work, where the line was drawn between the prohibition of compulsory labour and the obligation to work, and in what cases did the law provide for hard labour as a penal sanction.

121. Several questions were raised in connection with article 9 of the Covenant: In what circumstances could detainees be left in solitary confinement and for what period of time? Were there any regulations concerning the conditions in which that could occur? At what point after his arrest a detained or accused person was entitled to know the grounds for his arrest and the charges against him? How long a person could be detained before being brought to trial and for what reason? Were there any forms of arrest or detention other than those based on criminal charges?

Was “preventive procedure”, referred to in the report, the same thing as preventive detention? What was the role of the Procurator in this respect? Did he exercise independent judicial authority and, if so, how could this be reconciled with the statement in the report that he could extend detention in the interest of the preliminary investigation? How the bail system operated in Bulgaria and how was it ensured that the system did not operate in a discriminatory fashion?

122. In connection with article 10 of the Covenant, some members asked what provisions existed to ensure that persons deprived of their liberty could maintain contact with their families, what educational measures were used for the social rehabilitation of prisoners, especially young offenders and whether there were places of detention other than those mentioned in the report that might be used under special circumstances for purposes of re-education.

123. With reference to article 12 of the Covenant, it was noted that people wishing to change their residence in the country had to apply to that effect in writing, and questions were asked as to who had the authority to decide on their applications and whether they were usually approved. Some members asked whether passports were issued to all members of a family so that they could travel together or only to an individual; what were the cases in which passports for travel abroad could be refused or impounded other than those referred to in the report and how did the Government interpret “State security” in that context. In this connection, questions were also asked as to whether persons could be deprived of their nationality and whether banishment existed as a legal sanction and, if so, how often punishment in both cases had been applied in recent years.

124. With reference to article 14 of the Covenant, members sought further information on the system of the judiciary, the organization of the legal profession, the jurisdiction of the military tribunals in connection with offences committed by civilians and on any special procedures that may exist for dealing with juveniles in courts. Noting that respect for the civil and political rights of citizens could be guaranteed only when the judiciary was independent, members asked how the independence of judges was guaranteed, whether any social or political measures had been taken in order to ensure their independence, who nominated judges and who elected them, whether women were entitled to become judges at all levels and how independence of judges could be reconciled with the possibility of their being recalled before the end of their term as mentioned in the report. Questions were also asked as to whether foreign lawyers could be present as observers at a trial; at what point during pre-trial proceedings the accused was entitled to communicate with his legal counsel; who was responsible for paying interpreters and whether that depended on the outcome of the proceedings; whether the right of the accused to examine witnesses against himself and to obtain the attendance and examination of witnesses on his behalf was formally safeguarded under Bulgarian law and whether the necessary supplementary legislation had been enacted to give effect to the principle of compensation due to a person who had been the victim of a judicial error.

125. As regards article 17 of the Covenant, information was requested on the exceptions stipulated in the Bulgarian Constitution to the guarantees provided for in that article for the protection of private and family life.

126. Several comments were made and questions were asked in connection with the part of the report dealing with the rights and freedoms provided for in article 18 of the Covenant. Explanation was requested of the term “recognized religion” and the question was asked as to how and on what

basis a religion was accorded or denied recognition and how that might be reconciled with the provisions of the Covenant. Concern was expressed with regard to the provision of article 53 of the Bulgarian Constitution to the effect that citizens were permitted to perform religious rites and to conduct anti-religious propaganda. According to one member, this provision amounted to the non-existence of the freedom to disseminate religious propaganda and could be, according to another member, tantamount to intolerance. It was maintained that freedom of religion meant freedom to have or not to have a religion and that, in a country where a particular ideology was the guiding force in the State and that ideology was atheistic, anti-religious propaganda could be used with great force to the detriment of the principle of equality enshrined in the Covenant. Reference was also made to the prohibition in the same article of the Constitution of abuse of the church and religion for political purposes and of the establishment of political organizations on a religious basis; the question was asked what the Government considered to be such abuse.

127. With reference to article 38 (3) of the Bulgarian Constitution to the effect that parents have the right and obligation to attend to the communist education of their children, it was argued that this provision may not be in conformity with article 18 (4) of the Covenant. The view was expressed that, whereas in practice most societies educated their children in their own philosophy or religion, parents could not, according to the letter and spirit of the Covenant, be legally obliged to bring up their children in accordance with any particular ideology. Questions were asked whether, having received a communist education, children were compelled to become communists and whether parents who failed to comply with article 38 (3) of the Constitution would have to face sanctions. The hope was expressed, however, that the Bulgarian representative would explain the socialist approach to all matters pertaining to the question of religion as raised in the Committee and, in particular, the guiding role of the Communist Party as set forth in the Bulgarian Constitution.

