

GERMANY

CCPR A/33/40 (1978)

147. The Committee considered the initial report (CCPR/C/1 /Add.13) submitted by the German Democratic Republic at its 65th, 67th and 68th meetings on 27, 30 and 31 January 1978 (CCPR/C/SR.65, 67 and 68).

148. The report was introduced by the representative of the State party who, having indicated that it was prepared before the Committee had completed its general guidelines on the form and contents of reports from States, gave further information on the promotion, implementation and protection of civil and political rights in his country.

149. The representative of the German Democratic Republic stated that the implementation of civil and political rights in his country should be seen in the light of its social structure whereby exploitation and class antagonism had been overcome and comradesly co-operation had developed between all working people and citizens. He pointed out that, since the principles of the Covenant were embodied in the Constitution of 1968, there was no need for special legislation to give effect to its provisions; that State organs in his country ensured that domestic laws and regulations were in keeping with the provisions of the Covenant; and that all government agencies, enterprises and social organizations were obliged to assume responsibility for the protection of human rights.

150. Referring to the remedies available to citizens to ensure enjoyment of their rights, he mentioned the right to petition popularly elected bodies, their deputies or State and economic organs. He cited several other legal remedies including the right to appeal to the procurator against any measures taken by the investigating bodies.

151. The representative of the German Democratic Republic drew attention to a new law that his Government had enacted on 5 May 1977 relating to the tasks, rights and duties of public procurators in the supervision of the rule of law, the conduct of preliminary proceedings, the enforcement of penalties and the social rehabilitation of offenders. According to the new law, the penalty of "correction through labour" was abolished and any sentence entailing deprivation of liberty must specify the precise period of such deprivation. Juvenile offenders in his country could no longer be sentenced to life imprisonment and were accorded treatment appropriate to their age and legal status. The new law expressly prohibited discrimination against prisoners on any grounds and guaranteed the protection of the life, health and working ability of prisoners.

152. Referring to the rights of the Sorbs, the only national minority in his country, the representative stated that the 11 districts where the 100,000 Sorbs lived had been declared bilingual and that the Constitution guaranteed them not only full civil and political rights and the right to develop their national characteristics and to use their own language, but also required the State to encourage and support such aspirations.

153. Commenting on the report, members of the Committee expressed different points of view in

connection with the statement in the report that the basic social and economic rights, which were guaranteed by the Constitution of the German Democratic Republic, were the decisive pre-condition for the full implementation of civil and political rights. According to one viewpoint, it was more accurate to say that the full enjoyment of civil and political rights might depend on the degree to which economic, social and cultural rights were enjoyed, in view of the more immediate character of the basic obligation embodied in article 2 of the International Covenant on Civil and Political Rights as compared with that of article 2 of the International Covenant on Economic, Social and Cultural Rights. On the other hand, total agreement with the basic premise in the report was expressed by some members of the Committee, and reference was made to the relevant paragraph of General Assembly resolution 32/130 of 16 December 1977 which stated that “the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible”.

154. With reference to article 2, paragraph 1, of the Covenant, the question was asked, under what principle was the basic protection of citizens extended to all individuals within the territory of the German Democratic Republic?

155. It was noted that, in accordance with article 2, paragraph 3, of the Covenant, States parties undertook to ensure that any person whose rights or freedoms had been violated would have an effective remedy and that the right to claim such a remedy would be determined by competent judicial, administrative or legal authorities. The representative was then asked how that possibility was guaranteed in the German Democratic Republic, where the Supreme Court and the Procurator General appeared to be entirely dependent upon the People’s Chamber. More information was requested on “the legal redress for citizens in case of infringement of their rights” referred to in the report in connection with article 2, paragraph 3, of the Covenant.

156. With reference to article 6 of the Covenant, information was sought on all cases where instructions to the police forces allowed them to make use of their firearms (and whether it was considered that human life could be taken if the police were trying to enforce the law at a frontier crossing). The question was also asked whether there were any crimes in the German Democratic Republic for which the death penalty might be imposed.

157. With reference to articles 7, 9 and 10 of the Covenant, the following questions were asked: Did solitary confinement exist in the German Democratic Republic and, if so, for how long? Did the law of the Execution of Penalties correspond to the Standard Minimum Rules for the Treatment of Offenders and to the recent draft code of conduct for law enforcement officials, and did disciplinary or security measures under that law include restrictions on the right of prisoners to carry on correspondence? How long could detention in custody for questioning last? Was any distinction made between political and ordinary prisoners with regard to the enjoyment of their rights? Clarification was also requested on the statement in the report that the court had to examine ex officio at any time whether the conditions for custody on remand still prevailed; could an individual under pre-trial detention be given assistance by a legal counsel or choose his own counsel? And to what extent could the latter communicate with him?

158. As regards article 12 of the Covenant, information was requested on the laws referred to in the report to the effect that the constitutional right to freedom of movement could be restricted only “by

laws binding upon all citizens". Questions were also asked concerning the criteria that were used in the German Democratic Republic when applications to leave the country were being considered; bearing in mind the provisions of article 23 of the Covenant, were the children of an individual who had left the country in a manner which the Government considered unlawful allowed to join him abroad without hindrance? The representative of the German Democratic Republic was also requested to provide details of the circumstances in which citizens were not allowed to enter their country and of what action was taken against persons who attempted to leave without authorization.

159. In relation to article 14 of the Covenant, questions were asked concerning the legal guarantees provided with regard to the right to all persons to a fair and public hearing by a competent, independent and impartial tribunal; under what conditions could the public be excluded from a trial? Were there any specific rules concerning the admission of the press to court hearings?

160. With reference to article 17 of the Covenant, information was requested on cases where searches were allowed in the German Democratic Republic. The representative was asked whether searches of homes or persons conducted by the police without court orders could be reported to courts afterwards.

161. As regards article 18 of the Covenant, the question was asked, could persons be exempted from military service on grounds of religious beliefs?

162. With respect to article 19 of the Covenant, some members asked to what extent persons were free to comment on and to criticize the acts of the Government and of public authorities and to advocate peaceful changes in the social system; what measures had been taken to enable citizens to express different views through the mass media; and whether a private citizen was entitled to subscribe to and receive newspapers published in various foreign countries. Information was also requested on the measures used to enforce any restrictions to freedom of expression that may exist and on the number of persons detained for political reasons.

163. Noting that the German Democratic Republic had made an important contribution to existing international law by prohibiting war propaganda, one member requested information on the exact terms of that prohibition, since the relevant text would not only be useful for the Committee but might also be helpful to Governments which had thus far been reluctant to make war propaganda a punishable act.

164. As regards the freedoms provided for in articles 21 and 22 of the Covenant, the representative was asked whether prior authorization for a peaceful assembly had to be obtained by the organization concerned and, if it had to be, what conditions had to be met.

165. Referring to articles 23 and 24 of the Covenant, some members asked whether economic assistance was provided to the family to ensure its proper development; what provision was made to ensure the care and upbringing of children of tender age while their mothers worked outside the home; and what was done, in law and in practice, to facilitate the reunion of families which had been separated during the Second World War.

166. Commenting on article 25 of the Covenant, one member of the Committee asked whether the

only requirement to hold public office was to possess the necessary qualifications needed for the office in question. Further information was also requested on the participation of citizens in the conduct of public affairs and, in particular, in the carrying out of certain legal procedures.

167. As regards article 26 of the Covenant, the representative of the German Democratic Republic was asked whether a person who claimed that another person had prevented his access to employment or accommodation on some discriminatory ground was entitled to protection under the law. In this connection, information was also sought on the meaning of “socialist legality” and whether it was a guiding legal principle or a part of natural or positive law.

168. In relation to article 27 of the Covenant, the German Democratic Republic was congratulated on its achievements both in law and in fact concerning the status of the Sorbs. Reference was also made to the statement in the report that there were no religious minorities in the German Democratic Republic and the representative was asked whether that meant that there were no religious groups in the country.

169. The representative of the German Democratic Republic commented on the observations and questions summarized in the preceding paragraphs. He stated that the exercise of human rights in his country was organized with a view to the free development of all without distinction of any kind, it being understood, however, that action in the field of human rights must not be prejudicial to the State. He pointed out that some rights and duties, such as the right to vote and to be elected, were limited to citizens, but that aliens otherwise enjoyed equal rights in accordance with the spirit and aims of the Constitution.

170. Referring to comments on article 2, paragraph 3, of the Covenant, he pointed out that although the President and judges of the Supreme Court were responsible to the popular representative body, which was the expression of the people’s sovereignty, it did not imply that the said body had judiciary powers.

171. Replying to questions raised in connection with article 6 of the Covenant, he stated that the death penalty had not been abolished in the German Democratic Republic because the Government regarded it as an effective weapon against racialism, fascism and war criminals. In that connection, he pointed out that the use of firearms by the police was governed by the law relating to the People’s Police, which did not differ from that of other States.

172. Replying to comments on articles 7, 9 and 10 of the Covenant, the representative stated that the judge alone was competent to decide whether custody on remand could be ordered, and that a person who had been arrested had to be brought before him not more than one day after the arrest. Existing legislation had consistently been in conformity with the Standard Minimum Rules for the Treatment of Offenders and had even gone further in certain respects.

173. As regards freedom of movement, he said that restrictions for reasons of national security could be placed on that freedom in certain regions such as the military zones situated along the western frontier and along the frontier with West Berlin. He indicated that the granting of passports was subject to restrictions provided for in the relevant legislation, which was in accordance with the provisions of article 12, paragraph 3, of the Covenant. The right of persons other than citizens to

enter the territory of the German Democratic Republic was subject to certain legal regulations.

174. Replying to questions on the competence and independence of judges, he stated that they were elected by the popular representative body but were fully independent in their administration of justice and were bound only by the Constitution and the laws and regulations. A judge's term of office was the same as that of the popular representative body; he thus received his mandate from the last assembly elected by the people. He explained that such a procedure strengthened the position of the judge considerably while at the same time it prevented him from considering himself above the law. He also gave details on the role of the "lay judges" who were elected by direct suffrage and thus enabled the people to participate in the administration of justice.

175. The representative of the German Democratic Republic pointed out that every citizen of his country had the right to appeal and to have the assistance of counsel at all stages of the proceedings. Under the right of defence, the accused was entitled to know what charges were being brought against him and the nature of the evidence and, in general, to be provided with all the means necessary to prove his innocence. In that connection, he explained that the public could be excluded from a trial if publicity was likely to be detrimental to public order or morals or for reasons of State security.

176. Concerning the questions put to him under article 17 of the Covenant, he said that a search was authorized only if it was found necessary in connection with the preliminary investigation and that the authority competent to take a decision in the matter was the Office of the Public Prosecutor or, in an emergency, the body responsible for the investigation. The decision had to be confirmed by the judge within 48 hours as otherwise it became null and void, and proceedings could be taken against those who infringed that rule.

177. Replying to questions under articles 18 and 27 of the Covenant, he stated that there was no State religion in the Republic and consequently, there were no religious minorities. Church and State were separate and religious communities, of which he gave many details, managed their own affairs without State interference. He also said that "construction teams" had been created to enable conscientious objectors to perform useful work by participating in the construction of public works and the repair of damage caused by natural disasters.

178. As regards the freedom of expression enshrined in article 19 of the Covenant, he stated that his country attached particular importance to exchanges of views whenever decisions had to be taken on important legislation, social projects or economic plans and stressed that the Constitution made no provision for censorship. He gave details of the number and circulation of the various periodicals published by the political parties and social organizations in his country as well as of the publications and radio and television programmes received from and exported to the capitalist countries. He said that there were no political detainees in his country.

179. Replying to a question on the legal provisions prohibiting war propaganda, he read out the relevant article of the Penal Code under which proceedings could be initiated against anyone who engaged in propaganda for a war of aggression or other aggressive acts or who brought about the violation of international instruments aimed at preserving and strengthening peace.

180. Regarding the right of peaceful assembly and the question of whether non-violent demonstrations could be organized, he said that the unlawfulness of an act could not be determined solely in relation to its violent character and that all penal codes treated incitement, which did not in itself involve violence, as a punishable offence. He stated that social organizations could hold their meetings without special notification, and associations established by citizens for the defence of their interests had to comply with the provisions of the relevant law.

181. Replying to questions on articles 23 and 24 of the Covenant, the representative stated that his country had spared no effort in reuniting families since the end of the Second World War, and many cases had been settled in collaboration with Red Cross Societies. In that connection, he said that a series of social and economic measures had been adopted on behalf of the family, such as family allowances, social insurance, assistance to large families in need and loans to young couples. He gave detailed descriptions of the benefits enjoyed by a working mother with a view to enabling her to perform her professional activities without having to neglect her family obligations.

182. Concerning articles 25 and 26 of the Covenant, he stated that some rights and duties, such as the right to vote and to be elected and the right and duty to perform military service, were enjoyed only by citizens of the Republic. In addition to the role played by the "lay judges" in the administration of justice, he said that, in criminal cases, the representative of a team of workers could be invited to take part in the trial, so that the fellow workers of the accused could express their views before the court through a person enjoying their confidence. As regards employment opportunities, he stated that the sole criterion for obtaining employment was that of the candidate's qualifications.

183. In the course of his comments, the representative of the German Democratic Republic expressed his readiness to have some of the laws, reports and regulations referred to in his replies transmitted subsequently to the Committee.

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332. The Committee considered the initial report (CCPR/C/1/Add.18) submitted by the Federal Republic of Germany at its 92nd, 93rd, 94th and 96th meetings on 24, 25 and 26 July 1978 (CCPR/C/SR.92-94 and 96).

333. The report was introduced by the representative of the State party. Having explained the relationship between treaties entered into by the Federal Republic and domestic law, she pointed out that the individual rights embodied in the Covenant were also part and parcel of the Basic Law and of ordinary laws. Judicial remedies were available to persons claiming that their rights had been violated by a public authority. Every decision of the administration could be challenged before the courts, especially the administrative courts. The right to enter a complaint of unconstitutionality was guaranteed, and everyone, including aliens, could apply to the Federal Constitutional Court claiming violation by a public authority of a right guaranteed by the Constitution or by the Covenant. Moreover, each individual could apply to the Petitions Committee of the Bundestag or the Land Diets or even to individual members of Parliament. There were numerous associations which engaged in advocating and enforcing human rights and in disseminating information. Such rights as freedom of the press, of association and of scientific research played a significant part in the implementation of the Covenant.

334. Referring to present-day issues of public discussion, the representative stated that the Federal Republic was faced with determining how far to safeguard the human rights of those who refused to respect the human rights of others, and how to secure the benefits of the constitutional and judicial system for those who were resolved to destroy that system.

335. It was noted that the report had been published in the Federal Republic and that procedure was commended as a means of bringing the Covenant to the attention of the public in the reporting State and encouraging comment on the performance of its obligations.

336. Members of the Committee expressed doubts concerning the clarity in the report of the status of the Covenant in relation to the Basic Law and other legislation of the Federation and of the Länder. They asked whether the rights guaranteed by the Covenant were applicable only in so far as they were consistent with the Constitution and the basic rights deriving from it; whether provisions of the Covenant took precedence over legislative texts; and whether the Federal Constitutional Court had had occasion to decide if the Federal Republic was complying with the provisions of the Covenant.

337. Commenting on the reference in the report to a Basic Law provision calling upon the entire German people to achieve in free self-determination the unity and freedom of Germany, one member of the Committee observed that promotion of the right to self-determination must not be perverted to further expansionist aims or to justify claims to foreign territories and to jurisdiction over foreign citizens. As to the statement in the report that the Federal Government supported self-determination in southern Africa, did it mean that the Government gave no aid to the apartheid régime and that it also prevented individuals and juridical persons from doing so?

338. Recalling the provisions of article 2, paragraph 1, of the Covenant, it was noted that the State party was required to safeguard the rights and freedoms provided for in the Covenant by not engaging in any activities that would impair them. The Government's reaction to extremism was viewed as being in itself somewhat extreme and barely justifiable under that article. The representative was asked whether the agency responsible for the protection of the Constitution also had the duty of protecting individuals from interference by the State. It was also observed that the Federal Republic had a seemingly endless series of domestic remedies and that the relevant time-consuming procedures seemed inconsistent with the Covenant requirement that justice be administered without undue delays.

