POLAND

CCPR A/35/40 (1980)

44. The Committee considered the initial report (CCPR/C/4/Add.2) submitted by the Government of Poland at its 186th, 187th and 190th meetings held on 22 and 24 October 1979 (CCPR/C/SR.186, 187 and 190).

45. The report was introduced by the representative of Poland who stated that the report had been submitted in draft for comment to the Council of State, the competent parliamentary committees and other bodies such as the Juridical Sciences Committee of the Polish Academy of Science, the Association of Polish Jurists and the Legislative Council before its presentation to the Committee. She also pointed out that the Polish Parliament had amended the Constitution in 1976 on the basis of the provisions of the Covenant; on 26 May 1978, in order to give effect to the new provisions of the Constitution, Parliament had amended the People's Council Act; on 14 July 1979, the Council of State, which ensured that laws were in conformity with the Constitution, had passed a resolution defining the manner in which it exercised its functions, in order to reinforce legality and render the laws more comprehensible; and that Parliament was undertaking measures to amend administrative procedures which involved the exercise of judicial control over administrative decisions and the recognition of the rights of a citizen to appeal to a court against any such decisions.

46. Members of the Committee associated themselves with the statement of principle contained in the introduction to the report concerning the connection between the realization of human rights and economic and social development. The fact that the report quoted court decisions and provided specific examples illustrating how human rights were implemented in the Polish People's Republic was also commended. Some members expressed interest in the constitutional provision relating to the participation of all citizens in discussions and consultations on proposed basic laws and requested clarification on how that provision was implemented in practice.

47. Some members noted the omission in the Constitution of any specific provision prohibiting discrimination on the grounds of political opinion provided for under article 2 of the Covenant and stated that such omission assumed considerable importance in a country in which a specific ideology was enshrined in the Constitution. With reference to the statement in the report that the Covenant was applied not directly but through the medium of internal legislation and that the Polish domestic law was "basically" in harmony with the Covenant's provisions, it was asked whether there were aspects of Polish legislation which were not in harmony with the Covenant and whether a Polish citizen could invoke the Covenant before a judge or court and obtain a ruling which upheld its provisions. Stressing that there was a difference between availability of rights and their effective enjoyment, members requested additional information on the role played by the administrative and social bodies, referred to in the report, in protecting and promoting human rights; on whether the individual concerned was informed about the available remedy as a matter of principle; and on whether or not the authority responsible for reviewing appeals was different from the one whose decision had been challenged. It was also asked whether the legal profession was open to everyone, what qualifications were required and how often people used its services. Noting that the

Constitution conferred important powers on the Council of State, including the establishment of binding interpretation of laws, as well as the appointment and removal of judges and of the Public Prosecutor General, who was accountable to it, members asked whether such powers did not infringe the independence of the judiciary and whether institutional machinery existed to limit those powers.

48. As regards article 3 of the Covenant, interest was expressed in that part of the report which indicated how the development of economic and political rights promoted equality between men and women and the increased participation of the latter in public affairs. Questions were asked on the extent of such participation in Parliament, in the Council of Ministers, in the legal profession and in the Party organs.

49. In relation to article 6 of the Covenant, information was requested on the positive measures adopted by the State for the promotion of life as a social value as distinct from its protection by means of criminal sanctions. Referring to the crimes mentioned in the report to which the death penalty was applicable, questions were asked on which crimes against the economy were serious enough to warrant that penalty. Information was requested on the number of times the death penalty had been imposed during the period covered by the report and whether Poland was considering its abolition.

50. Regarding articles 7 and 10 of the Covenant, members of the Committee asked what supervision was maintained by the judicial or other independent authorities over the treatment of prisoners held in police custody; whether any measures were available to a detainee to ensure that a person guilty of extorting false evidence from him or of ill-treating him became answerable for his actions; whether persons in detention could be held incommunicado or in solitary confinement pending trial; how long they could be deprived of contact with their lawyers; and what provision was made to enable persons being detained or serving prison sentences to contact their families.

51. In connection with article 9 of the Covenant, it was asked for what period of time a public prosecutor could order a person to be remanded in custody; whether there was any possibility for a detained person to apply for release during the custody period of 48 hours; whether a person could be remanded in custody for a number of successive 48-hour periods; whether a decision by the public prosecutor to place an individual in detention could be reversed by the courts; and what provision was made for the care of the minor dependents of persons remanded in custody.