128. In the view of some members, the exercise of the freedoms embodied in articles 19, 21 and 22 of the Covenant was to be seen in conjunction with article 2 (1) which prohibits discrimination, inter alia, on the basis of political opinion. It was felt important to know whether, in a State where the Constitution had defined its political position and social organization, the restrictions on those freedoms applied only in the case of violent dissent or whether every form of disagreement was considered against the law. Questions were asked as to how many persons, if any, were detained in Bulgaria on account of non-violent political activities; how often the provisions of the Penal Code concerning punishment for anti-State agitation were applied; how many political parties existed in Bulgaria; what was the political role of the trade unions in the protection of human rights; whether trade unions were subject to party or government directives; whether it was possible to form trade unions independently of those which already existed and whether trade unions could organize meetings within the factory or only outside.

129. In connection with article 25 of the Covenant, it was noted that the Bulgarian Constitution referred to the Communist Party as the guiding force in society and the question was asked whether there was any legal instrument setting forth the powers of the Party over all the organs of the State and whether this meant that the Party established the general lines of State policy. It was also noted that the members of the Communist Party appeared to be in a position of predominance in relation to members of the Agrarian Union, and, above all, in relation to those who did not belong to either of the two entities. The question was asked as to how that state of affairs could be reconciled with the provisions of the Covenant. It was also asked what body of political, social and legal rules

governed the process of direct participation by citizens in the conduct of public affairs and whether such participation covered economic management and, if so, by what provision and in what form; what opportunities for access to public office were open to persons who did not belong to the Communist Party or the Agrarian Union; whether citizens could choose between different candidates or different programmes; what control the electors had over their representatives and under what conditions the latter could be recalled. The view was also expressed that the report dealt with article 25 of the Covenant in connection with elections and legislations and therefore that more information was needed on the participation of citizens in the various aspects of the public life.

130. Referring to the statement in the report concerning the national minority groups in Bulgaria, one member expressed concern over the fact that the report failed to mention a rather large group of Macedonians and some other minorities, which had been mentioned in both the 1956 census and the Statistical Yearbook of Bulgaria for 1959. There was a disparity between the 1956 census and that of 1965. The representative of Bulgaria was requested to clarify the matter and to furnish the Committee with information on existing legal statutes which clearly defined the rights of minorities in his country.

131. Commenting on the questions raised by members of the Committee, the representative of the State party observed that the valuable observations made and questions put by the Committee indicated that it had embarked on a fruitful and constructive dialogue with his Government. Serious consideration would be given by his Government to some of the questions and observations with a view to improving the legislation and the functioning of the judicial and administrative institutions concerned with the protection and observance of civil and political rights.

132. Replying to the question whether his Government shared the view that the main objective of the Covenant was to protect the interests of the individual against those of the State, the representative of Bulgaria stated that he did not believe that the interests of the individual and the State were, by definition, in opposition or that they conflicted in all cases; there was no such conflict, for example, in States which abolished social injustice and the exploitation of man by man and which had secured social equity and the well-being of the population and provided all kinds of social, educational and cultural facilities.

133. Regarding the question about the publicity given to the provisions of the Covenant in Bulgaria, he stated that the full text had been published not only in the Official Gazette, but also in other publications and that the anniversary of the Universal Declaration of Human Rights was an occasion for marking the significance, inter alia, of the two Covenants.

134. Replying to questions raised under article 2 of the Covenant, the representative stated that the Constitution contained a non-exhaustive enumeration of circumstances which could not become a cause for discrimination. Equality of rights of citizens was an underlying principle on which rested all the rights and freedoms in Bulgaria: Bulgarian legislation did not contain provisions which would justify discrimination on purely political grounds. Although the Covenant was not automatically enforced in Bulgaria's domestic legislation, there were no obstacles to its being quoted in the courts and before administrative bodies. It was out of the question even to mention the possibility of punishing persons who referred to the Covenant and demanded that it should be observed.

135. As regards one's right to enter complaints and present grievances, the representative stated that the Constitution guaranteed that right not only for the protection of the individual's interests, but also with a view to improving the system of governmental management and in defense of society's interests. The complaints were to be considered not by officers or persons against whose actions or lack of action they were directed, but by higher authorities. No one could be punished for having entered a complaint, and its presentation and consideration did not require any fee or special procedure. Under the State and Public Control Act of 1974, the organs of State and popular control supervised conformity with the law and saw to the timely consideration and settlement of complaints by citizens with a view to preventing abuse of position and providing remedies. As to the Public Prosecutor, the representative stated that under the law he could render void an illegal administrative act for detention of an individual but was not empowered to impose sanctions. The purpose of the non-contentious procedure was to have the administrative bodies provide, before the issuance of administrative acts, an opportunity for citizens and organizations, whose legitimate interests might be affected, to defend themselves. Every official was answerable for the harm he inflicted and the crimes he committed in performing his duties. The Penal Code provided for the right of citizens to submit claims for compensation, both material and moral, if their legitimate rights and interests had been infringed.

136. Replying to a question under article 3 of the Covenant, he pointed out that in present-day Bulgarian society women worked, created and participated in the socio-political and cultural life of the country on equal footing with men, that in 1977 almost one fifth of the members of the National Assembly and about double that ratio of the elected members of the local government bodies had been women and that they were represented at all levels of public administration.

137. As regards the right to life, the representative stated that one of the main functions of the social security system in his country was to ensure better conditions for all children to achieve a happy and meaningful life without exception on any grounds. The annual rate of decline of infant mortality in Bulgaria for the last 20 years was considered to be above average even for developed countries. As to the death penalty, he pointed out that it applied only to the most serious crimes and that these did not include any economic crime.