339. With reference to article 3 of the Covenant, it was noted that there was no equality between women and men in the Federal Republic in respect of wages; had consideration been given to provisions designed to ensure equal wages for work of equal value and what positive steps had been taken to combat sex discrimination?

340. As regards article 4 of the Covenant, reference was made to a statement in the report to the effect that certain basic rights, in the case of defence, might be restricted beyond the extent admissible in normal times. Members of the Committee requested clarification of the expression "in the case of defence" and wished to know whether those rights were the only rights which might be restricted and whether the other rights referred to in the Covenant were sufficiently guaranteed.

341. With respect to article 6 of the Covenant, the Federal Republic was commended for having abolished the death penalty. Members asked how the right to life was protected, especially in connection with the murder rate, labour safety and industrial accidents and the higher rate of infant mortality among the poor and migrant workers; what safeguards existed against the arbitrary use of arms by police or soldiers in case of riots, escape from prison or arrest; and whether educational measures were implemented to prevent the abuse of narcotic drugs.

342. In connection with article 9 of the Covenant, it was noted that liberty of the person seemed to be dealt with only in general constitutional provisions, not in specific statutes delimiting power of arrest or detention. It was observed that, in certain circumstances, according to the report, detention without trial might exceed even the usual maximum limit of six months. How often did that occur and how was the individual ensured against unduly long detention.

343. Commenting on article 10 of the Covenant, members of the Committee asked whether the principle of humane treatment of prisoners was a part of the law of the Federal Republic; to what extent the doctrine of "inherent features of imprisonment" was invoked to justify significant restrictions affecting prisoners; whether solitary confinement could be imposed and, if it could, under what conditions, for what periods of time and with what possibilities of renewal; and whether there could be total deprivation of contact with the outside world and with counsel.

344. Members of the Committee inquired about the rights of alien residents in the light of articles 12 and 13 of the Covenant: what restrictions, if any, might be imposed on aliens' liberty of movement and freedom to choose residence? Did the legal protection referred to in the report against the "immediate execution of the expulsion order" mean that the remedy in question had a suspensive effect? What crimes, if committed by an alien, could be followed by his expulsion

according to the law of the Federation?

345. With reference to article 14 of the Covenant, several questions were asked: Did the provisions of that article apply in proceedings before labour courts, finance courts and social courts? What constituted a “fair hearing” under the law of the Federation? What was the jurisdiction of the courts presided over by lay judges? Could the impartiality of judges of the Federal Republic be ensured when some people were excluded from judicial positions on political grounds? It was noted that under the law of the Federation, a person who was not acquitted, but against whom charges had been dropped, might nevertheless be required by the court to pay the costs. Was that provision compatible with the presumption of innocence, especially when the reason for imposing such costs might be that a suspicion remained? In that connection, it was argued that the law in force in the Federal Republic providing that the accused, if convicted, had to bear the cost of the proceedings, court-appointed counsel and interpretation, seemed inconsistent with paragraphs 3 (d) and 3 (f) of article 14 of the Covenant.

346. With reference to recent enactments in the Federal Republic whereby in certain circumstances solitary confinement was imposed and/or only written communication with counsel was permitted, members of the Committee inquired about the justification for such provisions and asked how they could be reconciled with the right of the accused to communicate with his legal adviser and to have proper facilities for the preparation of his defence. It was also noted that criminal proceedings occasionally extended over several years. Members of the Committee wondered whether that could be reconciled with the right of the accused “to be tried without undue delay”. With reference to a statement in the report to the effect that a trial could, under certain circumstances, be conducted against the accused in his absence, members asked how such decisions were made, whether they were made at the discretion of the judge alone and whether there was any possibility of challenging such decisions. When and on what grounds might a judge reduce a list of witnesses produced by a defendant?

347. With reference to article 15 of the Covenant, the representative was asked whether the principle of non-retroactivity was expressly provided for in the Constitution and guaranteed in the Penal Code, and, if it was, whether it was absolute or it referred only to those cases where new criminal law might prejudice the situation with regard to the person involved. Additional information was requested concerning the implementation of that article in the light of the fact that the punishment of war criminals was a requirement of international law.

348. In connection with article 17 of the Covenant, it was noted that the formal granting of the right to freedom from interference was insufficient if the essential dignity of man and respect for the privacy of life could be violated through technology. Members of the Committee asked whether the list of exceptions, mentioned in the report, to the restriction of interference with privacy was exhaustive; whether there were provisions to deal with wire-tapping and interference with correspondence; how people were protected against the use of information compiled by computers; what were the precise terms of the laws permitting interference with the privacy of mail and telecommunications and who was empowered to authorize such an action and to make the tape-recording available to third parties. With reference to the statement in the report that persons affected by such interference could complain to the Federal Constitutional Court, members asked how persons affected could take that step since they could not know of it. Information was

requested on the judicial practice of that Court in that respect, on any relevant proceedings under the European Convention and on the number of persons actually punished for violations of the right to privacy.

349. Regarding article 18 of the Covenant, reference was made to the statement in the report to the effect that religion or religious beliefs did not affect the enjoyment of civil and political rights or admission to public office. Information was requested on whether the same principle applied to ideology and to freedom of thought and conscience, on the kind of convictions which were used to justify the application of Berufsverbot (prohibition from practising a profession), and on the kind of posts and professions involved.

350. Commenting on article 19 of the Covenant, members of the Committee requested clarification of the limitations imposed on freedom of expression as provided for in the “general laws” and of the meaning of the expression “defamation of the Federal Republic” mentioned in the Criminal Code in connection with those limitations. It was noted that the provision in the labour law, under which the exercise of freedom of expression by an employee must not affect the interests of the employer, was inconsistent with article 19, paragraph 3, of the Covenant. It was also discriminatory because it provided punishment only when employees affected the interests of employers and not the reverse. One member of the Committee wondered how often freedom of expression had been violated in dealing with persons in possession of Communist literature and whether there was real freedom of opinion or of the press.

351. While commending the prohibition of war propaganda by federal law, members of the Committee wished to know whether a similar prohibition by law existed in respect of advocacy of national, racial or religious hatred that constituted incitement to discrimination, hostility or violence, as required under article 20, paragraph 2, of the Covenant.

352. In connection with freedom of association, it was noted that the right to form political parties was limited to the extent to which such organizations were in the interests of the Republic or one of its Länder and clarification was sought of those interests. It was observed that the exclusion of members of a particular political party from public service was a clear violation of article 22 of the Covenant. One member of the Committee wondered how many Nazi organizations existed in the Federal Republic and whether membership in them was considered a threat to the constitutional order. The question was asked, did trade unions have an opportunity to safeguard and improve the economic interests and working conditions of the workers and what part did they play in labour contracts?

353. With reference to articles 23 and 24 of the Covenant, members of the Committee requested additional information on the laws governing the rights and duties of spouses after the dissolution of marriage. Noting that the use of the term “illegitimate” was discriminatory, members of the Committee wondered what legal procedures existed for legitimizing natural children, whether the courts could require natural fathers to contribute to the maintenance of their children and whether in reality the rights of legitimate and illegitimate children were the same. In view of the high percentage of gainfully employed mothers in the Federal Republic, information was requested on the measures taken to make it economically possible for mothers to stay at home when their children were young or to provide child-care facilities while the mother was at work.

354. Referring to article 21 of the Basic Law which regulates the constitutionality of political parties, members of the Committee wondered whether that provision was compatible with article 25 of the Covenant and asked whether disputes arising from the application of that article could be adjudicated by courts and in particular by the Federal Constitutional Court. Concern was expressed about the implications involved in the regulations referred to in the report regarding the recruitment of civil servants. Those regulations were thought to pose considerable dangers not only to the rights referred to in article 25 of the Covenant but also to the freedom of expression and association. Questions were asked concerning the nature of political activities which could cause the denial of access to civil service; members wished to know whether such acts committed in the past could justify such a denial; whether mere membership of a group or political party could be a decisive factor or whether anyone calling for changes in the Constitution by non-violent means or expressing the view that a different social and political order might be preferable, could be regarded as hostile to the Constitution and, accordingly, denied access to the civil service. Information was requested concerning the procedure used in making such determinations as well as in reviewing the decision to reject a candidate by an administrative court, and on the cost and duration of such proceedings.

355. Additional information was requested concerning the implementation of article 26 of the Covenant, particularly as to whether discrimination was prohibited by law in private relationships, as envisaged in that article.

356. The representative of the State party commented on the observations and questions summarized in the preceding paragraphs. She stated that the Covenant was applied by the Federal Republic only to those individuals under its jurisdiction, in full conformity with the normal practice of States based on the general rules of international law. Her country's position was one of unqualified observance for the universal right to self-determination and it regarded that right as a decisive factor in evaluating the situation in southern Africa.

357. The provisions of the Covenant, she maintained, had been assimilated into domestic law with the status of a federal law and that the applicability of the Covenant did not depend on whether the rights laid down therein were also embodied in the Basic Law or in other laws. The fundamental rights provided for in the Basic Law enjoyed absolute pre-eminence in the legal system of the Federal Republic and were largely inalienable. Covenant rights, ranking after the fundamental rights of the Basic Law, were thus applicable only to the extent that the basic constitutional rights permitted. However, the Federal Government was convinced of the compatibility of the provisions of both the Covenant and the Basic Law. She stressed that the safeguards under the Basic Law and the legal system to protect the free democratic order related only to the central elements of the Constitution which coincided, and were compatible, with the guarantees of the Covenant.

358. The representative pointed out that the Covenant, as a federal law, prevailed over any conflicting legislation of the Länder; that guarantees of human rights enjoyed greater priority than ordinary law; and that her Government was committed to enact no legislation incompatible with them. She indicated that the courts had thus far not had to decide on whether the Covenant was directly enforceable since no contradiction had arisen in practice between the Basic Law and the Covenant. Individuals could, however, invoke the provisions of the Covenant in the courts to the extent that they were of a self-executing nature.

359. Referring to enquiries about the rights of alien residents in the light of articles 12 and 13 of the Covenant, she pointed out that foreign workers in her country enjoyed full protection of their human rights in conformity with the prevailing legal system and were virtually on a par with nationals of the Federation in terms of employment law and social legislation.

360. Replying to questions under articles 7 and 14 of the Covenant, she stated that the law providing for curtailment of contacts between an accused detained in custody and his legal counsel was strictly an emergency measure taken in response to a series of terrorist acts and could be imposed only to avert imminent danger to life, limb or freedom of a person and when the suspicion that such danger emanated from a terrorist association was based on hard evidence. Its application was hedged with protective restrictions, including a strict time-limit. Referring to the question of a trial being conducted in the absence of the defendant, she pointed out that under federal law a trial interrupted for more than ten days was automatically cancelled and had to start again. However, since the accused could interrupt and finally cancel trial proceedings by deliberately preventing his own participation through a hunger strike, the law provided that the trial could take place in his absence.

361. The representative pointed out that article 15, paragraph 1, of the Covenant was applied on the understanding that laws abolishing penalties in respect of certain acts could be retroactive. She did not think that the Covenant imposed an obligation on States parties to apply paragraph 2 of that article. However, the subject had been covered in her country by an extension of the period of limitation.

362. Replying to questions under article 24 of the Covenant, she indicated that, in the Federal Republic, children born out of wedlock enjoyed the same rights as legitimate children and were guaranteed equal opportunity for development under the Basic Law.

363. With reference to questions under article 25 of the Covenant, the representative pointed out that the competence to declare a political party unconstitutional under the Basic Law lay exclusively with the Federal Constitutional Court, in order to prevent a governing party from eliminating an opposition party for political reasons. The Court considered such cases only upon application by constitutional bodies and was required to ban only parties which constituted a real danger for the constitutional order.

364. As regards the requirements to be met by civil servants under the Basic Law and other laws, she stated that applicants for posts in public service must provide, *inter alia*, some security as to whether they recognized and were ready to promote the Basic Law and human rights and to respect the will of the people as expressed in free elections on the basis of majority suffrage. The reasons for which a candidate might be refused access to a post were made known to him and he was given the possibility of removing any doubts which might have led to his rejection and challenging the decision before the courts. The administration could base its action only on evidence admissible in court, which it must fully disclose to the applicant and the court. Membership in a political party which advocated dictatorship or the use of force to overthrow the constitutional order constituted an element in the assessment of a candidate's personality. Thus far, the Constitutional Court had not been able to decide whether or not active membership in the Communist Party was sufficient reason to doubt a person's loyalty to the Constitution. She stressed that there were no grounds for maintaining that the rights embodied in articles 19, 21 and 22 of the Covenant were restricted.

365. The representative of the State party expressed her Government's readiness to furnish additional information in writing on the issues which were not covered in her statement.

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479. In accordance with the statement on its duties under article 40 of the Covenant adopted at its eleventh session (CCPR/C/18), 14/ paragraph (i), and the guidelines adopted at its thirteenth session regarding the form and contents of reports from States parties (CCPR/C/20), 16/ and having further considered the method to be followed in examining second periodic reports (see paras. 58-59), the Committee, prior to its twenty-second session, entrusted a working group with the review of the information so far submitted by the Government of the German Democratic Republic in order to identify those matters which would seem most helpful to discuss with the representative of the reporting State. The working group prepared a list of issues to be taken up during the dialogue with the representatives of the German Democratic Republic. The list, supplemented by the Committee, was transmitted to the representatives of the German Democratic Republic prior to their appearance before the Committee, and appropriate explanations on the procedure to be followed were given to them. The Committee stressed, in particular, that the list of issues was not exhaustive and that members could raise other matters. The representatives of the German Democratic Republic would be asked to comment on the issues listed, section by section, and to reply to members' additional questions, if any.

480. The Committee considered the second periodic report of the German Democratic Republic (CCPR/C/28/Add.2) at its 532nd, 533rd, 534th and 536th meetings, held on 18, 19 and 20 July 1984 (CCPR/C/SR.532, 533, 534 and 536).

481. The report was introduced by the representative of the State party who stated that since its initial report to the Committee in 1978, the German Democratic Republic had undertaken numerous activities for the continued implementation and promotion of human rights both at national and international levels. In particular, major efforts had been made in his country to improve material conditions, public education, cultural life, health and social welfare of the people and to provide conditions and opportunities for the promotion of international understanding and mutual co-operation. He stressed the close connection between the right to peace and the right to life and the urgent need for effective disarmament, referring to the various proposals made or supported by the Government of the German Democratic Republic. He noted, in particular, that in 1983 the Government adopted regulations on the work of foreign cultural centres in the German Democratic Republic; a decree governing the conditions and procedures applicable to family reunification matters and marriages between citizens of the German Democratic Republic and aliens; and that his Government was constantly improving working people's participation in the conduct of public affairs as exemplified by recent elections to the local assemblies and election of judges. He described the process and its results. Moreover, the courts of the country, in particular the Supreme

14/ [Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40), annex IV].

16/ [Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 40 (A/36/40), annex VI].

Court, had developed procedures which strengthened political and civil rights. In providing legal

protection to individuals against physical injury and damage to personal property the courts had been much involved in determining and asserting civil law claims with regard to the payment of damages and compensation as well as the satisfaction of insurance claims.

482. The representative of the State party also referred to various human rights activities and stated, in particular, that under the new law of 1983 on social courts, disputes and arbitration commissions had been established in the German Democratic Republic which helped citizens with advice on legal matters and the exercise of their rights and gave advice on meeting legal obligations; that in the case of legal protection, a considerable contribution was made, in addition to barristers, by trade unions or the legal advisers or counsels appointed by them; that 37.7 per cent of the representatives elected to local assemblies and 50 per cent of legal officers were women; and that the German Democratic Republic was among the countries with the lowest crime rate in the world.