52. As regards article 12 of the Covenant, one member wondered why the need to maintain law and order or to uphold the vital economic interests of the country should necessitate residence restrictions. Information was requested on the conditions under which a person was authorized to settle in Warsaw, the date when such conditions had been laid down and the remedies which were available to the individual who felt that his application had been unlawfully rejected. Noting that, after serving a term of imprisonment, a convicted person could be ordered by the courts to live in a specific area in order to prevent undesirable contacts with criminal circles, another member wondered whether it was not the responsibility of the State to remove the criminal elements from the area rather than to prevent the individual in question from returning there. Clarification was requested on the statement in the report that a passport could be denied to a person who had harmed the good name of Poland or for "important reasons of State". In this connection, one member sought an assurance from the representative of Poland that any application to leave the country made under

article 12, paragraph 2 was respected as law-abiding conduct which would not be sanctioned as a criminal offence or, for instance, by dismissal from employment.

53. Commenting on article 14 of the Covenant, members of the Committee requested more information on the various judicial organs, including the collective boards, on their powers and composition, on whether they were elected, on the guarantees of good and independent justice and on the grounds on which a judge could be removed from office. Some members sought explanation of the reference in the report to the "participation of the social factor in the exercise of justice", the elements of the offences of the "hooligan" type and the guarantees for a fair trial, including the conditions for admission of evidence offered by the accused. Questions were asked concerning the exceptions to the rule that a hearing should be public and the grounds on which such exceptions were made; how often the court pronounced judgement in absentia; and whether such judgement could be revised if the convicted person appeared later. One member wondered whether the statement in the report to the effect that the Prosecutor, while authorizing the accused to confer with his lawyer could none the less reserve the right to be present at the meeting, was compatible with the provisions of article 14 (3) of the Covenant.

54. As regards article 18 of the Covenant, it was noted that neither the Constitution nor the report seemed specifically to mention freedom of thought. It was asked whether religious propaganda was authorized under certain conditions and whether atheistic propaganda existed and, if so, under what conditions it could be practised; whether children who attended schools were given the opportunity to receive religious teaching and, if so, whether parents took advantage of that possibility. Comments were made that the situation regarding freedom of conscience and religion, reflected in the report, was exemplified by the recent visit to that country of the present Roman Catholic Pope, himself of Polish origin, who had been entirely free to conduct what amounted to religious propaganda.

55. In connection with article 19 of the Covenant, members of the committee asked how far was it possible for a person to express dissent in regard to the country's political and social system in general; in which cases was the freedom of oral and written expression considered to be aimed at impairing this system; how much control was exerted over the mass media and to what extent control organs determined what the people could read. Reference was made to the statement in the report that Polish law prohibited the attribution to an institution of acts likely to bring it into disrepute, and the question was asked whether, in the event of such acts being attributed to the Council of State, for example, it was possible to obtain independent adjudication. More information was requested on how the youth of Poland was educated in the spirit of anti-fascism, peace and friendship. Satisfaction was expressed at the fact that Polish law contained provisions designed to protect society against moral degradation, the exaltation of violence and pornography.

56. As regards article 21 of the Covenant, reference was made to the statement in the report that consent to the holding of a meeting could be refused if the convening of the meeting was contrary to the "social interest". The concept of "social interest" was said to be broad and called for further explanation. Questions were asked as to who was authorized to grant such consent; to what kinds of meetings the requirement applied; who was empowered to judge what was or was not in the social interest and, in the event of a dispute on the latter point, who decided the issue.

57. Commenting on article 22 of the Covenant, members of the Committee noted that the Constitution prohibited the setting up of, and participating in, associations whose objectives were incompatible with the socio-political system or the legal order of Poland, and asked who decided whether such incompatibility existed; what remedies were available to an individual whose right of association was restricted; what were the associations recognized as being of "higher public utility"; to which category associations such as the Society of Friends of the United Nations belonged and how could an old order of the President of the Polish Republic issued in 1932 be used at the present day to restrict the right of association. One member wondered whether there was only one association in each field of artistic activity, whether artists were allowed to set up their own associations or had to belong to one of the official associations and whether an artist would be able to publicize his work if he was not a member.