138. Replying to questions under articles 7 and 8 of the Covenant, he pointed out that the ban on torture stemmed from the Constitution, which guaranteed the inviolability of the human person, and from the Code of Criminal Procedure, which stipulated that no coercive means could be used against persons participating in criminal proceedings, except in the cases provided for in the Penal Code; that placement in psychiatric establishments was subject to a decision by a court meeting in open session at the request of the district Public Prosecutor's office and in the presence of the person concerned, who had the right of defense; that the ban on slavery and similar practices derived both from the Constitution and the Penal Code and was confirmed by the ratification by his country of the international instruments concerning the elimination of slavery, the slave trade and similar institutions and practices; and that the Constitution was not in contradiction with the prohibition of forced labour, since the fulfilment of labour obligations was free from both the social and legal points of view.

139. As regards questions raised under articles 9 and 10 of the Covenant, the representative stated that preventive detention was resorted to only if there were sufficient grounds to believe that the

accused would seek to evade justice or commit further crimes, or if the accused had no permanent residence or his identity could not be established and that, in all these cases, this measure could be taken only with the consent of the Prosecutor's office. The accused had the right to appeal from that measure to the Public Prosecutor's office and in court. Any person who was unlawfully deprived of his liberty must be released. The accused was entitled to know what he was accused of. Bulgarian legislation did not allow for prisoners to be held in secret or to be punished by forced labour. There were no forms of detention other than those specified in the Code of Criminal Procedure and no one was held in prison only for having expressed his dissatisfaction. The Bulgarian law recognized the right of detainees to maintain contact with their relatives and to receive visits. More significant constraints applied to accused persons, who could receive relatives only with the permission of the Prosecutor's office.

140. Replying to questions under article 12 of the Covenant, the representative observed that the rapid urbanization accompanying Bulgaria's industrialization had given rise to many complex social problems in such areas as housing, transportation and health care, requiring government action. It was only natural that some cities had been compelled to place certain limits on the flow of people, but that had no discriminating implications whatsoever to choose one's place of residence or for liberty of movement. Freedom to choose one's place of residence was exercised by filing an application with the local council; not all applicants could be considered favourably immediately and, in some cases, there was a wait of several years. Applicants were generally given temporary permits to live and work in the city, but the primary consideration of the competent authorities was the welfare of the persons themselves. The restrictive provisions of the Act on Passports for Travel Abroad were fully in conformity with the Covenant and could not be considered a means of discouraging travel. A person could be deprived of nationality, *inter alia*, for illegally leaving the country, failing to return six months after the date of expiration of his passport or failing to serve the time prescribed by law in the armed forces.

141. With regard to article 14 of the Covenant, he pointed out that judges of district and municipal courts were elected directly whereas judges of the Supreme Court were elected by the National Assembly. Judges were answerable for their actions only before the body which had elected them. The dismissal of judges was governed by the Judicial Organization Act. There were military tribunals to deal with offences committed by members of the armed forces. Lawyers were organized into voluntary associations and were not public officials. An accused person was free to choose his counsel, who could conduct his defense from the preliminary investigation to the end of the trial. The accused person was allowed to question the witnesses and the prosecutor.

142. In connection with article 17 of the Covenant, he stated that inviolability of the home could be restricted in accordance with the Code of Criminal Procedure which also stipulated that only the court or the Prosecutor's office could order correspondence to be held or seized.

143. In respect of article 18 of the Covenant, the representative pointed out that the expression in the report "recognized religions" was unfortunate since neither the Constitution nor the other laws contained any concept of that kind and that all religious groups enjoyed the same rights and the same protection by the State. The Constitution allowed both religious and atheistic propaganda. The prohibition of the use of the church and religion for political ends was desired only to prevent possible misuse and implied not the slightest prohibition of participation by the church or its

believers in political activities. As to the communist education of the children, he stressed that article 38 of the Constitution should not be interpreted as a strict legal rule, since there was no sanction of any kind which would derive from it. No one was in a position de facto or de jure to interfere with the duties of parents to bring up their children. What was characteristic of communist education was the emphasis it placed on the concept of harmony between the common good and individual considerations and on the supremacy of the interests of society over the interests of the individual. He could not share the view that such moral levels were not in line with the spirit of the Covenant.

144. As regards questions raised under articles 19, 21 and 22 of the Covenant, the representative stated that criticism in the press and other mass media had broadened in scope in recent years and did not spare State organs or State leaders; that there were no political prisoners in Bulgaria, although some might attempt to attach that term to those convicted under ordinary law; that the Constitution expressly guaranteed citizens the right to form organizations of different kinds, including political organizations and parties, except those whose purpose was to overthrow the socialist régime or to propagate a fascist or anti-democratic ideology. Trade unions were public organizations with no particular political affiliation and were fully competent with respect to all problems relating to industrial relations and social security. Citizens were guaranteed the freedom to establish unions without legal, administrative or other restrictions, except those laid down in the Constitution, and without need of prior authorization.