483. Members of the Committee welcomed the spirit of co-operation shown by the German Democratic Republic and expressed their appreciation to the Government 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

484. With reference to this issue, members of the Committee wished to receive information on the significant changes relating to the implementation of the Covenant since the previous report; precisely in what respects had steady progress been made in the implementation of civil and political rights since the submission of 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 whether the Government had achieved a balance between civil and political rights on the one hand and economic, social and cultural rights on the other; whether any study had been made of the restrictions placed on civil and political rights in order to determine whether they were really necessary and consistent with the principle of proportionality, which was the guiding criterion of the Covenant. With regard to promotional activities, members asked, in particular, to what extent and in what ways knowledge of human rights recognized in the Covenant was imparted to schools and universities, to public officials and law enforcement officers, and to the general public; to what extent the Covenant was made available to the general public and whether it was available in libraries and bookshops; whether trade unions and other organizations were aware of the Covenant provisions; whether the bulletin of the Human Rights Committee of the German Democratic Republic was easily circulated in the country; whether the Committee included people from different walks of life and how its activities were planned; whether besides the planned activities there were also more spontaneous ones by non-governmental organizations, or demonstrations of solidarity; and finally, whether the summary records of the Committee's consideration of the present report and the Committee's proceedings would be published in the bulletin.

485. Clarification was requested on the views of the German Democratic Republic regarding self-determination of peoples (article 1 of the Covenant). Recalling a parallel question to the Democratic People's Republic of Korea, a member asked whether the policy of the German Democratic Republic on reunification of Germany accorded with that principle, and whether it considered self-determination to be a dynamic or static concept. Another member wanted additional information

on what was being done with regard to the self-determination of other peoples referring in particular to southern Africa and Palestine. It was also asked whether the country had granted diplomatic status to either the PLO or the SWAPO. Members further asked what was the legal framework of the participation of citizens in public administration and whether it was encouraged. More information was also sought concerning the regulations governing family reunification and transborder marriages; on the content of the Third Penal Modification Act of 28 June 1979 to which reference was made in the report; on the petitions and appeals made at the administrative, judicial and legal levels; and whether petitions could be classified as effective remedies within the meaning of article 2, paragraph 3, of the Covenant and whether there were any specific rules concerning their handling.

486. In his reply, the representative of the State party stated that in the last 10 to 20 years the idea of human rights had become much more widespread in his country; that human rights issues formed part of the legal education in high schools and were frequently discussed in the mass media and that the citizens' consciousness and awareness of human rights had enormously increased; and that civil and political rights found expression not only in the constitution but in official commentaries and textbooks published in the last few years; that the Covenant and the text of the final act of Helsinki and the complete text of the concluding document of the Madrid conference had been published in the German Democratic Republic; that a human rights committee had been in existence in the country for more than 20 years, issuing a bulletin and most recently publishing the Government's second periodic report to the Committee, and that the Government had taken note of the various problems discussed in the Committee, in particular, during consideration of the first periodic report. He explained that the two German States were of a different socio-economic system and that it would be impossible to compare the situation in Korea with the situation in Europe or use the reunification policy of the Democratic People's Republic of Korea as a general model. He also pointed out that there had been a significant increase in the use of petitions in the last few years under article 103 of the Constitution; that petitions were a simple and informal procedure, no fee was payable and they often produced more benefits than filling an action with a court; that about 50 per cent of petitions challenging judgements or other legal decisions proved successful. The representative stressed that petitions were not appeals and could not be used in place of appeals. Moreover, they could not achieve any formal modification of a decision of a court. Petitions often consisted of criticisms of decisions or activities of State organs and other organizations. Article 1 of the Petitions Act stipulated that exercising the right of petition must not result in any disadvantage to a citizen or a social organization. Article 7 stipulated that the petitioner had the right to a detailed written or oral answer to his petition which had to be delivered within four weeks. Under articles 10 and 11 the relevant State organs and other bodies were required to analyse the contents of petitions with a view to improving their work. The representative stressed that the highly developed level of economic, political, social and cultural life in the German Democratic Republic was the basis for a full guarantee of human rights and the equality of all human beings without any discrimination; as well as of the largest possible political participation of citizens in the conduct of public affairs.

487. As regards the Committee for Human Rights in the German Democratic Republic, the representative said that the Committee was an independent, non-governmental body without affiliation to any political party; it was not responsible to any authority, institution or organization. Its membership consisted of representatives from various organizations and included representatives

of different parties, mass organizations, central government bodies, academic establishments; hence it represented varying interest and social groups.

Equality of the sexes

488. With regard to the second issue, members of the Committee wished to receive information on the equality of the sexes which was dealt with in paragraphs 16 to 20 of the report. In particular, since measures taken to improve the status of women could have considerable implications for family life and for the care and upbringing of children, further details were requested on how those problems were dealt with in the German Democratic Republic. In addition, information was requested on whether married women were treated in the same way as unmarried women; from what age interruption of pregnancy was permitted and whether there was any distinction between the treatment of minors and adult women; whether a married woman could have an abortion without the agreement of her husband; what the impact of abortion on family life was and was the opinion of the husband taken into consideration; and whether the birth rate had decreased in the country and, if so, what problems were envisaged.

489. Replying to those questions, the representative of the State party pointed out that about 50 per cent of all students at colleges and nearly 75 per cent of all students in technical schools were women; that 99 per cent of girls who had completed 10 years of compulsory schooling began vocational training; and that as a result, the number of women having completed vocational or higher education was steadily growing. Replying to other questions concerning the status of women and family life he said that the State provided financial assistance for working mothers; that many mothers took a year's paid maternity leave; that families with three or more children received priority in housing; that paid maternity leave would be extended to 18 months; that mothers taking care of sick children received an allowance equivalent to the sick pay to which they were entitled after the seventh week of their own incapacitation and those benefits were also available to unmarried mothers. He also stated that the paid leave available for working mothers who wished to care for their children had been extended to 18 months. It was, however, true that working mothers, and especially those more highly qualified, tended to lose part of their professional development due to maternity and did not find it easy to reach the level of their male colleagues, especially in scientific fields. In the administration of justice, however, women are playing a large role. Replying to additional questions, the representative said that women were free to decide whether they wished to work or to stay at home and take care of their families. His country's experience showed that equality for women could only be achieved if men gave their full support and participation in what was a difficult and complicated social process. Progressive steps had been taken to allow every female to decide during the first three months of pregnancy whether she wanted a child. In addition effective social measures and widespread family planning were provided to ensure the equality and freedom of women.

Rights to life

490. With reference to this issue, members of the Committee wished to receive information on the death penalty, including information on the number of cases and for what offences the death penalty had been carried out; whether any consideration was being given to its abolition; deaths resulting from action of the security forces; what instructions security forces had received regarding the use

of fire-arms; and in relation to the deployment of nuclear arms in Europe, what attitude did the Government and the people of the German Democratic Republic take and what practical steps had the German Democratic Republic taken to promote disarmament. Regarding the right to live in peace, the report referred to “relentless punishment of crimes against peace, humanity, human rights and war crimes” as indispensable prerequisite for peace and stability, and members asked whether the German Democratic Republic would favour the establishment of a criminal jurisdiction on an international basis to deal with such crimes. Members also raised questions as to the protection of health.

491. Other questions raised by members concerned the manner in which the German Democratic Republic conceived and applied the principle of unilateral renunciation of military force. Other members referred to the inadequacy of article 4 of the Constitution guaranteeing the right to live in peace relative to the broader right to life guaranteed under article 6 of the Covenant; the possible violation of article 6 through arbitrary use of deadly force by frontier guards; in that connection it was asked how many persons had been killed by automatically triggered fire-arms along the frontier since the submission of the German Democratic Republic’s initial report in 1979. The wish was expressed that those devices be removed.

492. The representative of the German Democratic Republic explained that the right to life was linked to the right to peace; that in the opinion of his Government, no one should be arbitrarily deprived of life, it would be wrong to interpret article 4 of the Constitution as limited protection of the right to life. That right was also protected by other provisions of the Constitution and specific laws. The death penalty (arts. 6 (2), (3), (4) and (5) of the Covenant) was applicable only to a very few serious crimes, including crimes against peace and humanity, genocide and war crimes, high treason, espionage and very serious cases of murder. He stressed that even in the case of military crimes the death penalty was only applicable when the German Democratic Republic was the victim of aggression and was in a state of national defence. In practice, since the first periodic report, there had been no cases of death sentences either imposed or executed. The question of abolition of the death penalty was linked to that of international efforts towards peace to save the lives of millions from nuclear war. Nothing was more important than peace and all means should be used to achieve it, even the death penalty. The lessons of history had been learned under fascism and the Government of the German Democratic Republic would fight with all means at its disposal against this most serious of crimes.

493. With reference to the question of death resulting from the action of the security forces, he said that weapons could only be used to an appropriate extent commensurate with the threat of danger offered. He quoted articles 26 and 27 of the law on the State frontier of the German Democratic Republic which stated that frontier troops might resort to physical action if other means were not adequate to prevent serious implications for security and order in the frontier area and only against violent acts. He also said that a complicated situation had existed for more than 25 years due to the fact that the western frontier of the German Democratic Republic had not been fully recognized as an international border. Attempts had been made to destroy the Socialist State in the German Democratic Republic and national security consequently had become a vital issue. The situation of the border was different from that prevailing in relation to other States because it was a frontier between two differing social systems and divided two military pacts. Turning to another question, he stated that fire-arms were the ultimate measure against individuals only when other physical

action was ineffective and failed to prevent the perpetration of a crime. The lives of persons would be spared if possible and injured persons aided. A similar law governed the People's Police and corresponded to regulations enacted in other democratic countries. It had very seldom been used because of the stable political situation in the German Democratic Republic and the absence of terrorism or banditry. There had been a strict control on fire-arms since 1945 and prohibition on their possession or import.

494. With reference to questions on the right to live in peace, he said that the explicit inclusion of human rights in paragraph 26 of the Penal Code illustrated the view that the protection of peace, humanity and human rights was one and the same; that individual human rights were protected by law; that the more serious crimes, such as mercenary or war crimes, were equivalent to crimes against humanity; that the Code was particularly clear with regard to crimes against national, ethnic, racial or religious groups and that in the past few years a number of ex-Nazi criminals had been tried and sentenced for war crimes. The representative also stated that his Government thought the question of an international criminal jurisdiction for that purpose was inseparable from the sovereignty of any State, and that crimes against peace and humanity should be prosecuted under the principle of universality within the competence of every State. In relation to concrete steps for disarmament, he referred to the willingness of the German Democratic Republic to accept the proposal of the Government of Sweden for a nuclear-free zone in Europe and its efforts to ban all nuclear weapons from European territory.

495. In response to the questions raised with regard to the protection of health, the representative stated that health of the people was considered to be a human right in the Constitution and was guaranteed by article 35 which provided for the improvement of working and living conditions, the promotion of physical culture and sport, and free medical care on the basis of the social insurance system.

496. He cited a number of statistics to illustrate health improvements in the German Democratic Republic, in particular, infant mortality in 1983 had improved to 10.7 per thousand live births; in 1949 there had been 9,245 deaths from infectious diseases but only 390 in 1982; deaths from malignant tumours and heart and circulatory diseases had also dropped in recent years; the Government had paid great attention to public health and in 1983 there were 22 doctors available per 10,000 inhabitants compared with 7 per 10,000 inhabitants in 1949. Financial support for public health had grown from 1 billion marks in 1950 to 11 billion marks in 1983.

497. Referring to questions on legislation concerning the beginning of life he said that the start of life and the development of the personality occurred when the body of the child separated from the body of the mother and from that moment the individual was considered to have human rights protected by penal law, although even before that moment the foetus was protected under the laws on abortion and article 363 of the Civil Code according to which a child already conceived had the right of inheritance. Legislation in the German Democratic Republic prohibited any active assistance in ending a person's life and medical personnel involved in such activities were punished. Where the transplant of organs was concerned, the German Democratic Republic had some practice but no legislation; a transplant was regarded as an operation and the consent of both parties or their relatives was necessary.

Liberty and security of persons

498. With reference to this issue, members of the Committee wished to receive information concerning the circumstances and periods for which persons might be detained without being charged with a criminal offence; on the remedies available to persons (and their relatives) who believed that they were being detained wrongfully; on the effectiveness of those remedies; on observance of article 9, paragraphs 2 and 3 of the Covenant; on the maximum period for which persons might be detained pending trial; on solitary confinement; on the contact between arrested persons and lawyers; on the prompt notification of family in case of arrest; detailed information on the Ordinance of 8 November 1979 on the care of persons and the protection of dwellings and property in case of arrest; the laws on the treatment of persons in custody during investigation and their compatibility with the United Nations Standard Minimum Rules for the Treatment of Offenders.

499. In addition, members of the Committee wished to receive further information concerning possible violation of article 9 of the Covenant through the arbitrary arrest of peaceful demonstrators; concerning the conditions of detention such as whether prisoners were obliged to work, whether there were programmes for prisoners' education and for their social rehabilitation; whether there were separate places of detention for those undergoing trial and those already sentenced; whether there were high-security prisons and whether political prisoners were kept separately from common criminals. In addition, information was requested concerning the claims made by many persons charged with attempted escape, that they were unaware of the applicable Penal Law covering their offence; and concerning reported violations of article 9, paragraph 4, of the Covenant involving delays of as much as six months prior to trial.

500. The representative of the German Democratic Republic stated that no arbitrary deprivation of liberty existed in the German Democratic Republic. In practical terms, under article 125 of the Penal Code any person could apprehend another if he were in flight and if he were suspected of attempting to abscond and his identity could not be established. The procurator and the investigating authorities could order temporary apprehension of a person if the conditions for issuing a warrant prevailed. Such a person, however, must be brought before a competent court not later than the next day. Following preliminary arrest, a number of legal remedies were applicable and available to the person concerned. A date must be appointed for a public trial not later than four weeks after a person had been charged. In 90 per cent of criminal proceedings that period was complied with and only in exceptional circumstances, which had to be recorded, was that provision not observed.

501. Turning to the question on the commitment of persons to institutions, he said that principally the family was involved, and in some cases a member of the family might legally represent the person in question. Under article 14.3 of the Law on Commitment, a member of a family had the right to apply for the derogation of commitment to an institution passed by a court provided that the family would see to the medical treatment of the patient.

502. Replying to questions on the execution of criminal justice, the representative stated that the standard minimum rules of hygiene in places of detention were stringently observed. Labour safety regulations for prisoners were no worse than those in force outside prison. In accordance with the Covenant, pre-trial and criminally charged prisoners were separated, and pre-trial detainees were

treated as persons who had not been proved guilty. Juveniles and adults were separated in accordance with the provisions of the Covenant except in certain instances where such juveniles were receiving training and were over 18 years of age. In other instances juvenile offenders over 18 years of age might remain in juvenile prisons to complete training. He also said that political opinions were not punished and there were no special trials for those accused of political crimes nor special prison regulations for political prisoners and that the German Democratic Republic only held persons responsible for their criminal acts. Moreover, among the efforts to rehabilitate prisoners stress was laid on parole before the full sentence had been served as an important step in the transition from prison to freedom. A prisoner who was released was given a job in accordance with the qualifications obtained in prison and provided with lodging (unless he returned to his family); those items were very important in the rehabilitation of former prisoners and were complemented by social assistance.

Freedom of movement

503. With reference to this issue, members of the Committee wished to receive information on the restrictions on the freedom of movement currently in force; the restrictions for citizens of the German Democratic Republic to enter their country; the actions, if any, taken against persons who attempted to leave the country without authorization, and the criteria used for permission to leave the country. They asked, in particular, what documents were required for application for authorization to leave the country either temporarily or permanently; whether they included tax statements or statements by the employers or members of the family regarding the purpose of the journey, documents from other administrations such as the police and housing services and the duration of such certificates; whether citizens had the right to a passport and how the passport system of 1979 compared to article 12, paragraph 2, of the Covenant; how restrictions could be justified with regard to article 12, paragraph 3, of the Covenant; what protection of national security meant and what were the criteria of proportionality to prevent persons from going abroad; as well as how an application by a citizen to leave the country was assessed in relation to the protection of public order. Furthermore, explanation was requested on the number of applications to leave the country; on the percentage of applications made for permission to leave for countries other than those of Eastern Europe and what percentage of applications were granted or refused and whether reasons were given for refusal; which category of persons were permitted or refused the right to leave; whether the legal reasons for refusal were mentioned in any text and whether the person concerned was informed of them and what effective remedies the person could claim with reference to article 12, paragraph 2, of the Covenant if a passport was refused. In addition to the normal frontier posts for police and customs controls, it was asked whether any physical obstacles existed to crossing the frontier and, if so, when they had been set up and for what purpose and what the results of their existence and operation had been, as well as how many persons had been condemned under article 213 of the Penal Code.