58. With respect to articles 23 and 24 of the Covenant, it was asked whether there were any restrictions on the marriage of Polish citizens with foreigners; whether there was any difference in treatment with regard to residence and nationality as between a Polish man or a Polish woman who married a foreigner and if any distinction was made as to the nationality of their children; to what extent the right of abortion was recognised in the Polish system; whether the conditions for married and unmarried women differed in that respect and whether a married woman would be free to have an abortion without her husband's consent. Information was requested on any special provisions made for the care of young children of the working mothers. As regards the statement in the report to the effect that there could be no divorce in certain circumstances where the interests of the children so required, it was observed that there appeared to be little justification for this as, on the one hand, Polish law provided equal rights both for legitimate children and for those born out of wedlock and, on the other hand, it might be against the interests of the children themselves to live in an atmosphere of mutual dislike between parents.

59. In connexion with article 25 of the Covenant, it was pointed out that the reference in the Constitution to the Polish United Worker's Party as being the guiding political force of society in building socialism gave predominance to that party and to its members, and seemed incompatible with the Covenant. It was asked whether the trade unions could present candidates for elections and take part in the law-making process by proposing amendments to laws. Information was sought on the role of social organizations in carrying out the tasks of socialist democracy and in the machinery of the State and on the function and operation of the residents' self-management committees and their role in the management of the economy. One member asked for clarifications about the electoral criteria applied in relation to article 25 of the Covenant and wished to know what steps were taken to ensure that a person could express himself freely in elections.

60. In relation to article 27 of the Covenant, information was requested on the status of the various minority groups and on the opportunities available to them to retain their identity, to publish books and newspapers in their own languages, and to use their own languages in schools and churches. It was asked why the people of German culture and language had not been mentioned as a distinct group within the meaning of article 27 of the Covenant.

61. Commenting on the questions raised by members of the Committee, the representative of the State party stated that apart from the established practice for Parliament and the Government to ask associations of jurists for their opinion, the Polish people were consulted about the majority of

legislative bills which concerned the rights of citizens and that in the case of legislation of lesser importance, only the social organizations concerned were consulted.

62. Replying to questions asked under article 2 of the Covenant, the representative pointed out that the Polish legislation contained no provision which departed from the principle of the equality of human rights on the grounds of opinion and that article 67, paragraph 2, of the Constitution should be considered in conjunction with article 83, paragraph 1, which explicitly guaranteed freedom of speech. She noted that, in ratifying the Covenant and publishing it in the Official Gazette and several other national publications, Poland had undertaken to respect it and to do all that was necessary to guarantee and protect in its entirety the rights embodied in it; that in practice, although Polish citizens were unable to invoke the Covenant as such in order to demonstrate that a specific rule of law was null and void because it ran counter to the Covenant, nevertheless the rights laid down in the Covenant were given effect to in Poland through the medium of domestic law; that the Public Prosecutor General had the right to challenge general legislative acts that were not in conformity with the law and to request local administrative bodies to take the necessary action in that respect; and that the social control committees were particularly important so far as protection of the rights of citizens were concerned. Referring to other comments, the representative pointed out that, in the intervals between sessions of Parliament, the Council of State was empowered to issue decrees having the force of law, but they subsequently had to receive parliamentary approval; that the judges were subject to the law and, subsequently, were not required to rule on the compatibility of the laws with the Constitution. However, they did have the right to determine whether executive and other judicial orders and laws were consonant with the Constitution and were able to refrain from giving effect to an order emanating from a body of lesser rank if it was not in accordance with the law.

63. Replying to questions on equality between men and women, the representative stated that Polish women often held responsible posts in enterprises, education, Parliament, the judiciary and local government bodies; that two members of each of the Council of State and the Council of Ministers were women; that women accounted for 17 per cent of the lawyers, 33 per cent of the prosecutors and about 49 per cent of the judges; and that many women occupied high positions in the hierarchy of the political parties.