145. Replying to questions under article 25 of the Covenant, the representative stated that the political decisions of the organs of the Bulgarian Communist Party were only guidelines and therefore not legally binding, although they were reflected in legislative acts and in the decisions of the executive and administrative organs; that membership in this Party and in the Agrarian Union did not entail any special privileges; that both the Constitution and the legislation stipulated that all citizens enjoyed political equality without discrimination; that representatives could be recalled by means of a decision made by the electorate; that in each constituency there might be an unrestricted number of candidates to the National Assembly or local bodies; that access to public office depended on personal merit with no restrictions for reasons of a political or any other nature, barring the exceptions for which the law made specific provision. Participation in public affairs included the direct participation of workers and farmers, through bodies elected by them, in the management of the economy.

146. With regard to questions raised under article 27 of the Covenant, the representative stated that all persons belonging to ethnic, religious or linguistic groups enjoyed all the rights provided for in that article as guaranteed in the Constitution. He refuted the existence of a Macedonian minority in Bulgaria and stated that the census carried out in 1956 and other censuses conducted after the Second World War had been influenced greatly by political circumstances arising from the idea of setting up a southern slavic federation; that subsequently, when the necessary conditions for a free expression of will had been created, that same population, had chosen explicitly and firmly to express its Bulgarian national self-awareness as an indivisible part of the Bulgarian nation.

CCPR A/48/40 (1993)

711. The Committee considered the second periodic report of Bulgaria (CCPR/C/32/Add.17) at its 1248th to 1250th meetings, held on 21 and 22 July 1993 (CCPR/C/SR.1248-1250). (For the composition of the delegation, see annex XI .)

712. The report was introduced by the representative of the State party, who informed the Committee of the radical changes that had taken place in Bulgaria since November 1989 during the country's transition from a totalitarian system to a democratic régime. He stressed that there had been a kind of peaceful revolution, which had made the process of democratization irreversible on the basis of respect for the rules and principles of parliamentary democracy, human rights and fundamental freedoms.

713. All those changes had radically and positively modified the political, social and legal context in which Bulgaria gave effect to its obligations under the Covenant. That favourable context contributed in particular to filling the gap which had widened under the totalitarian régime between the law and its enforcement in the field of human rights. The implementation of the Covenant was nevertheless encountering some difficulties in Bulgaria as a result of: the impact of constant political confrontation on human rights, respect for which did not depend on ideological or political considerations; the continuing existence of ethnic tensions, even though they were no longer the same as they had been before 1989; the deep economic crisis; and the external debt of US\$ 13 billion left behind by the former régime, as well as the strict enforcement of the sanctions which had been decided by the United Nations against Serbia and Montenegro and which had already led to losses for Bulgaria of over US\$ 4 billion. The increase in unemployment, inflation, the inadequate income of the majority of the population and the alarming increase in crime, especially among persons belonging to certain ethnic groups, all accounted for the very high social cost of the reforms under way and inevitably affected human rights.

714. In view of that difficult situation, the National Assembly had had to give priority to some categories of laws, mainly economic and social, and to delay the adoption of other texts which had been regarded as less urgent. At present, the National Assembly was considering over 500 bills, many of which related to human rights issues.

Constitutional and legal framework within which the Covenant is implemented, non-discrimination and equality of the sexes

715. With regard to those issues, the Committee wished to know what factors and difficulties impeded the implementation of the Covenant in Bulgaria in view of the changes which had taken place in the past few years; to what extent national legislation and practice fully conformed to the Covenant with regard to the status of foreigners; whether the provisions of the Covenant had been invoked by individuals before the courts; how conflicts between provisions of the Covenant and domestic law were being resolved by the Constitutional Court; whether the new Penal Code had been adopted; what measures had been taken to disseminate information on the rights recognized in the Covenant and on the first Optional Protocol, particularly among the various minority communities in their own languages. The Committee also requested information on the ethnic,

linguistic and religious minorities living in Bulgaria and the assistance given to them to preserve their cultural identity, language and religion; on whether the members of the Turkish minority who had fled the country after 1984 had had the possibility of coming back to Bulgaria and receiving compensation; and on the current situation of the Roma (Gypsies) in Bulgaria.

716. Members of the Committee also asked about the place of the Covenant in the domestic legal systems; the role and powers of the Constitutional Court; whether the Bulgarian authorities were planning to establish an institution comparable to that of an Ombudsman's office or a national human rights commission, as recommended by the World Conference on Human Rights; whether Bulgaria was considering the possibility, as also recommended by the World Conference, of setting up a national institution which would, *inter alia*, provide instruction and training for the staff of law enforcement agencies and the judicial services; whether the violations of basic rights which had taken place under the communist régime had been investigated and prosecuted and whether the persons responsible had been identified and punished; and whether the Bulgarian authorities intended to review their legislation, especially the provisions of article 57 of the Constitution, to remove incompatibilities with article 4 of the Covenant.

717. With regard to equality between men and women, members of the Committee requested detailed statistics, particularly on the number of women who held high-level posts, especially in the legal profession.