504. The representative stated that liberty of movement was guaranteed by article 32 of the Constitution; that it was only restricted by law in certain specific circumstances in the interest of the citizen and of society, to ensure security and protect health, for example in the case of epidemics; and that residence restrictions might be imposed by court decision under article 31 of the Penal Code in accordance with the nature of the crime.

505. With reference to restrictions for citizens to enter their country, he said that there were no circumstances or conditions under which citizens were not allowed to enter the German Democratic Republic. Under article 10 of the Law on Citizenship, citizens were allowed to move to another country upon request unless the law and regulations stipulated otherwise.

506. As regards questions concerning the actions taken against persons who attempted to leave the country without authorization, the representative asserted that those persons violated the law, both in the case of citizens of the German Democratic Republic and of foreigners residing there. Foreigners might have their permit withdrawn or be expelled from the country, while citizens of the German Democratic Republic might be charged under article 213 of the Penal Code. Persons known as “escape helpers” who received money for helping persons to leave the country illegally could be punished on the grounds of conducting traffic in human beings.

507. Replying to questions posed on the criteria used for permission to leave the country, the representative explained that requests to leave the country were processed by the competent organs acting in accordance with national legislation, such as the Passport Act and Passport and Visa Decree of 1979 and the Ordinance on the regulation of questions concerning family reunification and marriage between citizens of the German Democratic Republic and aliens of September 1983, and that the temporary or permanent exit from one country to another depended on the relation between States. In order to ensure the legitimate rights of their citizens, the authorities reserved the right to grant permission to leave, because the German Democratic Republic was located on the dividing line between two social systems, even until today its laws on citizenship were not respected by all States and the German Democratic Republic must defend itself against efforts to lure away skilled manpower. He also stated that permission was refused if the rights of citizens were impaired by the change of residence and also depended on the family situation of the applicant, his profession, whether he had met his obligations in the German Democratic Republic, whether he had given correct information, whether his desire to change his residence was at conflict with the interests of the German Democratic Republic, whether he was free of military obligations or whether he was involved in any criminal proceedings.

508. In reply to a number of questions, he said that the role of the frontier was to determine the territory of the State with respect to its neighbours; that his Government wished for peaceful relations with all its neighbours and enjoyed relations of friendship with them and that a country's right to its frontiers could not be questioned under the Charter of the United Nations and the treaty of Helsinki.

Right to fair trial and equality before the law

509. With reference to this 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 competent, independent and impartial tribunal, on the relevant rules and practices concerning the publicity of trials and to public pronouncement of judgements as required by article 14, paragraph 1, of the Covenant and on specific rules concerning the admission of the mass media to court hearings; as well as on facilities for accused persons to enable them to obtain legal assistance. Referring to article 94 (1) of the Constitution which stipulated that only persons loyally devoted to the people and their socialist State could be judges, it was asked whether there was a public body to decide

which judges met those requirements. As regards the admission of the mass media to court hearings, more information was requested on whether observers from non-governmental organizations could attend trials; what criteria were used to decide when a trial should be held in secret for reasons of State security and what measures were applied to prevent trials from exceeding a reasonable limit, as required under article 14 of the Covenant. As regards the right to a public hearing, it was inquired whether in cases where articular facts were kept secret, was this not an exception which could be very broadly interpreted and used to hold trials in camera whenever the State felt that for some reason or another it would be desirable for them not to be held in public. It was also asked whether trials concerning illegal crossing of the frontier were normally held in public or always held in camera. In addition, further clarification was requested regarding the principle of the independence of the judiciary.

510. The representative of the German Democratic Republic stated that equal rights of all individuals before the law was a fundamental basis of the legislation of the German Democratic Republic and were enshrined in articles 20 and 94 of the Constitution, article 5 of the Penal Code and article 5 of the Criminal Procedure Code. The right to a fair and public hearing was guaranteed by article 105 of the Constitution, articles 10 and 11 of the Court Constitution Act, articles 211 and 246 of the Penal Procedure Code, and articles 3, 43 and 44 of the Civil Procedure Code. The independence and impartiality of the judiciary was guaranteed by article 96 of the Constitution, article 5 of the Court Constitution Act, and articles 156 and 222 of the Criminal Procedure Code. There were no extraordinary courts in the German Democratic Republic. Military courts were included in the general court system and there were no special military codes. The Supreme Court ensured uniform application of the law by all courts, including military courts.

511. In order to safeguard a fair trial by an independent and impartial court, article 7 of the Penal Code included important provisions concerning the eligibility and election of judges; courts and judges were subject only to the Constitution and the law and court judgements could only be revised by a superior court. Only a special body of judges sitting in a disciplinary committee was entitled to decide upon the disciplinary liability of a judge. The representative also pointed out that article 94 of the Constitution required that only persons loyally devoted to the people and their socialist State, and endowed with a high measure of knowledge and experience, human maturity and character might be judges. The fact that judges were elected and had to be scrutinized by citizens' teams provided a safeguard that people with the right personality became judges and that has been his country's experience.

512. As to the independence of judges, he stated that judges of the Supreme Court were elected by the People's Chamber and might be recalled by it, and that the People's Chamber issued guidelines for the work of the Supreme Court. Nevertheless, it did not give orders as to how the Supreme Court was actually to function.

513. With regard to the admission of mass media to court hearings, it was a principle of the administration of justice in the German Democratic Republic that, in accordance with article 14, paragraph 1, of the Covenant, court proceedings were held in public. The only exceptions were in accordance with articles 44 and 211 of the Criminal Procedure Code. Court proceedings were regularly reported in the mass media as part of the process of developing the legal consciousness and awareness of the people. In conformity with article 14 of the Covenant, facilities were granted to

accused persons without any restriction or discrimination. A person charged with a criminal offence was entitled under article 61 of the Criminal Procedure Code to defend himself and to avail himself of legal assistance at any stage of the proceedings and he was entitled to legal assistance of his own choosing free of charge. Most advocates in the German Democratic Republic had joined to the collegia mentioned in the report; the collegia ensured that persons seeking advice could freely choose their advocate from among members. An individual contract had to be concluded between the client and an advocate which formed the basis for the activity of the defence counsel.

Interference with privacy

514. With regard to this issue, members of the Committee wished to receive information on the powers of security forces to search private houses and to interfere with private correspondence.

515. The representative stated that the rights and duties of the security forces were strictly stipulated by law and that such interference was admissible only in regular preliminary proceedings or court proceedings as provided by article 98 of the Criminal Code. If those legal prerequisites were not fulfilled, no one was allowed to search private homes or to interfere with private correspondence. Under article 19 of the Criminal Code, if the information provided gave rise to a suspicion of a criminal action, a written order would be issued for the institution of preliminary proceedings. Article 108, paragraph 2, of the Criminal Code provided that a person could be searched if he was suspected of having committed or participated in a criminal act and if the search was expected to produce evidence.

516. Under article 115 of the Criminal Code, the post office might be ordered to hold letters, telegrams and other postal matter addressed to the accused. If it was established after opening the mail that retention was unnecessary, it must be returned to the postal service. The surveillance and recording of telecommunication might be ordered in the event of a strong suspicion of criminal acts such as air piracy, and drug trafficking. Under article 121 of the Criminal Code, application must be made to a court within 48 hours for confirmation of such restrictive measures and if confirmation was denied, the measures must be cancelled within 24 hours.

Freedom of expression

517. With reference to this issue members of the Committee wished to receive information on the controls exercised on freedom of the press and the mass media; on cases where persons may be arrested or detained on account of their political views; on restrictions on political debates; on the extent to which artistic activity was dependent on membership in official organs of artists; as well as on the criteria of admission to and dismissal from such organizations.

518. They also wished to receive further clarification on the application in practice of article 99 of the Criminal Code, under which it was a criminal offence to collect information which was not classified as secret with a view to passing it to foreign agencies or organizations, as well as how this article had been interpreted by the courts.

519. Moreover, members inquired what measures, in particular, were taken by the State to enable people to seek and receive information, regardless of frontiers; whether it was true that, in order to

publish anything, a person needed the authorization of the Minister of Information; whether, if an individual wished to publicize his ideas for change or draw attention to alleged violations of rights, what means were available for him to do so; whether he had to do it in the government-controlled mass media or could issue some other publication.

520. Further information was also requested on the application of articles 106 and 220 of the Criminal Code; on whether there was any kind of private human rights committee, in particular, whether there was a branch of Amnesty International or a Helsinki Declaration Monitoring Group; and also how the German Democratic Republic justified the fact that German language newspapers from other countries were not available in that country. Concern was expressed that a private peace group, which had chosen the monument "Swords into Ploughshares" as its symbol, had been subjected to sanctions by public authorities.

521. The representative explained that freedom of expression was a fundamental right of citizens of the German Democratic Republic and was ensured by article 27 of the Constitution. This guarantee was an essential part and pre-condition of socialist democracy. In the Republic the press was owned by the people, the political parties and other organizations. There were no private newspapers or journals and the press was not governed by commercial interests. The parties and organizations which represented the ideas and feeling of the working people determined the general policy of the press. The people had an opportunity to write articles and contribute to the press and there was a large network of popular correspondents who reported on everyday affairs and experiences reflecting the living and working conditions of the people.

522. There was no State control of the press. Radio and television were controlled by two State committees which guided their activities. The committees represented the working people and reflected their interests. Political and other subjects were frequently discussed on radio and television. It should be noted that while radio and television were under the control of the State, such control was not directed at restricting or limiting freedom of expression but at promoting the use and application of that right to the greatest possible extent.

523. With regard to cases where persons might be arrested or detained on account of the political views which they expressed, he said that there had not been a single case in the German Democratic Republic of arrest or detention on such grounds. According to articles 19, 87 and 99 of the Constitution, criminal responsibility arose only in respect of concrete acts and not in respect of a person's conviction, attitude or opinion. In the case of crimes against humanity, propaganda for war, and acts directed against the sovereignty of the German Democratic Republic, the political power of the working people and public order, persons were not punished as dissenters but were called to account on the grounds of their criminal conduct.

524. With regard to restrictions on political debate, he said that there were no special legal or other restrictions on such debate. The general orientation for political debate was to secure peace and to safeguard the welfare of the people as laid down in the Constitution. Within the framework of that objective, people in his country discussed freely in various forums the various problems which arose, making the use of the right to participate in the conduct of public affairs. Following such debates, the people frequently submitted proposals to the relevant bodies.

525. With respect to the extent to which artistic activity was dependent on membership in an official organ of artists and the criteria of admission to, and dismissal from, such organizations, he said that artistic activity was an important part of the cultural life and development of people in the German Democratic Republic. Therefore, the State and society supported the promotion of artistic activity. Such activity was not dependent on membership in any official organization and any one who would wish to participate in an artistic activity could do so in accordance with his ability. Therefore, groups and organizations of artists formed in accordance with the Constitution were autonomous in that they conducted their own affairs and drew up their own statutes. They were of course registered with the competent State authorities in order to have legal status.

526. Replying to questions about the peace movement in the German Democratic Republic, he said that an active and extensive peace movement was independent of State control. No citizen had been prosecuted for participating in peace movement demonstrations; however, in recent years certain forces external to the German Democratic Republic had initiated activities of a subversive nature sometimes using the label of the peace movement.

527. Turning to the question on the possibility of obtaining newspapers from Western countries in the German Democratic Republic, the representative pointed out that many newspapers and films were indeed imported from other countries and the citizens of his country had access to a great deal of information from German language newspapers and television stations. He himself had travelled to many countries where it had been impossible to buy newspapers from the German Democratic Republic. Where reciprocity was concerned, a number of agencies carried out an exchange of press with other countries, such as Austria, France and the United Kingdom. Such exchanges, however, had been conducted in hard currency and the issue was, therefore, complicated. Postal communications had been successfully extended. Independent publishing houses were able to purchase the books of their choice. Nationally-owned companies examined the manuscripts they received for suitability to ascertain whether they were compatible with their publishing policy. There was no Government interference or censorship.

Right of peaceful assembly

528. Members of the Committee requested information on the restrictions on this right.

529. In this connection, the representative stated that the right of peaceful assembly was basic to socialist democracy and guaranteed by the Constitution and all bodies in the State. Every day many meetings of organizations were held and the only restrictions were provisions regulating material conditions to be met for health and traffic purposes, for instance. Groups inviting the public for such activities as dances, concerts or pop festivals must apply to the State authorities for special permission.

Freedom of association

530. With reference to this issue, members of the committee wished to receive information on the right of workers to establish organizations of their own choosing, on the requirements needed to form a political party and on whether a political party may be formed to promote changes of the present Constitution by peaceful means.

531. In addition, members of the Committee wished to receive further clarification on the provisions of article 1 of the Constitution, which stated that the German Democratic Republic was the political organization of the working people "... led by the working class and its Marxist-Leninist party", in particular, whether that provision did not exclude the possibility of change and whether political parties in the country could adopt a capitalist ideology and what specific restrictions had been posed on freedom of association. Moreover, information was also requested on whether the German Democratic Republic had acceded to the ILO Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize; whether the statement in the report that the nature and aims of associations had to be in agreement with the objectives of the socialist society was not restrictive of the right of freedom of association; as well as whether private farmers were able to form associations or trade unions to defend their interests.

532. Replying to questions raised under this issue, the representative stated that socialist society was based on co-operation and mutual assistance and needed appropriate forms of organization. In using that freedom the workers had joined organizations, namely, trade unions, such as had existed in the past. Immediately after being liberated from the Hitlerian dictatorship the workers and formed a confederation of trade unions, the Confederation of Free German Trade Unions - and had elected a national executive committee. That body had become the largest and most powerful organization in the country, comprising more than nine million members. Articles 44 and 45 of the Constitution provided that, *inter alia*, the free trade unions had the right to conclude agreements with government authorities, to initiate legislation and safeguard the rights of the working people and their living and working conditions. Trade unions were under the protection of the State and, in turn, protected the rights of the workers. Judges in the labour courts must have the support of the trade union boards who submitted lists from which judges were elected. At a labour court, there must be one senior judge, one professional judge and three lay judges proposed by the national executive of the Confederation of Free German Trade Unions. He found it difficult to imagine that any worker would try to found a separate trade union, which could never be so important and influential as the present one.

533. As regards private farmers, who were not in a position of economic dependence on an enterprise as other workers were, they had seen no need to form unions. Those farmers who wished joined collectives which were free to choose how to realize their own aims. The Congress of Farmers which met every five years discussed their affairs and made proposals to the Government for new legislation.

534. As regards the formation of political parties, he said that there were five political parties which had been re-established after the liberation from fascism, taking account of the lessons learned from history. They represented the different strata and interests of society. The main one was the Socialist Unity Party, which was Marxist-Leninist. The others were the Christian Democratic Party, which refused the Marxist-Leninist ideological basis and reflected the Christian view of the world; the Liberal Democratic Party, which reflected the interests of craftsmen; the National Democratic Party which was favoured by the intelligentsia; and the Democratic Peasants' Party. In general, they had common political aims, which led them to join in a democratic block. They were not confrontational because of the stable political situation and had an agreed proportion of places in the People's Chamber. As an example of the parties' participation in government, he pointed out that the President of the Supreme Court was a leading member of the Christian Democratic Party,

the Minister of Justice was a leading member of the Liberal Democratic Party and one of his deputy ministers was a leading member of the National Democratic Party. Judges and other legal officials included many people coming from different parties. In the early days there had been differences but they now co-operated for the benefit of all.

Protection of family, including the right to marry

535. Members of the Committee wished to receive information on the restrictions, if any, on the right of citizens of the German Democratic Republic of marriageable age to marry aliens.

536. The representative said that the Family Code of the German Democratic Republic provided for marriage rules similar to those of most European countries. For marriage to an alien, some formal prerequisites were necessary, determined for each of the two spouses by the law of the State of which they were nationals. Where such a marriage was contracted outside the German Democratic Republic, the law of the State where the marriage took place prevailed, provided it was compatible with the law of the country of which one of the spouses was a national.