64. As regards article 6 of the Covenant, the representative pointed out that the existence, in both urban and rural areas, of many consultation services for future mothers and of free medical and other care for pregnant women and infants had resulted in a decline in the infant mortality rate which, in 1978, was less than 23 per thousand; that the death penalty could be imposed on persons who organized or directed the seizure of goods of high value to the detriment of a unit of the socialized economy and provoked serious disturbances in the functioning of the national economy; and that since the Penal Code had come into force on 1 January 1970, the death penalty had never been imposed on those grounds. The Polish Government did not plan, and had not found it necessary, to modify the Penal Code in force.

65. Replying to questions under articles 7 and 10 of the Covenant, she stated that penalties were carried out in a humane manner and with respect for human dignity; that the penitentiary judge and the Public Prosecutor were responsible for supervising the serving of the sentence; that heads of districts were required to visit prison establishments in order to inspect conditions of detention and,

where necessary, they could take appropriate action; that convicted persons and detainees had the right to appeal should they be subjected to treatment contrary to the principles expressed in the Penal Code; that in the event of the death of a person in custody there was a very thorough inquest into the circumstances of the death and that a person sentenced to deprivation of liberty had the right to communicate with persons outside and, in particular, to maintain contact with his family by visits and correspondence.

66. In connection with article 9 of the Covenant, the representative pointed out that the period during which someone could be remanded in custody by decision of the Public Prosecutor could not exceed three months. However, if the preparatory proceedings could not be completed within that period, the prosecutor had the right to extend the detention to six months and the court to a longer period, as required in order to complete enquiries.

67. Regarding article 12, she stressed that Polish law did not restrict the individual's freedom to choose his place of residence; that exceptions to that rule concerned military areas important for national defence or border areas; that the economic reasons mentioned in the report related to the allocation of experts to the various regions throughout the country in accordance with the needs of the economy; that any Polish citizen had the right to leave Poland; and that exceptions to that principle represented only 0.6 per cent of cases.

68. Replying to questions relating to article 14 of the Covenant, the representative stated that the courts acted with the participation of the people, through people's assessors elected by People's Councils; that the Councils elected the members of the boards, which dealt with less serious offences, from among the citizens living and working in a particular place who had full civic rights, were 24 years of age and were capable of acting in that capacity; that the boards' proceedings were public; and that the establishment of professional and social administrations was another special device for enabling society to participate in the activities of the courts. She gave a detailed account of the procedure for the appointment of judges and of the provision guaranteeing their independence and pointed out that a judge could be removed from office if he no longer gave the necessary guarantees for the proper discharge of his duties, but that there had only been one case of dismissal in the past 10 years and no judge had been removed from office since 1977; that a judge could be relieved of his duties by the Minister of Justice for reasons which she enumerated or by a decision of the disciplinary court; and that during the past 10 years there had been only three such decisions. As to the procedure applicable to offences of the "hooligan" type, she stated that this concerned only persons caught in the act or immediately thereafter, that in the courts dealing with such cases there was a permanent legal service which provided to accused persons the services of a lawyer, and that the system of exemption from payment of costs was widely applied. Replying to other questions, she stated that secret hearings were the exception, and in such cases two persons appointed by each of the parties, as well as persons admitted pursuant to a decision of the president of the court, were present; that the right of the accused to communicate directly with his counsel without other persons being present was limited only in exceptional cases during the initial stage of the investigation; that the verdict was pronounced in public, although the judge might make an exception to that principle in criminal cases where a State secret was involved; that judgement could be pronounced by default only in the instances specified by law and that, should the person concerned avail himself of the right to a new hearing, the judgement pronounced was not executed and the case was tried again.

69. In connection with article 18 of the Covenant, the representative pointed out that it was prohibited in the Polish People's Republic either to compel someone to take part in religious ceremonies or to restrict participation in such ceremonies; that since 1961, religious education had been entirely the responsibility of the Church, acting under the supervision of the Minister of Education; that there were several religious publications put out by religious organizations; and that parents were free to decide on a religious education for their children.

70. Commenting on questions asked under article 19 of the Covenant, she stated that during the period 1977-1979 only four persons had been sentenced for the offence of insulting the Polish State or disseminating information injurious to its interests; that the Central Office for the Control of the Press, Publications and Public Entertainment granted newspaper publication permits and decided whether a particular publication would or would not be subject to control; that, under an order of the Council of Ministers, no blame was attached to a person acting in good faith within the limits of the law and on the basis of accurate information; that attempts to stifle criticism were inadmissible; and that persons failing to act within the spirit of the relevant provisions laid themselves open to severe disciplinary penalties.