718. As to the question of minorities, members of the Committee wanted to know whether the Bulgarian Government was considering the adoption of general legislation recognizing certain specific rights or some degree of autonomy for minorities; whether the Government had taken the urgent steps necessary not only to put an end to racial hatred, but also to guarantee minorities and the Roma (Gypsy) population, in particular, full enjoyment of the rights provided for in the Covenant; and why the massive exodus of Bulgarians of Turkish origin to Turkey was continuing, although the restrictions imposed by the former régime had been lifted and the new Constitution offered all guarantees to Bulgarian citizens.

719. Replying to the questions raised, the representative of the State party said that the 1972 Stay of Foreigners in Bulgaria Act had been amended several times in the past 20 years and that it was now fully in keeping with the provisions of the Covenant; the regulations giving effect to it still give rise to some problems, but they should be solved by means of a draft amendment to the legislation on foreigners that had been submitted to the National Assembly. The reports of decisions handed down by the Supreme Court in the past two years did not refer to any case in which the provisions of the Covenant had been invoked. The Constitutional Court had, however, ruled on several occasions on conflicts between internal law and the rules of international law, especially the provisions of the Covenant. With respect to the place of the Covenant in the domestic legal order, the representative said that international instruments took precedence over conflicting municipal legislation but not over the Constitution. It was essential in this connection that international instruments had been legally ratified, promulgated and published. He provided information on the status of the Constitutional Court within the domestic judicial system and explained that the Court could act on an initiative from one fifth of the members of the National Assembly, the President, the Council of Ministers, the Supreme Court of Cassation, the Supreme Administrative Court or the Chief Prosecutor. The issue of the establishment of an Ombudsman's office had been discussed at

length during the drafting of the Constitution, but it had been decided not to create such an institution for the time being. The Parliamentary Human Rights Commission exercised certain functions and assumed certain duties that resembled those of an Ombudsman. So far, very few laws had been adopted in the field of human rights. The National Assembly should decide within the next 12 months on over 45 bills relating to human rights, including the Penal Code.

720. The representative indicated that the texts of international human rights instruments were published in Bulgarian in the Official Gazette, as well as in a number of publications prepared with the assistance of the United Nations Centre for Human Rights. With regard to demographic composition, he said that Bulgaria had 8,473,000 inhabitants, including 7,200,000 Bulgarians, 800,000 Turks and 280,000 Roma (Gypsies). The other minority groups numbered 90,000. As to religion, 87 per cent of the population was Christian, mainly Orthodox, and 12.7 per cent was Muslim.

721. As far as equality between men and women was concerned, the representative said that Bulgarian legislation was in conformity with article 3 of the Covenant, but that practice showed that women were in fact at a disadvantage in many spheres of life.

722. With respect to article 4 of the Covenant, the representative pointed out that, in accordance with article 57 (3) of the Constitution, the exercise of individual civil rights could be temporarily curtailed, following a proclamation of war, martial law or a state of emergency.

723. With regard to ethnic minorities, he pointed out that at present no specific legislation relating to those groups existed in Bulgaria, but that the possibility of introducing such legislation was being considered. He noted that considerable progress had been made with regard to the re-establishment, realization and protection of the rights of minority ethnic, linguistic and religious communities since November 1989. Particular attention had been paid to compensation for the disastrous effects of measures of repression and attempts to assimilate Bulgarian Turks. A broad range of legislative and administrative measures had been adopted in order to right the wrongs that had been done. Religious freedoms had been fully restored and all religions could be practiced without hindrance. Children who belonged to minority linguistic groups could now study their mother tongue in public schools for four hours a week. Books and magazines in the languages of the various minority groups were freely published and circulated. He also described the current situation of the Roma (Gypsies), indicating, for example, that they had been the hardest hit by the serious economic crisis and that their level of education was the lowest and their unemployment and infant mortality rates were the highest. Unemployment and poverty drove many of them to alcoholism and crime. Despite the efforts being made, the authorities still had not been able to improve their situation.

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

724. With regard to those issues, the Committee wished to know what had been the outcome of the discussion before the National Assembly on the abolition of the death penalty; what were the rules and regulations governing the use of weapons by the police and security forces; what concrete measures had been taken to ensure the observance of article 7 of the Covenant; whether the Standards and Minimum Rules for the Treatment of Prisoners were complied with and whether these

provisions had been made known to law enforcement officials. Members also sought further information on the compatibility of the procedural rules on detention described in paragraphs 78 and 85 of the report and with article 9, paragraphs 3 and 4, of the Covenant; on arrangements for the supervision of places of detention and on procedures for receiving and investigating complaints; and on the operation of the Liability of State for Harm to Citizens Act.

725. Additionally, members of the Committee requested further clarification regarding “crimes affecting society in general” and “crimes against the State”, for which the death penalty could be imposed. Referring to reports received from non-governmental organizations, members wished to receive information on alleged cases of ill-treatment, especially of members of the Roma (Gypsy) community; on police violence in Pazardynik and the outcome of investigations that may have been carried out in that respect; and what measures had been taken to prevent a recurrence of such incidents.