Political rights

537. With reference to this issue, members of the Committee wished to receive information on the restrictions on the exercise of the rights set forth in article 25 of the Covenant. The representative stated that a socialist State needed the participation of all its citizens more than any other form of society did and that all were entitled to vote and to be elected, and secrecy was guaranteed. Exceptions were people who had been deprived of their rights by court order, who were mentally incapacitated or prisoners whether before or after sentence. Of course, special qualifications were necessary for such people as judges, medical officers and financial experts.

General observations

538. Members of the Committee thanked the representative of the German Democratic Republic for his extensive and careful replies and for his close co-operation with the Committee. They welcomed the desire shown by the Government of the German Democratic Republic to continue the constructive dialogue. Some members of the Committee noted that the representative had been unable to deal with several important questions, and stated that they were disappointed with a number of answers of too general a nature. In addition, they expressed the hope that the remaining questions would be replied to in writing. The fact that the proceedings of the Committee would be transmitted to the Government was encouraging. It was hoped that the questions, answers and observations made would be published in extenso by the press. Some members welcomed the fact that, despite disagreements, a dialogue had been initiated and expressed the hope that benefits would be derived from this mutual encounter.

539. Further general observations were made concerning the interpretation of the Covenant. One member commented on the many references made by the delegation of the German Democratic Republic to the specific socialist concept of human rights. He pointed out that the wording and spirit of the Covenant as an international instrument was the yardstick; the specific approach of a State had to be consistent with it. Another member stressed that the uniform application of the Covenant

had to be ensured by the Committee. It was finally said by a third member that although different social systems made it inevitable that there should be different concepts, the Committee had to ensure the implementation of the minimum provided for in the Covenant.

540. The representative stated that his Government would study the various approaches to the question of human rights in an effort to create all conditions necessary for the full realization of the human rights covered by the Covenant by progressively developing economic, social and political relations.

CCPR A/41/40 (1986)

261. The Committee considered the second periodic report of the Federal Republic of Germany (CCPR/C/28/Add.6 and Corr.1) at its 663rd to 667th meetings, on 3, 4 and 7 April 1986 (CCPR/C/SR.663-SR.667).

262. The report was introduced by the representative of the State party who reaffirmed his Government's strong support for the Committee's work, particularly since the promotion and strengthening of human rights throughout the world was one of his country's key foreign policy objectives. The representative drew special attention to the progress made in his country in ensuring the right to privacy, which was threatened by the growth of modern data-processing systems and computer technology. He referred to the increasing problem caused by the growing influx of refugees and applicants for asylum. The representative of the State party stressed that the fact that it had responded to particular questions in the second periodic report should not be interpreted to mean that his Government accepted the Committee's interpretation of the relevant article.

The Covenant and national law

263. With reference to that issue, members of the Committee wished to know whether the Covenant had any distinct role to play in the domestic legal order apart from that provided for by the Basic Law and whether it could be invoked directly at the level of common courts as if it were a national law. They requested further information on the composition of the Federal Constitutional Court and the influence of political parties on the nomination and election of judges as well as on the role of the Federal Constitutional Court in deciding on the compatibility of a law with obligations under the Covenant and asked whether that question had ever been addressed by the Court. They also asked how it was determined that certain groups had totalitarian ideologies and therefore should not enjoy the rights protected under the Covenant, and whether the Federal Constitutional Court had examined the constitutionality of the laws on extremism and if, as a result of those laws, anyone had been barred from teaching. Information was requested on factors and difficulties, if any, affecting the implementation of the Covenant; they asked, in particular, whether the long-standing unemployment of more than 2.5 million workers was not tantamount to social discrimination. Members also wished to have clarification concerning the practical importance of article 25 of the Basic Law in relation to human rights and the role of the Länder in implementing the relevant provisions of the Covenant, as well as the extent of publicity given to the report of the Federal Republic of Germany. It was asked whether resident aliens had been informed of their rights and how far the study of human rights contained in international instruments such as the Covenant was included in the curricula of elementary and secondary schools. One member also asked for clarification of a statement by the representative of the State party in the Third Committee of the General Assembly to the effect that the Committee, in its general comment No. 14 (23) 2/ had clearly deviated from its mandate.

2/ See Official Records of the General Assembly, Fortieth session, Supplement No. 40 (A/40/40), annex VI.

Another member wished to know whether the Federal Republic of Germany had any plans for ratification of the Optional Protocol.

264. In his reply, the representative of the State party noted that his Government had conducted a study, prior to the ratification of the Covenant, to ascertain whether its provisions were adequately reflected in domestic law and had found that to be the case. The Federal Republic had thus been able to ratify the Covenant without having to make any significant reservations. Only those provisions of the Covenant which were self-executing, for example, article 7, were directly applicable under domestic law. A review of court rulings handed down in 1981 and 1982 indicated a slight tendency to apply articles of the Covenant directly. In general, the provisions of the Covenant were considered comparable with domestic legislation and only the Basic Law took precedence over them.

265. The representative explained the composition of the Federal Constitutional Court and stated that, while political parties had some influence on the election process, the requirement of a two-thirds majority for the election of judges tended to create the possibility of broad agreement. The Court did not rule directly on the compatibility of laws with the Covenant, confining itself to determining their compatibility with the Basic Law. In that process, and in determining the adequacy of the Federal Republic's compliance with its international obligations in a given case, the Court could take the provisions of the Covenant into account indirectly when interpreting the provisions of the Basic Law, although it was not known whether that had actually occurred. The competence to determine whether a person had abused a basic right set out in the Basic Law and whether a political party should be prohibited for reasons of its unconstitutionality was vested exclusively in the Federal Constitutional Court under articles 18 and 21 of the Basic Law. The determination of a political party's unconstitutionality depended upon the behaviour of its members - for example, whether they attempted to undermine or abolish the democratic order or to endanger the existence of the Federal Republic of Germany. Associations other than political parties could be declared illegal by the Minister of the Interior or the highest authority of a Land if their objectives or activities were in violation of the Penal Code or if they opposed the constitutional order or the idea of mutual understanding between peoples. Legal recourse was available against such decisions. The Federal Constitutional Court could also review the constitutionality of decisions taken by the Government to reject left-wing or right-wing candidates for public service. No difficulties had been encountered in implementing the provisions of the Covenant, and areas where such difficulties could be anticipated had been made the subject of reservations, such as in the case of article 14, paragraph 3 (c). The laws of the Länder placed no restrictions on the implementation of the Covenant.

266. With regard to questions concerning publicity and the study of human rights, the representative stated that human rights had been given a prominent place in the curricula of secondary schools in all Länder. Particular emphasis was placed on the relevant international instruments and the Covenants on Human Rights. As to the Federal Republic's intentions with respect to the Optional Protocol, he explained that the Government had not been able to decide upon ratification owing to the existence of a number of difficult legal and political questions. In deciding whether to ratify the Optional Protocol, his Government would also consider the Committee's interpretation of the provisions of the Covenant, the practice of the Committee and its general comments. His Government sought to avoid a broad interpretation of the provisions of the Covenant. Matters such as drug abuse and measures against infant mortality fell more appropriately within the framework

of the International Covenant on Economic, Social and Cultural Rights.

Self-determination

267. With reference to that issue, members of the Committee wished to receive information on the Federal Republic's position in relation to the right to self-determination of the Palestinian and Namibian peoples and on measures taken by the Federal Republic to prevent public and private support for the apartheid régime of South Africa. With regard to South Africa, members also wished to know whether the State party would be able to accept sanctions that might be imposed against South Africa under Article 42 of the Charter of the United Nations or to support the use of force in eliminating apartheid, whether it was co-operating with South Africa to increase the latter's defence capabilities, what the Government's position was concerning Decree No. 1 for the Protection of the Natural Resources of Namibia, enacted by the United Nations Council for Namibia, 12/ and whether it was true that the branches of some German corporations were operating in South Africa without paying minimum salaries or conforming to the guidelines that had been adopted by the European Community. Referring to article 20, paragraph 4, of the Basic Law, one member also wished to know whether the right of resistance encompassed the right to resort to force if necessary and whether it would be recognized also for the black people in South Africa.

268. In his reply, the representative of the State party said that his country considered the right to self-determination to be one of the basic legal principles of the international community, which applied to all the peoples of the world, including the Palestinian people. Only the Palestinian people themselves could decide how that right would ultimately be implemented. The Federal Republic of Germany and the other member States of the European Community had repeatedly expressed their willingness to contribute to a comprehensive, just and peaceful settlement of the Middle East question. As to the question of Namibia, his country supported the implementation of Security Council resolution 435 (1978). Article 20, paragraph 4, of the Basic Law - which was a source of pride since very few countries had such a protective clause in their constitution - was not applicable outside the Federal Republic of Germany.

269. Responding to members' questions and comments concerning South Africa, the representative stated that his country had consistently and unequivocally condemned South Africa's policy of apartheid as an unacceptable offence against basic human rights. Consequently, his Government strictly observed the arms embargo that had been imposed against South Africa by the Security Council, as well as the restrictive measures implied in the European Community decision of 10 September 1984. By so doing, his Government had taken active steps to prevent public and private support for the apartheid régime of South Africa. It was also in permanent contact with organizations struggling for self-determination in South Africa and was trying as far as possible to bring about peaceful changes in the abominable situation in that country. The representative categorically rejected, as baseless, the allegation that his Government provided South Africa with weapons and nuclear technology.

12/ See Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 24 (A/35/24), vol. I, annex.

Non-discrimination and equality of the sexes

270. With reference to that issue, members of the Committee wished to know what measures had been taken to eliminate de facto discrimination against women and whether the Federal Republic of Germany had ratified the Convention on the Elimination of All Forms of Discrimination against Women. Concern was expressed as to whether the practice of Berufsverbot was compatible with article 2 of the Covenant; it was felt that the German authorities were violating the right to non-discrimination by refusing civil service posts and civil service training to citizens on political grounds. It was asked whether any Länder other than the Saarland had discontinued the practice of Berufsverbot, and whether any compensation had been granted to persons who had suffered damages as a result of that practice.

271. In his reply concerning the equality of the sexes, the representative of the State party noted that a 1980 law on the equal treatment of men and women in the workplace sought to translate into reality the principle of equal treatment with respect to civil law relations between employers and employees. Under the Civil Code, employers were prohibited from discriminating against employees, inter alia, on the basis of sex, when drawing up work contracts. There were also provisions guaranteeing men and women equal pay for equal work and establishing sanctions against employers who did not adhere to those provisions. Since the subject also fell within the framework of the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women, it would be more fully treated in reports to be submitted under those instruments. He suggested that, in the future, it would be more appropriate not to refer in the Committee to questions covered by other conventions. As to Berufsverbot, he explained that that term referred to a measure that was sometimes imposed by the courts in criminal judgements in order to prevent a convicted person from abusing his professional position in the future to the detriment of his clients or other persons. There were no other government-imposed prohibitions on the exercise of professions. The requirements applicable to employment in the civil service, such as those regarding training, nationality and loyalty to basic constitutional principles stipulated in civil service legislation, were equally applicable to all persons and were therefore fully consistent with article 2, paragraph 1, of the Covenant. Complaints could be lodged before the administrative courts or the Federal Constitutional Court, which also guaranteed the application of article 2, paragraph 3, of the Covenant. The relevant decision of the Federal Constitutional Court concerning so-called Berufsverbot that had been requested would be transmitted to the Committee. The authorities of his country believed that there was no place in the civil service for either left-wing or right-wing extremists, and they did not want to see a return to Nazi conditions in the country.

Right to life

272. With reference to that issue, members of the Committee wished to receive information concerning control procedures for ensuring proper observance by the police of the regulations governing the use of firearms, drug abuse, education efforts designed to reduce the incidence of drug-related crimes, and infant mortality data relating to the various strata of the population. Regret was expressed that the Federal Republic of Germany had decided to disregard the Committee's general comments Nos. 6 (16) and 14 (23), which the Committee had adopted in order to counter a narrow interpretation of the right to life. Referring to the statement, in paragraph 41 of the report, indicating that 136 persons had been killed by police using firearms during the period 1974-1983, one member asked whether there had been an official inquiry into the circumstances of each of those

cases, whether officers who had acted improperly had been prosecuted and punished, and whether the families of those killed had received compensation, where appropriate.

273. In his reply, the representative of the State party noted that the use of firearms by law enforcement agents was strictly limited under domestic law, the restrictions being based upon the principles described in paragraph 42 of the report. An inquiry was mandatory in all cases of death resulting from any conflict situation and the families of any victims of breaches of the law by police officers had been given compensation. As for drug abuse, his Government had taken numerous initiatives to inform the population at large about the problem, using brochures, the media and schools. Its efforts had helped to keep the figures for drug abuse at a steady level of 50,000, while deaths from drug abuse had declined from 620 in 1979 to 320 in 1984. Many groups were engaged in caring for and providing therapy to drug addicts and those prone to drug use. It had been found that close co-operation between physicians, psychologists and social workers helped greatly in the treatment of drug users and in preventing them from returning to drugs.

274. Concerning infant mortality, he noted that a comprehensive range of pre-natal and post-natal medical services and care was available to prevent infant mortality and still births; infant mortality had declined from 21.1 per thousand children in the first year of life in 1974 to 9.6 per thousand in 1984. Detailed information on that subject would be included in the second periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights, which was due for submission in September 1986.

275. Concerning the general comments on the right to life, the representative explained that the Federal Republic of Germany could agree with general comment No. 6 (16) ^{1/} regarding the prevention of war and the legitimate use of force, but believed that, in general comment No. 14 (23), the Committee had deviated from its mandate and that the question dealt with in that comment fell rather within the competence of other United Nations organs.

Torture, inhuman and degrading treatment and punishment

276. With reference to that issue, members of the Committee wished to know what exactly was meant in legal terms by the words “prisoners from the terrorist scene”, what crimes such prisoners were accused of, and why they were routinely subjected to a special detention régime rather than only on a case-by-case basis when special detention was found necessary. It was also asked whether the need for special detention measures was determined according to the category of the crime committed or according to the particular circumstances of each individual case; whether a special detention régime could be maintained for an indefinite period, possibly including the entire duration of pre-trial detention; whether there was a maximum time-limit on the period of isolation of

^{1/} See Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40), annex V.

detainees; what circumstances determined a convict’s detention under a special prison régime, including isolation; how the state of health of prisoners held in isolation was monitored; how decisions relating to visits to detainees were controlled; and which laws ensured the prohibition of

medical experiments without the consent of the individual concerned.

277. Furthermore, members asked whether such prisoners were held incommunicado and submitted to conditions of privation of sensory stimulation, whether accusations of violations of article 7 of the Covenant in respect of such detainees had been investigated, and whether prison personnel and other law enforcement officials had received appropriate instructions regarding the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 3452 (XXX) and the Code of Conduct for Law Enforcement Officials (resolution 34/169)). It was also asked whether the practice of torture was legally prohibited and effectively prevented, whether judges could decline to enforce regulations that seemed to be inconsistent with article 7 of the Covenant, whether prison personnel had ever been subject to punishment for maltreatment of detainees, and whether the reported practice of surgically inducing behaviour modification in prisoners who had consented to such procedures in exchange for the commutation of their sentences had been discontinued.

278. In replying to questions raised by members of the Committee concerning the detention of convicted terrorists, the representative of the State party explained that, like other convicts, such persons were subject to the provisions of the Prison Act of 1976, which permitted the transfer of particularly dangerous, recalcitrant or unruly prisoners to a suitable high-security area. Because of their fanaticism and their continuing links with accomplices still at large, terrorist convicts clearly fell within that special category. The European Commission of Human Rights, in dismissing a case brought before it in 1978, had confirmed that the conditions of detention of terrorists in the Federal Republic of Germany did not constitute torture or inhuman or degrading treatment. The special detention régime was not the same as solitary confinement or being held incommunicado, since convicted terrorists were able to meet in small groups and could receive visits. An order for special detention under section 85 of the Prison Act of 1976 had no time-limit and remained in effect for as long as the persistence of the danger made it appropriate. Section 109 of the Prison Act provided for the possibility of appeals by prisoners against restrictions imposed under section 85 or other restrictions.