71. Replying to a question under article 21 of the Covenant, the representative stated that no permission was required for meetings which did not involve disturbance of public order and which were held at the initiative of existing organizations.

72. As regards article 22 of the Covenant, she indicated that there were three categories of social organizations in Poland: simple associations, declared associations and associations of higher public utility; that each category of organization was subject to different rules; that the Polish Red Cross, the National Defence League and the Association of Polish Jurists were examples of organizations of higher public utility; and that nearly all artists belonged to an artistic association, whatever their political opinions.

73. In relation to article 23 of the Covenant, the representative stated that mixed marriages were not prohibited by Polish law and did not automatically involve a change of nationality; that a foreign woman who married a Polish national acquired Polish nationality if, in the three months following the date of her marriage, she made the necessary statement before a competent body and if that body decided to grant her request; and that the child born of a mixed marriage acquired Polish citizenship unless his parents decided otherwise. As regards the questions on abortion, she pointed out that a pregnancy could only be terminated on medical recommendation or when the living conditions of the pregnant woman were difficult or if there was a well-founded presumption that the pregnancy was the consequence of an offence; and that the decision to terminate a pregnancy was that of the woman alone and the husband's consent was not required. In the case of a minor girl, permission was required from the parents, guardians or guardianship court. Explaining the facilities enjoyed by working mothers, she pointed out that the Polish system granted a mother the right to three years of unpaid leave to look after her young child, that a woman who availed herself of this right did not lose her social insurance and pension entitlements, that an employer was obliged to guarantee her return to work in the same post at the same establishment, but that she could use day nursery facilities and continue to work. Replying to comments concerning divorce, she stressed that in the socialist ethic, the interests of the child occupied a high place and that even at the judgement stage those interests must nearly always take precedence over those of the parents.

74. As regards article 25, the representative stressed that members of the Polish United Workers' Party did not have a more privileged social role to play than members of other parties, or citizens who did not belong to any party, but that the members' duties at the professional and socio-political levels were more important; that there were no restrictions in Poland on the recruitment of persons who held particular political opinions; that trade unions took part in the preparation of social and economic plans at all levels; that some of the social organizations played a very important role in running the economy through their extensive participation in the management of socialized enterprises; and that the residents' self-managing committees took decisions as regards the development of the region, exercised control over the quality and conditions of life and dealt with matters referred to them by the Municipal Council.

75. Commenting on questions raised under article 27 of the Covenant, she stated that instruction was provided in the mother tongue of the national minorities during primary and secondary education; that such instruction was arranged at the written request of the parents, provided that there were at least seven pupils; that two faculties had been created at the University of Warsaw to ensure the teaching of minority languages; that educational establishments provided the minorities with libraries and newspapers; and that there were radio and television programmes disseminating information on the cultural and social activity of the minorities.

55. The Committee considered the second periodic report of Poland (CCPR/C/32/Add.9 and Add.13) at its 708th to 711th meetings, held on 26 and 27 March 1987 (CCPR/C/SR.708-711).

56. The report was introduced by the representative of the State party, who drew attention to the fact that a far-reaching reconstruction of Poland's legal system had been undertaken since 1980 with a view to bringing it into line with changing political, economic and social relations. Although the reform process was not yet concluded, and essential step forward had already been taken. The representative noted, in that connection, that a number of steps had been taken to complement the existing system of institutional guarantees for the protection of human rights, including the establishment of the Supreme Administrative Court, the Constitutional Court and the Tribunal of State and the enactment of new laws on common courts of law and on the Supreme Court. Positive developments had also taken place in the area of guaranteeing the enjoyment of specific rights or groups of rights, as exemplified by new regulations concerning the exercise of freedom of speech and freedom of the press, which had reduced the scope of limitations on such rights to a minimum. Limitations on the right to travel abroad and to return to the country were also being progressively reduced.

57. As part of the continuing reform process, there was wide-ranging public discussion in Poland of a proposal to establish the office of spokesman for citizens' rights, who would be the equivalent of an ombudsman, and the Sejm was currently considering a draft law on social consultation and referendum that would enhance the participation of citizens in public affairs.