726. Members expressed concern at the apparently excessive powers wielded by the prosecutor's office, noting that in many instances the prosecutor was both party and judge. They also wondered why the prosecutor was not required to seek authorization from a magistrate before detaining a person - a practice in apparent violation of the provisions of the Covenant, as well as of the European Convention on Human Rights, to which Bulgaria was a party - and wished to know whether any measures were envisaged to remedy that situation.

727. With regard to article 10 of the Covenant, members requested information on detention in mental institutions, on the rules applicable in such cases and on guarantees available to persons so detained.

728. Replying to the questions raised, the representative of the State party explained that the abolition of the death penalty had been the subject of much debate in the National Assembly in connection with the drafting of the Constitution and it had been decided that that issue should be resolved when a new Penal Code would be drafted. As a result, there was a moratorium on executions, pending the introduction of new legislation. In accordance with article 25 of the police regulations, weapons could be used by the police only as a last resort, for example, in cases of self-defence, in order to detain a person who was regarded as a threat to public safety or in cases of armed resistance. The Council of Ministers had recently presented a bill for amending the police regulations, which would bring provisions relating to the use of weapons more into line with the Covenant. With reference to article 7 of the Covenant, the representative stated that there had been no recorded cases of torture or cruel, inhuman or degrading treatment in recent years.

729. The representative said that he did not have any statistics on the number of persons detained in psychiatric establishments, but explained that, for psychiatric detention, there had to be a very clear report by the prison medical service.

730. Referring to article 8 of the Covenant, he said that there was no forced labour in prisons and that prisoners were free to decide whether or not they wanted to work. The correctional labour mentioned in paragraph 70 of the report described the situation of persons who had committed minor offences and who, on conviction, were sentenced to work for between 3 and 12 months, but at their regular place of work and for reduced wages.

731. Detention was applied, in exceptional circumstances, for crimes subject to more than 10 years' imprisonment or the death penalty and in respect of persons accused of lesser crimes, where it seemed likely that they might escape or commit other crimes. Detention ordered by the investigating authorities was generally subject to the prosecutor's approval. In 1990, article 152 of the Code of Criminal Procedure had been amended to the effect that any person detained might appeal against the detention order before a court of law, irrespective of the source of the detention order, thus bringing it in conformity with the appeals procedure envisaged under article 9, paragraph 4, of the Covenant.

732. The representative informed the Committee that the head of the prison service and the Minister of Justice were responsible for supervising penitentiary establishments. Other places of detention were supervised by the directors of the institutions in question and were inspected by local prosecutors. Court officials had access to prison establishments to investigate complaints and take any action deemed necessary. The Standard Minimum Rules for the Treatment of Prisoners had been translated into Bulgarian and were available in public libraries.

733. The aim of the Liability of State for Harm to Citizens Act was to compensate citizens for damage caused by illegal acts on the part of the executive or the judiciary. The provisions of the Act were most frequently invoked in respect of the latter in cases of unlawful detention or when prison sentences were longer than necessary. Compensation for other types of damage during detention in concentration camps or deportation was covered by the Act on Political and Civil Rehabilitation of Persons Repressed during the Totalitarian Régime because of their Origin, Political or Religious Persuasion.

Right to a fair trial

734. In regard to that issue, the Committee asked what was meant by "the judiciary power" in paragraph 19 of the report; what were the guarantees for the independence and impartiality of the judiciary and what were the provisions governing the tenure, dismissal and disciplining of members of the judiciary; and whether the Supreme Administrative Court had been established.

735. Having noted that, according to paragraph 120 of the report, special courts for minors did not exist in Bulgaria, members asked whether the possibility of establishing such courts had been discussed in the context of the reform of the judicial system. They pointed out that the statement contained in paragraph 77 of the report seemed incompatible with the presumption of innocence and requested clarification on that matter.

736. The representative of the State party declared that judicial power was exercised by three bodies, namely, the courts, the prosecutor and the investigating authorities. The courts ensured the administration of justice in the country; the prosecutors ensured that the laws of the land were observed; and the investigating authorities conducted preliminary inquiries into crimes. Bulgarian legislation recognized the importance of independent and impartial courts as a means of ensuring respect for human rights and fundamental freedoms. Judges, prosecutors and magistrates were granted lifelong tenure three years after their initial appointment and their activities were supervised by the Supreme Judicial Council. Procedures for the application of disciplinary sanctions were different for each of the three branches of the judiciary; sanctions for judges, prosecutors and

magistrates were imposed by the Supreme Court of Cassation, the Prosecutor-General and the head of the investigating authorities, respectively. The representative explained that the Supreme Administrative Court had not yet been established, pending the enactment of the Judicial Powers Act, currently being examined on second reading by the National Assembly.

737. With regard to minors' courts, the representative indicated that they were not provided for in national legislation, but the possibility was under consideration and Bulgaria might well establish such special courts.

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

738. With regard to those issues the Committee requested detailed information on the grounds on which the issuance of a passport could be refused and clarifications on how the concept of the "security of the Republic of Bulgaria" was interpreted in that regard, as well as details on the restrictions which could be placed on the freedom of movement of foreign nationals within Bulgarian territory. It requested further information on the law and practice relating to permissible interference with the right to privacy; on registration or other procedures relating to the recognition of religious denominations by the authorities; on whether any legislation was being considered to regulate the activities of the press and other media; on which authority was competent to ban an organization or a political party; on the law and practice relating to the employment of minors; and on whether any categories of persons in Bulgaria were barred from public service.