279. The application of special detention measures during pre-trial detention was covered by section 119 of the Code of Penal Procedure, which required the issuance of an appropriate order by a judge. There was no specified limit to the duration of pre-trial detention, but the process was subject to judicial review every three months. Section 89 of the Prison Act provided that solitary confinement could not be imposed unless it was indispensable for reasons inherent to the prisoner himself and, as a rule should not exceed three months. In addition, the Suspension of Communications Act, which had been adopted in 1977 at the height of the wave of terrorism in the Federal Republic, allowed the Federal Government or the Länder governments to issue orders suspending communication between a prisoner and his defence lawyer. That Act had only been applied once, in 1977, but it remained in force because of the continuing danger of terrorism. All measures implementing legal provisions were subject to some form of judicial review and appeals could go as far as the Federal Constitutional Court and the European Commission of Human Rights. Those imprisoned for terrorist crimes had access to all the recourse procedures available to other prisoners.

280. There was no legal definition of terrorism as such, but article 129 (a) of the Penal Code stipulated that any person establishing an association whose purpose was to commit murder, practice

intentional mutilation or genocide, violate personal freedoms, or perpetrate crimes that violated public safety, as well as any person who belonged to such an association, spread propaganda on its behalf or supported it, could be sentenced to imprisonment for a period of six months to five years. It was sufficient to prove a suspect's membership in such an association for him to be punishable under article 129 (a). Specific crimes, such as homicide, were of course punishable separately.

281. Regarding torture, the representative stated that that practice was prohibited under domestic laws as well as under the European Convention for the Protection of Human Rights and Fundamental Freedoms and that it was not therefore necessary to invoke the provisions of the Covenant. There was no record in the judicial annals of any prisoners ever having been tortured. It was not possible to state with absolute certainty without consulting the competent authorities that there had not been any case in which penal or disciplinary sanctions had been imposed on a law enforcement officer for violating the rights of a prisoner. Judges in the Federal Republic who believed that a particular federal law was unconstitutional were not only under an obligation to decline to enforce it, but also had to initiate special proceedings before the Federal Constitutional Court with a view to having its constitutional status ascertained.

282. Responding to questions concerning the status of prisoners' health and their protection from non-voluntary medical treatment or experimentation, he explained that, while there was no need to undertake special monitoring of the health of prisoners held in high-security areas, the health of those held in solitary confinement or under special precautions did receive special protection. Except for cases of immediate danger to the life of the prisoner, medical treatment without consent was prohibited under section 101 of the Prison Act and any such treatment that was not justified was punishable as an act of mayhem. Informed consent by the patient for any experimental treatment was therefore necessary and there was no record of certain surgical practices having posed practical problems.

Liberty and security of the person

283. With reference to the issue of pre-trial detention, members of the Committee wished to receive information concerning the maximum period of such detention, pre-trial detention practices in relation to juveniles and the criteria applied by the courts in determining whether pre-trial detention was justified. It was asked whether terrorist suspects were automatically subjected to pre-trial detention and, if so, why, whether pre-trial detention was mandatory in certain cases because of the seriousness of the crime, whether unreasonably long periods of two years or more of pre-trial detention were commonplace, and whether there was any generally applied system of supervision with regard to the duration of pre-trial detention. Members also wished to know, with respect to the issue of liberty and security of the person, whether rapid and efficient procedural remedies such as habeas corpus or amparo were available to detainees; whether there were any arrangements, such as the system of bail, under which detained persons could be released provided that their subsequent appearance in court was adequately ensured; whether the right to have a tribunal decide about the legality of detention of persons deprived of their liberty for reasons unrelated to criminality - such as mental illness, vagrancy, drug abuse or immigration problems - was adequately protected; and whether any studies were available regarding the results of programmes aimed at the reformation of prisoners.

284. In his reply, the representative of the State party noted that the regular upper limit on pre-trial detention was six months, although that period could be prolonged since there was no legally established absolute upper limit. However, a number of measures had been taken, as described in paragraphs 62 to 65 of the report, to avoid excessively long periods of pre-trial detention. The main criteria for judging the need for detention related to the principle of proportionality, which was specifically recognized in the Federal Republic's Constitution. Thus, it was stipulated in the Code of Criminal Procedure that a detention order could be issued only when the accused was suspected of having committed a serious crime, such as murder. No one could be detained for a minor infringement of the law, and the mere fact that a person supported a terrorist organization was not in itself sufficient to justify his detention. In such cases pre-trial detention usually related to justified concerns that the individual would disappear or conceal or destroy evidence if left at liberty. Those principles also applied to the deprivation of freedom of persons with mental problems, to protect their own safety and that of others, and in extradition proceedings, although in both cases the measures were subjected to review by the courts.

285. Under section 117 of the Code of Criminal Procedure a person in pre-trial detention had the right, at any time, to appeal to a court to review the justification for his continued detention and the legal system provided a number of other remedies and measures for monitoring pre-trial detention. The pre-trial detention of minors was covered in section 72 (1) of the Law on Juvenile Courts, which stipulated that such detention could be ordered if its purpose could not be attained through a preliminary order regarding educational measures or through other measures. However, the practical application of that provision had given rise to certain difficulties in view of the time constraints faced by judges, and the matter was currently under review by the judicial authorities in the Federal Republic. Regarding the social re-adaptation of prisoners, the Federal Government attached great importance to efforts such as the elementary and advanced training programmes in prisons and hoped that positive results were being achieved. Unfortunately, no detailed information or statistics were at hand.

Freedom of movement and rights of aliens

286. With reference to that issue, members of the Committee wished to know whether the reasons for restricting the right of aliens to choose their residence freely were compatible with the Covenant; on what grounds residence permits were restricted and how many such restrictions had been issued annually; why a distinction was made, regarding freedom of residence, between refugees and those who had been granted asylum; whether special decrees removing the suspensive effect of appeals against expulsion had ever been set aside by court order; and the extent to which the rights of aliens under the Covenant were affected by the laws of the Länder. Information was also requested concerning the effect of laws affecting migrant workers, both in terms of their personal welfare and the practice of subcontracting their labour.

287. Members also asked for clarification on the validity of limiting the free movement of aliens on the basis of factors relating to the "personality or conduct of foreigners or special local circumstances". They also asked whether restrictions relating to the residence of aliens in "congested areas" were provided for by law, as required by article 12, paragraph 3, of the Covenant, and were consistent with the permissible limitations enumerated in that paragraph; whether the courts had ever confirmed the correlation between restrictions on freedom of residence of aliens and

the maintenance of public order; whether discrimination among aliens of different nationality or origin was practised in the application of restrictions on freedom of movement and choice of residence; whether there were any State or social organs specializing in the protection of aliens; and whether the prohibition on the subcontracting of manpower was imposed because the workers in question did not have work permits or because the terms of the subcontracting violated the provisions of the Labour Code. In connection with the restriction of the right of aliens to leave the country, one member asked for clarification of the meaning of the term “evasion of a public duty”, cited in the report as providing grounds for the refusal of permission to depart.

288. In his reply to questions raised by members of the Committee concerning restrictions on the freedom of movement and residence of aliens, the representative stated that his Government was convinced that both the Aliens Act and the related legal practices in the Federal Republic were in conformity with the Covenant. Foreigners with permanent residence permits or nationals of the European Community were not subject to restrictions in their choice of residence and enjoyed full freedom of movement. The problems arose mainly with aliens who did not have permanent residence permits and with illegal aliens and asylum-seekers. In such cases, geographical limitations were imposed with respect to residence for reasons such as prevention of the growth of ghettos in heavily populated areas or prevention of disturbances of public order. In the latter connection, he noted that some 74,000 refugees had entered the Federal Republic during 1985, and that there would have been no way to provide such a large group with adequate social assistance and health care if they had been allowed to settle wherever they wished. It had been agreed with the Länder that aliens should be distributed over the entire territory. It was not clear that admissible restrictions of the right of freedom of movement contained in article 12, paragraph 3, of the Covenant were really different from those in the Fourth Protocol to the European Convention on Human Rights since, in the opinion of European legal experts, the concept of “public order”, mentioned in the Covenant, could be interpreted as covering the notions of “public safety” and “prevention of crime” mentioned in the European Convention. Restrictions for reasons of public order had been applied to perhaps no more than 50,000 persons out of a total alien population in the Federal Republic of 4.5 million.

289. To the extent that distinctions were made in the treatment of aliens they were based on legal criteria, such as whether the alien was legal or illegal or a temporary or permanent resident. The restrictions on residence under the Asylum Procedure Act were aimed at ensuring an equitable distribution of such persons among the different Länder and, in particular, at speeding up the asylum procedures. Some restrictions, such as the housing of asylum-seekers in the same buildings, were imposed for economic reasons; the Länder were spending some \$US 800 million annually for the care and maintenance of asylum-seekers and political refugees.

290. Regarding the expulsion of aliens, the representative explained that orders for the immediate execution of an expulsion order had frequently been set aside by the courts, and the Federal Constitutional Court had handed down a general decision to the effect that, in most cases, an appeal against such an order necessarily had a suspensive effect. It was also possible to have further legal recourse against the immediate enforcement of an expulsion decree, even when the suspensive effect of an appeal had been set aside by the authorities. The rights of aliens were covered under federal legislation and the adoption of administrative regulations to implement such legislation was also a federal responsibility. The Länder were responsible for the actual application of such laws and regulations and had no power of regulation except in areas not already pre-empted by the Federal

Government.

291. Turning to other questions, the representative explained that his Government had categorically denounced the practice by unlicensed employment agencies of subcontracting foreign workers without work permits and had made that offence punishable by up to five years' imprisonment. The Federal Labour Institute had established 29 branch offices around the country whose function was to initiate legal proceedings against those engaged in such clandestine labour practices and was planning to establish an additional 28 offices during 1986. In February 1986, a court had imposed severe penalties on two agencies that had engaged in illegal subcontracting of foreign workers. A number of organizations were doing excellent work on behalf of alien workers in the Federal Republic, notably the Red Cross and the Churches. The Government had also appointed a Special Commissioner for Alien Workers who acted as ombudsman. Concerning freedom to leave the country, he noted that aliens enjoyed great freedom in that regard.

Right to a fair trial

292. With reference to that issue, members of the Committee wished to know what difficulties, if any, had been experienced in implementing section 129 of the Penal Code, which permitted surveillance of written communications between the accused and his defence counsel; whether such administratively reviewed communications had ever been retained or confiscated by the security police and whether the latter were entitled to confiscate defence papers in the course of the trial or to search defence attorneys; whether the provision in the Code of Criminal Procedure prohibiting a single defence attorney from representing two or more defendants for the same or similar offences did not amount to interference with the right of the accused to counsel of his choice; and what crimes against humanity committed during the Second World War continued to be punishable in the Federal Republic. Referring to the excessive length of many criminal proceedings, several members asked whether the various measures adopted in recent years to reduce the duration of trials, including the 1979 Law to Amend Criminal Procedure, had significantly expedited the administration of criminal justice.

293. In his reply, the representative of the State party explained that the surveillance of communications referred to in paragraph 109 of the report was undertaken by a judge and only upon informing both the defendant and his defence counsel. In any event, the accused and his counsel could communicate orally without surveillance or monitoring, which ensured that the effective preparation of the defence was not impaired. The restriction against defence counsel representing two or more clients at a trial was intended to eliminate possible conflicts of interest and to guarantee the right of the accused to a proper defence, in accordance with the provisions of the Covenant. It was recognized that terrorists also had the right to humane treatment and to due process under the law.

294. The representative agreed that the duration of penal proceedings continued to pose a problem. However, the situation had improved in recent years as a result of the adoption of various measures including, for example, the elimination of certain preliminary procedures. His Government would endeavour to provide statistical data regarding the duration of such proceedings in its next periodic report. He also took note of the Committee's interpretation concerning the applicability of the procedural guarantees contained in article 14 of the Covenant to both civil and criminal cases.

Regarding crimes committed prior to 1945, he noted that murder and acting as an accomplice to murder were still punishable under the laws of the Federal Republic.

Right to privacy

295. With reference to that issue, members of the Committee wished to receive information concerning certain new security bills, which would apparently permit the exchange of personal computer files, and the Federal Data Commissioner's attitude towards such legislation, as well as the circumstances surrounding the collection by the security services of dossiers on members of the Green Party and the transmission of such dossiers to unauthorized persons. It was asked whether legislation providing protection against unlawful interference with the privacy of correspondence or telephone conversations, in accordance with article 17 of the Covenant, made provision for compensation.

296. In his reply, the representative of the State party said that it would be inappropriate for him to comment in detail on the new security laws since the legislative procedures had not yet been completed. The Federal Data Commissioner had criticized them and amendments to improve them had been proposed. The Committee's questions would be addressed in the Federal Republic's next periodic report, after the draft laws had been adopted. He was also unable to comment on the circumstances under which dossiers had been gathered on members of the Green Party by the security services, since the matter was currently under investigation by a committee of the Bundestag. However, to the best of his knowledge, the matter related to certain individuals and not to a particular political party.

Freedom of expression

297. With reference to that issue, members of the Committee wished to receive information on prosecutions under section 90 (a) of the Penal Code, which prohibited slander or wilful disparagement of the Federal Republic, its constitutional order, or one of the Länder. They asked whether that section did not, in fact, provide for terms of imprisonment for the non-violent exercise of the right to freedom of expression. They also asked to what extent section 240 of the Penal Code was applied against persons participating in peaceful demonstrations or against members of the peace movement; how many people had been prosecuted during 1985 under section 166 of the Penal Code; whether supporters or members of associations whose purposes were defined in article 129 (a) of the Penal Code, but which were not themselves active in the Federal Republic, were subject to prosecution under that article; whether it was true that in some of the Länder the organizers of peaceful demonstrations were required to bear the costs involved in policing the gathering; and how the Government could justify the practice of Berufsverbot with the provision of article 19 of the Covenant.

298. In his reply, the representative of the State party said that section 90 (a) of the Penal Code was clearly consistent with article 19, paragraph 3, of the Covenant, which permitted the imposition of certain restrictions on the right to freedom of expression, but that convictions under that statute were very rare - only 20 in 1984. Although persons making slanderous assertions about the Federal Republic were generally liable to prosecution under that section, the form in which the statement or assertion was made was of great practical importance in determining whether or not prosecution

would be undertaken. The representative agreed with members of the Committee who had stressed the need for great care in applying restrictions to the right to freedom of expression, noting that the Federal Constitutional Court had also held that such restrictions must only be applied in a manner consonant with the general principle of freedom of expression. He hoped it would be possible to deal with the subject in greater detail in the next periodic report. It was true that the prohibitions under section 90 (a) were applicable to non-violent acts but it was precisely such acts that could be restricted under article 19, paragraph 3, of the Covenant. Where violence was employed, the matter no longer fell within the purview of article 19, since freedom of expression was not then the issue.

299. Section 240 of the Penal Code related to the unlawful use of force or the threat of harm to coerce third parties, thereby interfering with their rights and freedoms within the meaning of articles 21 and 19, paragraph 3 (c), of the Covenant. While the right to demonstrate peacefully was clearly a basic right, which was fully respected in the Federal Republic, it was another matter entirely when demonstrators sought to apply coercion to others. There were only 22 recorded convictions in 1984 under sections 166 and 167 of the Penal Code, which prohibited disparagement of religious beliefs and disturbance of religious exercises, respectively. Referring to the practice of so-called Berufsverbot the representative of the State party said that civil servants must be loyal to the principles of the State; others were free to express their opinions.

Advocacy of national or racial hatred

300. With reference to that issue, members of the Committee wished to receive information regarding the Government's concerns about the reported resurgence of neo-nazism and about any positive measures being taken to meet such a threat. One member asked for clarification as to why section 130 of the Penal Code seemed to provide protection against hatred only to the "native part of the population" rather than to all, in accordance with article 20, paragraph 2, of the Covenant.

301. In his reply, the representative of the State party said that the advocacy of national, racist, or religious hatred with incitement to discrimination, hostility or use of violence was prohibited by law, and that neo-Nazi activities were kept under strict surveillance by the Office for the Protection of the Constitution. The Federal Minister of the Interior had prohibited two neo-Nazi organizations in 1982 and 1983, under section 3 of the Law on Association, and the Bavarian State Ministry of the Interior had prohibited and dissolved another such organization in February 1984. In April 1985, the Minister of the Interior of Rhineland-Palatinate had prohibited a neo-Nazi group in Koblenz that had been founded only 3 months earlier. The Federal Government was also promoting research into political extremism and the Ministry of Justice was in the process of finalizing a study relating, inter alia, to the personal background of right-wing extremists who had been sentenced for criminal activities during the period 1978-1982. The reference to the term "native part of the population" in paragraph 158 of the report was a mistranslation of the phrase that actually appeared in section 130 of the Penal Code, the correct translation being "part of the population living within the Federal Republic of Germany".