58. Referring to the period of martial law (13 December 1981-22 July 1983), the representative stressed that Poland had fulfilled all relevant obligations arising under article 4 of the Covenant.

Constitutional and legal framework within which the Covenant is implemented

59. With reference to that issue, members of the Committee wished to receive information about significant changes relevant to the implementation of the Covenant since the previous report, the role of the Patriotic Movement of National Rebirth and its impact, if any, on the implementation of the Covenant, the steps envisaged under the Law of 29 April 1985 for initiating proceedings before the Constitutional Court, and the efforts that had been made to disseminate information about the Covenant. Members also wished to know about any special factors and difficulties affecting the implementation of the Covenant, including in particular those stemming from the period of the state of emergency. In the latter regard, they requested additional information about the circumstances surrounding the imposition of martial law and asked whether any of the powers existing under the state of martial law had been transferred elsewhere - to the judiciary or the police, for example - when martial law was lifted on 22 July 1983. In addition, it was asked whether there was any concrete legislative provision relating to the declaration of martial law and providing for the protection of rights during any future state of emergency.

60. Members also requested further information concerning the Law of 14 July 1983 on the Ministry of Internal Affairs, asking in particular whether the activities and powers conferred were

investigative or preventive and whether they could also be applied to acts viewed as posing a threat to state security or to public order that were already fully covered under various articles of the Penal Code. It was also asked whether legal remedy could be sought on the basis of alleged violations of the Covenant that might not be recognized under domestic law. Furthermore, some members requested additional information concerning measures aimed at strengthening the independence of judges, including measures relating to their recruitment, tenure of office and removal, the planned establishment of an office equivalent to that of ombudsman, and the concrete measures taken, as indicated in paragraph 25 of the report (CCPR/C/32/Add.9), to extend civil rights and freedoms.

61. In his reply, the representative of the State party pointed out that the details of significant changes relevant to the implementation of the Covenant had been provided in the report. As indicated, a number of fundamental laws in the field of public administration had been changed, limitations on the enjoyment of certain rights and freedoms had been reduced and guarantees of the enjoyment of other rights had been expanded. The reform of administrative law had taken place at three levels: in the organization of the state administrative apparatus, in connection with rules governing procedure, and through the introduction of judicial controls. In addition, the participation of citizens in public affairs had been expanded through the introduction of self-government in a variety of fields. Regarding the Patriotic Movement of National Rebirth, the representative said that it was an open social and political movement, whose tasks included ensuring the effective participation of citizens in the running of public affairs and maintaining a dialogue with a view to reconciling contradictory trends in Polish society. The Movement was also active in the juridical sphere. It did not possess any power of authority and carried out its programme exclusively on the basis of the support it received from society at large. The Movement had significantly influenced the development of electoral law, the setting up of the Constitutional Court, the extension of the competence of courts of law and the introduction of self-government. Membership was open to both organizations and individuals, support for the Movement's programme being the sole requirement for membership.

62. Concerning the initiation of proceedings before the Constitutional Court, the representative said that proceedings could be instituted if the matter fell under the general provisions of article 19 (1) of the Law establishing the Court, if the object of the proceedings was appropriate - for example, national security or defence, and if a group of citizens engaged in a given profession or occupation sought court action bearing upon some aspect of their professional activities. Proceedings could also be started on the Court's own initiative. In addition, the Court could be requested to consider the constitutionality of legislative acts or to provide an interpretation of such acts. Regarding special difficulties affecting implementation of the Covenant, the representative referred to a Ministry of Health regulation requiring the admission to the Academy of Medicine of men and women in equal numbers and the problem resulting from the fact that more women than men were passing the qualifying examinations. The legal issue had been settled by the Constitutional Court, which declared the regulation unconstitutional, but the social and professional problem remained. He also stated that, in view of rising crime rates, it had been necessary to pass two new laws to stiffen penal sanctions.