739. Members of the Committee also asked for additional information on grounds for the expulsion of foreigners; the existence of exit fees and their amount; and whether the denial of a passport could be appealed. In that context, they pointed out that holding State secrets could not be invoked to restrict freedom of movement and that it would be desirable for such a ground to be eliminated. With regard to freedom of religion, they recalled that the protection of the security of the State was not one of the criteria listed in article 18 of the Covenant, but that was not the case of Bulgarian legislation. Members wished to know whether individuals had access to television so as to be able to address their fellow citizens and what arrangements existed for that purpose; what the exact functions and powers of the Executive Board of the Municipal Council were in the context of article 21 of the Covenant; and how political parties were financed.

740. Replying to the questions raised, the representative of the State party indicated that the grounds on which a passport could be denied or withdrawn were listed exhaustively in article 7 of the Passport Act, which he read out. The concept of "national security" was taken directly from article 12, paragraph 3, of the Covenant. Moreover, that criterion was not often applied in Bulgaria and it mainly concerned persons holding State secrets and members of the military. He said that he had looked for an interpretation of the term "national security" in the Committee's general comments, but had not found one. A passport now cost US\$ 20; there was no tax for leaving the country. If the issuance of a passport was refused, the person concerned could appeal the decision to the judicial authorities. Holding a State secret had no longer been a ground for refusing a passport for some time now. As to freedom of movement, foreign nationals were subject to the same régime as Bulgarian citizens, except that embassy officials who wanted to enter border areas had to notify the Ministry of Foreign Affairs.

741. The question of interference with the right to privacy was governed by articles 32 to 34 of the Constitution, as well as by other legislative texts, the basic principle of which was that interference could take place only with the agreement of the person concerned, except in cases expressly provided for by law. He stressed that the constitutional provisions would be elaborated on in the draft Code of Penal Procedure and the draft Post and Telecommunications Act with a view to compliance with the new requirements for the protection of privacy.

742. Under the law as it now stood, the registration of religious denominations was done by the Office of Religious Affairs, which had registered about 30 to date. As practice, especially the recent decisions of the Constitutional Council, had shown, however, there were problems in that area that would have to be solved by the new Religious Denominations Act.

743. The draft legislation on the press and other media had given rise to a lively debate and the differences of opinion had been so great that it had been decided to consult experts from the Council of Europe, who were expected to come to Bulgaria in September 1993. The television was still State owned. However, during elections, political parties were given time on the air, which was shared by all parties presenting candidates, and that system had worked adequately so far. With regard to article 21 of the Covenant, he said that meetings held indoors did not require the authorization of the Executive Board of the Municipal Council, contrary to meetings held outdoors. Decisions by the Executive Board denying permission for gatherings could not be appealed before the courts. He informed the Committee of the requirements for the establishment of political parties and the grounds for the prohibition of their activities, explaining that such matters were governed by article 11, paragraph 4, of the Constitution and, in greater detail, by articles 22 to 24 of the 1990 Political Parties Act. Only the Supreme Court could ban a political party and only on the proposal of the Chief Prosecutor. At present, over 100 political parties were registered in Bulgaria. Access to certain occupations was subject to conditions laid down by law: in order to be a judge or a prosecutor, for example, a person had to be a Bulgarian citizen and have the necessary legal training and professional level. Like other countries which had broken off with the former communist system, Bulgaria was experiencing what might be called a problem of “decommunization” and a number of laws had already been adopted excluding the former leaders of the totalitarian régime from certain high-level posts. In the case of the Banking and Credit Act, the Constitutional Court had declared the provisions relating to the restrictions on former communist leaders unconstitutional.

Concluding observations by individual members

744. Members of the Committee welcomed the fact that the quality of the dialogue with the Bulgarian delegation had enabled them to note with satisfaction that great progress had been made in Bulgaria in guaranteeing respect for human rights; that the new Constitution was broadly based on the provisions of the Covenant; and that Bulgaria had ratified the first Optional Protocol to the Covenant and undertaken to recognize the competence of the Committee on the Elimination of Racial Discrimination and the Committee against Torture to consider communications submitted by individuals. In addition, new legislative texts had been adopted in order to provide compensation, if possible, for loss or injury suffered by citizens under the former totalitarian régime. He noted that the Constitutional Court had already played a very useful role in strengthening the legal protection of human rights.

745. Members also pointed out that the report related only to the period following the major changes that had taken place in 1989 and did not deal at all with the period following the submission of the initial report of Bulgaria in 1978. In those circumstances, the Committee had not been able to fulfil its responsibilities as it should.

746. Members indicated that the provisions of article 9 of the Covenant relating, *inter alia*, to grounds for and the length of detention had to be fully respected, as did the provision of article 18. In the latter case, the Bulgarian authorities might draw inspiration from the Committee's general comment on freedom of religion and take the appropriate measures in that regard. They also noted that more energetic measures had to be taken to eliminate discrimination against ethnic and religious minorities and to encourage tolerance. To that end, a full human rights teaching programme should be set up and effective penalties should be provided for against persons who abused their authority, particularly law enforcement officials. They stressed that, under article 27 of the Covenant, minorities should not only have the same economic and political status as other Bulgarian citizens, but should also benefit from special measures of protection.