Right to peaceful assembly

302. With reference to that issue, members asked for clarification concerning a 1984 law that apparently subjected participants in political rallies that turned violent to prosecution unless they

could show that they had actively tried to prevent violence, and for information concerning any other new laws relating to peaceful assembly that might have been adopted in 1984 or 1985, and their application.

303. In his reply, the representative of the State party explained that it was not true that under a 1984 law a participant in a political rally that became violent could be prosecuted unless he or she could demonstrate an active attempt to prevent the violence. It was true, however, that the provision in the Penal Code penalizing any disturbance of the public peace, and the Law on Assembly, had both been amended by a law of 18 July 1985 prohibiting participants in demonstrations held in the open from carrying weapons designed to offer resistance to the police and from masking themselves with the intent of eluding identification. Offenders against the prohibition were liable to non-criminal punishment, but any armed or masked person mingling with a crowd from the midst of which acts of violence had been committed during a demonstration could be punished as if they had committed a proven act of violence. The amendment was the result of experience with several hundred “professional demonstrators”, who rallied from all parts of the country when large demonstrations were held, merely to come to blows with the police and commit other acts of violence. Such people could be distinguished primarily by the fact that they carried weapons and wore masks; punishing them was not only a question of fighting against crime but of protecting the basic right of peaceful demonstration. It was not possible to provide details regarding the application of the new law since it was too recent.

Freedom of association

304. With reference to that issue, members of the Committee asked whether any restrictive measures had been taken against members or supporters of a legal political party and, if so, how such measures could be reconciled with articles 22 and 25 of the Covenant; whether all parties were treated equally, in accordance with article 25, and whether, for example, all parties represented in parliament enjoyed the same rights of participation in parliamentary committees; whether the requirement that civil service applicants should accept the established order on an a priori and absolute basis was compatible with the Covenant; and whether the fact that big corporations could make large secret contributions to political parties did not, in fact, amount to discrimination on the basis of property.

305. In his reply, the representative explained that political parties that had not been prohibited on grounds of unconstitutionality by the Federal Constitutional Court could engage freely in political activities and citizens could belong to or support any such party as long as they did not violate the laws. On the other hand, since the Federal Government did not necessarily seek to ban parties it considered anti-constitutional, it was possible that such political parties could remain operational. Members or active supporters of such parties revealed by their conduct that they did not loyally support the Constitution and could therefore be barred from civil service employment. While there was no discrimination against anyone because of his political views or party affiliations, in view of the country’s unfortunate experiences under the Weimar Republic, those who wished to become civil servants were required to demonstrate a high degree of support for the Basic Law and democratic order. Citizens were also free to seek peaceful changes in the Constitution so long as they remained within the norms established under article 79, paragraph 3, of the Basic Law.

306. Regarding the funding of political parties, he said that reforms had been introduced in 1983 so that problems such as those to which members had referred could be avoided in the future. With respect to the question of equality, the representative stated that all parties had an equal right to participate in the country's political life and in the work of parliamentary committees. Where it was not possible for all parties to take part in the work of a particular committee because of its limited size, that did not mean that any parliamentary group was legally barred from participation. The Federal Constitutional Court, in a ruling on 14 January 1986, had confirmed the constitutionality of the system for establishing and regulating parliamentary committees.

Rights of minorities

307. With reference to that issue, members of the Committee wished to have further clarification as to why the Danish ethnic group in Schleswig-Holstein was considered by the State party as being the only minority within the meaning of article 27 of the Covenant. One member of the Committee also wished to know whether any group of foreign workers had acquired permanent residence or citizenship, whether there was an established policy with regard to the granting of such status, and what was being done to promote the enjoyment by such workers of their cultural rights.

308. In his reply, the representative of the State party explained that while there was no legally established definition of the concept of a minority, certain criteria appeared to enjoy wide acceptance. According to such criteria, a minority was a separate or distinct group, strictly defined and long established within a given area of a State. The only group in the Federal Republic falling within that category was, in fact, the Danish ethnic group in Schleswig-Holstein, which enjoyed all the rights set forth in article 27 of the Covenant. Immigrant workers enjoyed all their cultural and social rights, and nationals from member countries of the European Economic Community also enjoyed certain additional rights. Once they had resided within the Federal Republic for a specified period, all immigrant workers could become fully integrated into society as far as the enjoyment of social and cultural rights was concerned. They were also provided with many incentives to preserve their cultural traditions by municipal authorities and private organizations.

General observations

309. Members of the Committee thanked the delegation of the Federal Republic of Germany for its efforts to answer the questions raised and considered that the discussion of the State party's second periodic report had been thorough and useful. They welcomed the constructive dialogue which had made it possible to obtain further information and clarify important issues.

310. However, some members stressed that not all questions had been answered and that the Government's interpretation of the concept of human rights protected by the Covenant seemed to be too limited. They also noted that they could not agree with the Federal Republic's interpretation of article 5 of the Covenant.

311. Many members explained that their concerns with respect to a number of issues had not been fully allayed. They pointed, *inter alia*, to the duration of pre-trial detention and of judicial procedures, the nature of certain anti-terrorist measures, the practice of Berufsverbot, the policy vis-à-vis the apartheid régime, the application of certain penal provisions and the struggle against neo-

nazism.

312. Members of the Committee explicitly rejected the position of the Federal Republic of Germany that the principle of lex generalis and lex specialis should be strictly applied to the Covenant, that is, that questions covered by other international instruments should not be examined in detail by the Committee.

313. It was hoped that certain outstanding questions would be addressed by the State party prior to the submission of its next periodic report and that the continuing concerns of members of the Committee would be dealt with comprehensively in the third periodic report.

314. The representative of the State party said that his Government had provided detailed comments on the implementation of the Covenant in both its initial and its second periodic report, and had endeavoured to reply in the best possible way to the Committee's questions concerning the latter. He assured the Committee that the questions and suggestions that required further clarification would be transmitted to the competent authorities of the Federal Republic.

CCPR A/45/40(1990)

321. The Committee considered the third periodic report of the Federal Republic of Germany (CCPR/C/52/Add.3) at its 963rd to 965th meetings, held on 27 and 28 March 1990 (CCPR/C/SR.963-SR.965).

322. The report was introduced by the representative of the State party, who said that in the Federal Republic human rights were protected within the framework afforded by the free and democratic basic order established by the Basic Law and further developed by the judgements of the Federal Constitutional Court. Human rights were enshrined in the Constitution and, as directly-applicable law, were binding upon the legislature, the executive, and the courts. His Government had devoted long years of effort to promoting the abolition of the death penalty and had been the proponent of the Second Optional Protocol to the International Covenant on Civil and Political Rights, which was adopted by the General Assembly at its forty-fourth session. Recent developments in the German Democratic Republic and other parts of Central and Eastern Europe showed that these efforts to champion human rights and their implementation were fully justified. The Committee, and all other such bodies, deserved recognition and thanks for their role in fostering these developments.

Constitutional and legal framework within which the Covenant is implemented

323. With reference to that issue, members of the Committee wished to know whether there had been any cases during the period under review where the provisions of the Covenant had been directly invoked before the courts or referred to in court decisions; what the status of the Covenant was in domestic legislation and within the hierarchy of the law; how legislative uniformity was ensured when local laws conflicted with Federal legislation; whether international law took precedence over domestic law; why the Government had decided not to ratify the Optional Protocol; whether the rights guaranteed under the Basic Law differed from those contained in the Covenant and, if so, how such rights were protected; how article 19 (4) of the Basic Law, concerning recourse to the courts for violations by public authorities, was applied in practice; and what means other than article 95 of the Basic Law were available for preserving uniformity of jurisdiction. Members also requested further information on articles 18 and 19 of the Basic Law, concerning forfeiture and restriction of basic rights, respectively, and on article 20 (4), dealing with the right to resist anyone seeking to abolish the constitutional order.

324. In addition, members wished to know whether the Constitutional Court reviewed domestic legislation to ensure its conformity with international human rights obligations; whether the Government planned special measures, following the reunification of the two German Republics, to ensure the protection of human rights under international law; what would happen if the majority of the people decided to change the constitutional system; and what method was available for ensuring compliance with the will of the majority. Members also wished to know to what extent the contents of the third periodic report, and the current meeting, had been publicized in the Federal Republic.

325. In connection with the prospective reunification of the two German Republics, members wished to know whether unification would be effected under the existing Basic Law or through a

referendum; whether a further range of choices would be offered citizens on reunification and political choice beyond those reflected in the outcome of the recent elections; how the Government envisaged the application of the Covenant in the course of reunification; and whether the protection of human rights, particularly in respect of minority groups, would be affected by the process of unification.

326. In his response to the questions raised by members of the Committee, the representative of the State party said that although court judgements rarely referred to the Covenant since the Basic Law already contained the same provisions, there had been 13 cases since 1981, involving the constitutional, administrative and finance courts and concerning primarily the rights of aliens and political asylum-seekers, where the Covenant had been invoked. International instruments, such as the Covenant, once ratified, were integrated into domestic law and were binding. Although treaty law was not on a par with Constitutional law it was enforced through the constitutional jurisdiction, and international legal obligations had to be taken into consideration in interpreting domestic law. The question of the ratification of the Optional Protocol was still under consideration, and developments in East-West relations might have an impact on the issue.

327. In response to questions relating to the Basic Law, the representative said that article 19 (4) related to the protection of the authorities and the security of the armed forces and intelligence services in cases of threat and danger to the country, and the measures envisaged therein were applied only in exceptional cases. Concerned persons could appeal to a court to determine the legality of any measures that may have been applied to them. Article 18 of the Basic Law was rarely applied, if at all. Article 19 (2) of the Basic Law provided that the essential content of a basic right could not be encroached upon under any circumstances, but determining what constituted such encroachment was a matter for interpretation. Article 20 (4), on the right to resist attempts to abolish the constitutional order, had to be understood against the national socialist historical background of Germany, when strict adherence to the law had at times led to violations of human rights and fundamental freedoms. The right to resist was to be exercised “should no other remedy be possible” and could not be interpreted as allowing anyone to overturn that which had been freely achieved by a majority decision.

328. Concerning the unified jurisprudence of federal and state courts, the representative said that obligations assumed in international treaties had to be observed but that a certain latitude in their application was permitted. In cases of differing interpretations, recourse could be had to higher courts, with the Constitutional Court having the power to declare a state court ruling inapplicable. That court also had responsibility for determining whether there was incompatibility between a Federal law and a state law. The Government had issued a brochure and published special advertisements enabling the public to have free access to the information contained in the third periodic report.

329. In his response to questions raised concerning reunification, the representative of the State party said that any reply he could give as to what might happen could be overtaken by events, since developments were taking place at such a fast pace. There appeared to be two possibilities as to how unification could be effected. One was that the Basic Law, which provided for the possibility of other parts of Germany wishing to join the Federal Republic, might apply. If the Basic Law was not to be automatically extended to a reunified Germany, the question would have to be resolved

through negotiation. There would be no difficulty in respect of the observance of the Covenant and other treaties that had been ratified by both States, but it remained to be seen how the issue of treaty observance would be dealt with in other cases.

Non-discrimination and equality of the sexes

330. In connection with that issue, members of the Committee wished to know in which respects the rights of aliens were restricted as compared with those of citizens and as between foreign nationals from the member States of the European Community and other States; what recourse was available to persons who had been denied passports or travel documents; whether discrimination against individuals, particularly aliens, by private enterprises was permissible under the law; what the criteria were for determining that restrictions on the freedom of movement of aliens to avoid “ghettoization” were justified; whether the freedom of movement of European Community residents could be restricted and, if so, under what conditions; and whether any restrictions had been placed on the freedom of movement of gypsies. In addition, members requested clarification of the apparent discrepancy between the provisions of the Covenant and article 3 of the Basic Law, which failed to mention certain rights covered under the Covenant.

331. In his response, the representative of the State party said that, in general, all the human rights provisions of the Basic Law were applicable to aliens, with the exception of the right to vote in state or federal elections, but that the treatment of aliens varied somewhat among the different states of the Federal Republic. Aliens who were permanent residents of the country had the same rights as citizens but in certain cases their freedom of movement could be restricted and they could be denied residence permits for certain areas. Applicants for asylum were required to remain within the jurisdiction of the authorities to which they had been assigned and could also be directed to live in specific places. While comparisons between the treatment of citizens and aliens were difficult because of the differences in the rules applicable to the two categories, any question of discrimination could be brought before the courts. Citizens and aliens both had the right to appeal to administrative courts on various levels in cases where passports or travel documents had been denied. Restrictions on the right of aliens to freedom of residence related to the fact that efforts were needed to keep the proportion of aliens, which in some industrial areas amounted to 50 per cent of the population, at a level that would not endanger public order. Restrictions on the freedom of movement of citizens of the European Community could only be applied for reasons of health - mere economic reasons were specifically excluded. Gypsies were treated in the same way as all other aliens but the fact that they were nomadic had created problems relating to residence authorizations and the availability of suitable campsites in some States. It was not generally possible to invoke the rights guaranteed by the Basic Law in the event of discrimination by private individuals but in some cases, such as those involving discrimination against women, appropriate legislation did exist. Corrective action against other forms of discrimination was also possible through the legal system. The listing of rights in the first three articles of the Basic Law was not exhaustive. Thus, there was no discrepancy between the Basic Law and the Covenant.

Treatment of prisoners and other detainees

332. With reference to that issue, members wished to know what legal or administrative procedures

guaranteed prompt and impartial investigations of alleged violations of article 7 of the Covenant; whether any such allegations had been made during the period under review and, if so, whether they had been investigated and with what results; whether the continuing need to apply security measures in prisons was kept under review in individual cases; whether any prisoners held in specially-secure blocks had been transferred to open prisons; whether any prisoners, other than those referred to in paragraph 64 of the report, had been released on grounds of "human dignity"; and why the maximum period of preventive detention had been recently extended.

333. Members also wished to know whether action had been taken to reduce the excessively lengthy period of remand in custody of more than one year and whether detention for 48 hours without being brought before a judge was not unreasonably long; what was the average length of juvenile detention and whether juveniles in custody were housed separately from adults; whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were applied to detainees under heavy security; and whether the use of pacification cells for deranged prisoners and strip searches of prisoners under tight security still continued. Concerning measures relating to persons who were suffering from AIDS, members wished to know whether such persons could be detained and, if so, where and for how long and on whose authority; whether they could have recourse to the courts; whether they could be treated without giving their consent; and whether testing for AIDS was obligatory. Information was also requested concerning detention in psychiatric institutions and for reasons other than crimes. It was also asked whether conscientious objectors were treated as deserters.

334. In response to questions relating to article 7 of the Covenant, the representative noted that the European Convention against Torture would become effective in the Federal Republic in June 1990. Thereupon, the Federal Prosecutor would be able to conduct impartial investigations into allegations of torture. Additionally, the Commission established under that Convention would be able to inspect the conditions of all prisoners being held under section 129 of the Criminal Code, which regulated the treatment and conditions of those accused of terrorism. There had been no reported cases of torture as such during the reporting period but there had been one case, in 1988, of a forced confession, as well as 155 cases of alleged corporal violations by officials. Sixty-four of these cases had been dismissed and 54 of the accused had been acquitted. Thirty-seven officials had been found guilty and punished. The use of pacification cells was provisional and designed to protect both prisoners and prison furniture. Individual body searches were carried out on prisoners in order to prevent the passing of objects from visitors to prisoners.

335. There was no time-limit for detention on remand. While 48 hours of detention without a judicial decision could be considered harsh, it would be very difficult in practice to reduce that period. The recent extension of the period of preventive detention applied only to Bavaria where, owing to the abuse of certain police powers, the law had been changed to make the length of such detention - a maximum of one week - subject to judicial decision. That provision was being challenged and would soon be tested in the Federal Constitutional Court. There was no general practice of detaining persons who had AIDS or of subjecting them to compulsory treatment, but if a prisoner deliberately infected another prisoner, that would be a criminal offence and treated as such. Preventive detention for juveniles averaged 2.7 months but under pending legislation that period would be reduced.