Comments of the Committee

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

Introduction

748. The Committee expresses its appreciation to the State party for its report, which has been prepared in accordance with the Committee's guidelines, and for engaging through a highly qualified delegation in a fruitful dialogue with the Committee. It notes with satisfaction that the information provided by the representative of the State party in his introductory statement, as well as in his replies to the Committee's list of issues and oral questions raised by individual members, complemented the written report in a very constructive way and provided the Committee with a comprehensive view of Bulgaria's actual compliance with the obligations undertaken under the International Covenant on Civil and Political Rights. The Committee, however, draws the attention of the State party to the considerable delay in the submission of its second periodic report, which was due in 1984 and to the lack of information in the report on the period 1978-1990, when several regrettable measures are generally known to have been taken by the former régime violating provisions of the Covenant.

Positive aspects

749. The Committee notes with satisfaction the considerable progress made by the Government of Bulgaria since November 1989 in bringing gradually its national legislation, particularly its Constitution, into conformity with the provisions of the Covenant and other international human rights treaties to which Bulgaria is a party. The recognition by Bulgaria of the competence of the Committee to receive and consider communications from individuals under the Optional Protocol is of particular importance for the effective implementation of the Covenant by the State party.

750. The Committee also notes with satisfaction that the 1991 Constitution of Bulgaria, in its

second chapter entitled “Fundamental rights and obligations of citizens”, follows the substance and framework of the Covenant. The Committee considers an independent judiciary essential for the proper protection of civil and political rights and welcomes the recent rulings of the Constitutional Court on human rights issues as proof of an increased level of judicial protection of human rights in Bulgaria. Obviously the existence of an effective Constitutional Court promotes and expedites the eradication of anomalies from the former totalitarian period. The Committee welcomes in this context particularly the references the Court has made in several cases to provisions in the Covenant when examining the constitutionality of legal provisions.

751. The Committee considers that the laws enacted since November 1989, in particular, the Act on Political and Civil Rehabilitation of Persons Repressed During the Totalitarian Régime Because of their Origin, Political and Religious Persuasion, the Liability of State for Harm to Citizens Act, the Amnesty and Restoration of Confiscated Property Act, the Restoration of Property Rights over Nationalized Assets Act, the Act on Restoration of Property Rights over Certain Real Estate Procured by the State under the Territorial and Territorial Development Act and the Law on Restoration of Property Rights over Real Estate of Bulgarian Nationals who Applied for Travel to the Republic of Turkey and Other Countries Between May and September 1989 laid solid grounds for the development of a free and democratic society based on the rule of law. Legislation following thereafter has had further effects in that direction.

Factors and difficulties impeding the implementation of the Covenant

752. The Committee notes that remnants of authoritarian rule cannot be easily overcome in a short period of time and that much remains to be done in consolidating and developing democratic institutions and strengthening the implementation of the Covenant. The Committee also recognizes that prejudices with respect to various sectors of the population, especially with regard to national or ethnic minorities and the inadequacy in the provision of human rights education and information, adversely affects the implementation of the Covenant. The lack of independent national institutions in Bulgaria that monitor the development and protection of human rights is under such circumstances a handicapping factor.

Principal subjects of concern

753. The Committee notes with concern that the Covenant’s position in the legal system is not firmly established, that the Supreme Administrative Court, provided for in article 125 of the Constitution, has not yet been set up and that the powers of the prosecutors are excessively large at the expense of the courts. The fact that judicial review of administrative decisions is available exclusively through appeals to the Supreme Court may not provide the citizens with a remedy in compliance with article 2 of the Covenant. Similarly the Committee notes with concern that not all cases of torture that took place under the former régime have had redress and that the harassment of Bulgarian citizens of Turkish ethnic origin that took place under the former régime had lingering negative effects for citizens belonging to that group.

754. The Committee also expresses concern about the reported cases of excessive use of force by police officers, the prolonged periods of detention and wide range of grounds therefor. With respect to the latter, the Committee finds that current legislation does not fully conform with the provisions

of article 9 of the Covenant. The Committee further expresses concern about the continuing exodus of Bulgarian citizens of Turkish ethnic origin as well as about the many disadvantages experienced by the Roma (gypsy) minority. Restrictions on the formation of political parties appear to be excessive. Very little information was provided about the status of women and their participation in public life.

Suggestions and recommendations

755. The Committee recommends that remaining restrictions in national laws on human rights should be reviewed and brought into full conformity with the provisions of the Covenant as set forth in articles 18, 19 and 21. The national legislation on detention should be made to conform with article 9 of the Covenant. In this connection, the excessive powers of the prosecutors should be reconsidered. Particular attention should be paid to the protection of the rights of persons belonging to national minorities in compliance with article 27 of the Covenant. In the latter regard, positive action should be taken by the Government. The Committee further suggests the establishment of an institution in order to monitor and strengthen the protection of human rights.