336. Regarding anti-terrorist legislation, regulated under section 129 of the Criminal Code, the representative said that a prisoner convicted of terrorism could not be permanently cut off from his rights and had the right to take his case to court and to human rights bodies. Such prisoners considered themselves prisoners of war and entitled to a special kind of detention to underscore their status. They chose not to mingle at specified times with other prisoners and had also engaged in hunger strikes in order to be housed together. This the authorities were reluctant to allow, but they had provided a room where such prisoners could spend time together. In recent years the authorities had endeavoured to improve their conditions and treatment. They were allowed contact with lawyers, could conduct correspondence subject to censorship, and were allowed books and electronic equipment in their cells. A number of such prisoners had disavowed terrorism and had been transferred to minimum-security prisons. The sentencing and treatment of prisoners posing special security problems were regulated under Sections 6 and 7 of the Criminal Code. Prisoners were never completely isolated, but were allowed to have a radio and see a defence lawyer and other visitors. The authorities were taking measures to protect the health of prisoners sentenced to solitary confinement. In all 11 Länder, cases of psychiatric hospitalization ordered by the police were subject to state laws, which were very specific about the rights of the patients involved. The commission established under the European Convention for the Prevention of Torture would be able also to inspect psychiatric hospitals.

337. Responding to other questions, the representative said that one person serving a life sentence for crimes committed during the Nazi era had been released because of old age. The Federal Constitutional Court was responsible for determining whether old age could be grounds for release of a prisoner. As of March 1988, only 21 persons older than 70 were serving life sentences in prisons in the Federal Republic. Prisoners had special health services and hospitals and they could also consult their private doctors. Conscientious objectors were not treated as deserters or exposed to harsh conditions and could only be punished if they failed to convince the authorities of the sincerity of their convictions.

Right to a fair trial

338. With regard to that issue, members wished to know whether the Law of 19 December 1986 on Combatting Terrorism had had any noticeable impact on terrorism in the country and whether further progress had been made in reducing the duration of criminal proceedings.

339. In his response, the representative of the State party said that a recent report to Parliament had stated that the number of criminal acts committed by extreme left-wing groups was currently the lowest since 1980 and that there had been a decrease in personal injury and property damage and a drastic reduction in attacks on power lines. A new law had been enacted to reduce the duration of criminal proceedings but statistics on the length of proceedings under that law were still not available.

Freedom of movement and expulsion of aliens

340. With reference to that issue, members wished to know how many expulsion orders relating to aliens had been issued; how frequently the immediate execution of such orders was decreed by administrative authorities; and how the right of aliens to apply to a court to set aside such orders,

or their immediate execution, was ensured in practice. They also wished to know what plans the Government had for the eventual repatriation, transfer or settlement of asylum-seekers, especially in light of the impending reunification; how aliens could become naturalized citizens; whether aliens could be denied permission to leave the country in cases where the question of public order had not arisen; whether citizens were issued permanent passports; whether they could obtain duplicate passports from frontier officials in case of need; and what the grounds were for the removal or denial of passports or the prevention of departure from the country.

341. Responding to the foregoing questions, the representative of the State party explained that some 21,000 deportation orders had been issued during the previous three years, but this did not mean that all the individuals involved had been expelled. Deportation orders obliged aliens to leave the country if they had committed a crime, and expulsion ensued only if the deportation orders were ignored. The expulsion of asylum-seekers was rare. In 1988, for example, only 200 asylum-seekers out of a total of 95,000 had actually been expelled. The rights of aliens against a deportation or expulsion order were protected by the administrative courts. Immigrants from the German Democratic Republic could enter the country and remain there but the Government hoped that many of them would return home when conditions there improved. Since the country was already densely populated, the Government sought to stop any further influx of Germans from other countries of Eastern Europe and was seeking to encourage the voluntary return of those already in the Federal Republic. An alien could become a citizen after eight years, but not all aliens wished to do so.

342. There was no discrimination as between citizens and aliens in respect of their right to leave the country. Such travel restrictions were applied in cases where the Government had a claim against an alien or citizen for infringement of the law. An identity card was sufficient for travel to most countries but passports were issued to citizens on request when needed. Passports could be withdrawn or denied only under specific circumstances, such as the need to prevent avoidance of taxes and threats to public order or violations of foreign-trade laws. Border authorities usually provided replacement documents when necessary without any difficulties, except when an individual was trying to escape arrest.

Right to privacy

343. In connection with that issue, members wished to know whether, in adopting the census law, the Government had given due consideration to the need to avoid not merely unauthorized disclosure of information obtained from individuals but also excessive intrusion into their privacy; and whether changes that had occurred in the law on the protection of correspondence provided adequate guarantees against arbitrary interference with privacy.

344. In his response, the representative of the State party said that, in respect of the recent census, the Federal Constitutional Court had ruled that while a citizen was obliged to provide information, such data had to be kept confidential and could not be made available to any other authorities. The special procedures envisaged under article 10 (2) of the Basic Law that could be resorted to in case of danger to the free democratic basic order did present some difficulties, but there were many safeguards and legal controls, and the administrative courts had the power to decide whether interference with private communications had been justified.

Freedom of expression; prohibition of propaganda for war and incitement to national, racial or religious hatred

345. Concerning those issues, members wished to know whether there had been any prosecutions under paragraph 3 of section 129 (a) and paragraph 1 of section 90 (a) of the Criminal Code; whether peaceful demonstrations could be prohibited under the Criminal Code; whether denial of permission to hold such demonstrations could be appealed against or challenged in the courts; and what the legal consequences were for holding such demonstrations without a permit. Members also wished to know how the provision relating to the prohibition of written materials insulting to a domestically-established church or other religious community was interpreted; whether there were still groups in the country advocating racial hatred and, if so, what action had been taken against them; whether there was a tendency to broaden the scope of the concept of “protected truths”, particularly in view of claims that the Holocaust had not happened; and whether any attempt had been made in the courts to prevent the publication of books, such as The Satanic Verses, which were considered offensive by Muslims.

346. Responding to the questions that had been raised, the representative of the State party noted that paragraph 3 of section 129 (a) of the Criminal Code applied to persons spraying graffiti messages on walls to express sympathy with terrorist organizations. He explained that such acts were punishable in all cases as violations of property rights but that a charge based on the content of the message rather than damage to property had to be brought separately. A spray-painted message that was regarded as an expression of a humanitarian position was not deemed to be in violation of the law. No cases under paragraph 1 of section 90 (a) of the Criminal Code, alleging insult or disparagement of the Federal Republic or one of the Länder, had been brought to court in the last 10 to 15 years. There had been a few prosecutions for publishing or distributing in writing insults against the flag or the coat of arms of the Federal Republic but the courts had been lenient. Some sentences in such cases had been recently suspended by the Federal Constitutional Court on grounds of unconstitutionality. Sit-down demonstrations were punishable if they deliberately prevented others from exercising their right to freedom of movement. The usual penalties in such cases were fines. Peaceful demonstrations in the open air did not require a permit but had to be notified to the authorities in advance. Decisions by the latter to prohibit or restrict them in the interest of public order were subject to review within a fixed time-limit. In cases involving a diversity of legitimate interests, the authorities gave priority to freedom of assembly.

347. Only a very serious insult to a religious group or church would be prosecuted. While some right-wing extremist groups still existed in the country, their numbers were diminishing. During the reporting period, 340 cases dealing with rightists had come before the courts and judgements had been handed down in 183 cases. Claims denying war crimes, or the Holocaust, were punishable under the criminal law and under a recent change the State could now also press charges, in addition to affected individuals.

Right to participate in the conduct of public affairs

348. With reference to that issue, members wished to know how frequently employment had been denied to applicants who failed to guarantee loyalty to the Constitution and what proportion of the total number of applicants that group had comprised; what recourse was available against decisions

to deny civil service employment for failure to guarantee loyalty; how the ban on civil service employment of Communist Party members would be viewed in the light of reunification, particularly in view of the fact that many civil servants were currently members of the Communist Party in the German Democratic Republic; and whether the ban against party members would be made retroactive. Members also requested clarification of the term “extremist” as used in paragraphs 37 and 38 of the report and requested information concerning the funding of political parties.

349. In his reply, the representative of the State party said that no precise statistics were available concerning the number of persons refused civil service employment on grounds of disloyalty to the democratic order of the State. However, he indicated that, for example, only two applicants out of some 30,000 and 25 out of some 32,000, had been refused on that ground in Baden-Wurtemberg and Lower Saxony, respectively. No one had been denied employment for that reason in the State railroad and postal system since 1986. Public servants were expected to have a positive view of the State and the Constitution, and to demonstrate that attitude in the fulfilment of their duties. The Government’s view in that respect had not changed since the initial report to the Committee and it did not feel obliged to employ an individual who did not support the order of the State. However, that principle was not always applied in practice, and the easing of East-West tensions would have a further salutary effect on the hiring of persons for the public service. Decisions to reject an applicant on loyalty grounds had on occasions been overturned by the Federal Constitutional Court or the European Court of Human Rights.

350. All of the implications of that reunification had not yet been thoroughly considered but it could be assumed that, having demonstrated its desire to have a State based on democratic rights, the German Democratic Republic would surely continue to promote democratic development and human rights. Some changes in the funding procedures for political parties had been introduced recently. Parties could obtain such funding from the federal States, membership fees and fund-raising activities but were obliged to disclose where their funds had come from.

General observations

351. Members of the Committee expressed warm appreciation for the high quality of the report, which combined theory and practice as requested in the Committee’s guidelines and which, they felt, could be considered as a model for third periodic reports. They also welcomed the frankness and competence with which the representatives of the State party had answered the Committee’s questions.

352. While recognizing the existence of a sound mechanism for the protection of human rights in the Federal Republic and the fact that the State party had demonstrated its commitment to promoting and protecting human rights, members voiced some continuing concerns over prolonged periods of pre-trial detention; the duration of some criminal procedures; some aspects of the maximum security detention régime for terrorists; the loyalty requirement for employment in the civil service; and the fact that human rights legislation in some of the Länder was not fully in line with Federal laws. Members of the Committee also urged the State party to ratify the Optional Protocol to the Covenant which, they felt, would provide even greater protection for human rights and would serve as a stimulant to other States to do likewise.

353. The representative of the State party said that the dialogue with the Committee had been very profitable and that the views and concerns expressed by the members would be conveyed to the proper authorities in his country.

354. In concluding the consideration of the third periodic report of the Federal Republic of Germany, the Chairman said that the dialogue between the representative of the State party and the Committee had been extremely useful and urged that the Covenant be regarded by the State party as a valuable human rights instrument in its own right.

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171. The Committee considered the fourth periodic report of Germany (CCPR/C/84/Add.5) at its 1551st to 1553rd meetings (fifty-eighth session), held on 4 and 5 November 1996, and at its 1558th meeting, on 7 November 1996, adopted the following observations.

1. Introduction

172. The Committee welcomes the presence of a high-level delegation. It expresses its appreciation for the quality of the report and the detailed, frank and competent manner in which the delegation answered written and oral questions. The Committee notes with satisfaction that information enabled it to engage in a highly constructive and fruitful dialogue with the State party.

2. Factors and difficulties impeding the implementation of the Covenant

173. The Committee notes that the process of reunification of Germany has posed particular problems for the uniform application of the Covenant throughout the territory of Germany. The extension of the political, economic, and social system of the western part of the State to the territory of the former German Democratic Republic has posed novel, difficult and sensitive questions.

3. Positive aspects

174. The Committee welcomes the fact that the reunification of Germany has enabled people of the former German Democratic Republic to enjoy many of the rights and freedoms protected by the Covenant which were formerly denied to them.

175. The Committee notes with satisfaction that Germany has acceded to both Optional Protocols to the Covenant.

176. The Committee greatly appreciates the role of the Federal Constitutional Court in protecting individuals against the violation of their rights as established by the Basic Law and in ensuring conformity of legislation with the Basic Law.

177. The Committee welcomes the adoption of the Second Equal Treatment Act to advance the interests of women in the federal public administration, and the modification of the European Community's adaptation law to ensure that the ban on discrimination is more effectively applied.

178. The Committee appreciates the measures adopted for granting compensation and providing rehabilitation to those who suffered injustice at the hands of the Socialist Unity Party regime in the former German Democratic Republic.

179. The Committee welcomes the efforts made by the State party to counter racism, anti-Semitism and xenophobia, although it regrets that that phenomenon persists.

180. The Committee appreciates that Germany has provided temporary residence to a very large

number of refugees from Bosnia and Herzegovina. It welcomes the assurance given by the delegation that the return of those refugees will be primarily through voluntary repatriation and that, if any involuntary repatriation is made, it will be only in coordination with the Government of Bosnia and Herzegovina and the Office of the United Nations High Commissioner for Refugees and will be subject to challenge by judicial review. The Committee appreciates the assurance that no repatriation will take place to minority areas in Bosnia and Herzegovina or to majority areas which are not considered safe.

4. Principal subjects of concern, and suggestions and recommendations

181. The Committee expresses its concern that there exist instances of ill-treatment of persons by the police, including foreigners and particularly members of ethnic minorities and asylum seekers. In this regard, it is concerned that there is no truly independent mechanism for investigating complaints of ill-treatment by the police. The Committee therefore recommends the establishment of independent bodies throughout the territory of the State party for the investigation of complaints of ill-treatment by the police.

182. Although the Committee finds that programmes of education of young people and training of police officers concerning racism, anti-Semitism and xenophobic attitudes have been started, it regrets that broader educational and training programmes in human rights values do not appear to have received the same level of support. The Committee also expresses its concern that despite significant efforts by the Government, racism, xenophobia and anti-Semitism still persist among certain segments of the population. The Committee thus recommends that efforts to educate the youth and train the police that racism and xenophobia are violative of basic human dignity, contrary to fundamental values and constitutionally and legally impermissible should be intensified, and it urges that such education and training be placed in the wider context of human rights education and training. The Committee urges the Federal and Länder governments to introduce courses in human rights in schools, colleges and universities and also in police and defence academies with a view to strengthening a culture of respect for human rights.

183. The Committee is concerned that the definition of minorities as "ethnic or linguistic groups who have a traditional area of settlement in particular regions", as stated in paragraph 244 of the report, is much too restrictive in terms of article 27 of the Covenant. The Committee is of the view that article 27 applies to all persons belonging to minorities, whether linguistic, religious, ethnic or otherwise, including those who are not concentrated or settled in a particular area or region, those who are immigrants or those who have been given asylum in Germany.

184. The Committee regrets that Germany has made a reservation excluding the competence of the Committee under the Optional Protocol with regard to violation of rights as protected by article 26 of the Covenant.

185. The Committee expresses its concern that solitary confinement can be imposed for a period of up to three months and can be further extended by court order.

186. The Committee is concerned that membership in certain religious sects as such may, in some

Länder of the State party, disqualify individuals from obtaining employment in the public service, which may, in certain circumstances, violate the rights guaranteed in articles 18 and 25 of the Covenant. The Committee recommends that the State party discontinue the holding of "sensitizing" sessions for judges against the practices of certain designated sects.

187. The Committee expresses its concern that the criteria used to evaluate for retaining or dismissing former German Democratic Republic public servants, including judges and teachers, are vague and leave open the possibility for deprivation of employment on the basis of political opinions held or expressed. The Committee therefore suggests that the criteria for dismissing public servants of the former German Democratic Republic be made more precise so that no public servant will be dismissed on the grounds of political opinions held or expressed by him or her.

188. The Committee is concerned that there is an absolute ban on strikes by public servants who are not exercising authority in the name of the State and are not engaged in essential services, which may violate article 22 of the Covenant.

189. The Committee is concerned that the State party has not provided information in respect of the right to form and join trade unions (art. 22 of the Covenant) or on aspects of the rights of children (art. 24 of the Covenant) on the ground that information had been provided to another treaty body. In this regard, the Committee reminds the State party that reports under article 40 of the Covenant should provide information in respect of all Covenant rights.

190. Following the adoption of the present concluding observations, the Government submitted to the Committee the Survey of the Policy and Law concerning Foreigners in the Federal Republic of Germany which had been requested by members.