63. On the dissemination of information concerning the Covenant, the representative said that such information had been published in Polish, English and French, had appeared as an annex to the Journal of Laws, and had featured in a pamphlet and a number of monographs as well as in a book

on human rights by a leading scholar. Other examples of dissemination of the text were the coverage given to it by the media and legal bodies and its discussion at a special conference convened by the Polish Academy of Sciences in 1986 on the twentieth anniversary of the promulgation of the International Covenants. The contents of the Covenants were also made known in schools and students who chose law as an option in the secondary education syllabus became familiar with all international and regional human rights instruments as part of their international law studies.

64. Concerning the circumstances leading to the imposition of martial law, the representative said that an attempt had been made to give a fairly full account in the report. The period in question had been one of the most difficult experienced by Poland since the Second World War. An appeal by the President of the Council of Ministers for "90 days of public calm" had been followed by widespread unrest: sit-ins in public buildings and what was described in Poland as "strike-terrorism", namely the use of strikes as part of the political struggle. Whereas up to the conclusion of the Gdansk agreement in August 1980 the demands of workers to correct economic mismanagement had been just, later the idea that Solidarity should be allowed to do whatever it liked by exerting political pressure had gained currency. It had become essential to impose martial law in order to protect the nation's interests and prevent civil war.

65 Responding to other questions raised by members of the Committee, the representative of the State party explained that there was no direct relationship between the lifting of martial law and the Law of 14 July 1983, since the latter did not include regulations in force during the period of martial law. The rights and duties of officials concerned with security were defined in articles 6 and 7 of the Law of 14 July 1983, the underlying idea of the Law itself being the elimination of previous inconsistencies in the regulations governing direct enforcement measures. Persons of all shades of political opinion were represented on the Consultative Council of the President of the Council of State, including those who did not co-operate with the Patriotic Movement for National Rebirth, the Catholic Church and Solidarity activists. The legislative basis for any future declaration of emergency was contained in a law dated 5 December 1983, which provided that a state of emergency could be declared in the event of natural disaster or an internal threat to the security of the State. Such a declaration could be made by the Council of State or, in urgent cases, by the President of the Council of State, acting on the advice of the Council of Ministers or of the National Defence Board, or on his own initiative.

66. With reference to the possibility of seeking redress for alleged violations of rights covered by the Covenant but not recognized under domestic law, the representative pointed out that the provisions of the Covenant, while not a direct source of law, were included in domestic legislation and provided important guidelines for the interpretation of domestic laws. In a decision relating to the illegal arrest of a citizen, for example, the Supreme Court had cited the Covenant. Citizens who considered that their rights had been violated could have recourse to the civil law courts or to the Supreme Administrative Court. Officials were punishable under the Penal Code if criminal offences were involved. Measures to ensure the independence of the judiciary had already been enacted in the inter-war period. The 1985 law on the organization of the common courts of law reinforced the immunity of the bench. Judges could not be the object of penal or administrative sanctions, although they were subject to professional disciplinary action. In that connection, the role of the two judicial collegiate bodies - the General Assembly and the College of Judges - had been extended, together

with that of the colleges of voivodship judges in each province. Judges could be removed from office only in accordance with the law on the organization of the courts. Removal of judges for cause was exceptional - only three judges had been so removed during the period 1982-1985. While the establishment of an office of ombudsman was still at a preliminary stage of consideration, public opinion appeared to favour such a step. The office, if established, would probably be attached to the Sejm, with ombudsmen perhaps being eventually attached to local voivodship courts. The question of the scope of the office was important, and it was clear that, while the social context should be broad, the official concerned should not be overwhelmed by a mass of individual complaints that could be otherwise dealt with. Finally, the representative stated that the report provided ample illustration of how human rights had been expanded in Poland. Other examples included the reduction of passport restrictions and restrictions on the press and the theatre, and increased control and oversight of administrative decisions by the judicial authorities.

Non-discrimination and equality of the sexes

67. With regard to that issue, members of the Committee wished to know whether there was any legal basis for ensuring non-discrimination on grounds of political opinion, in what respects the rights of aliens were restricted as compared with those of citizens, and what actual or planned activities were being undertaken by the Plenipotentiary for Women's Affairs to ensure, in practice, the equality of the sexes.

68. In his reply, the representative of the State party said that there was no discrimination in Poland based on political opinion, nor was there any legal basis for such discrimination. Aliens were accorded the same rights as citizens except in such areas as voting and eligibility for public office. The Office of the Plenipotentiary for Women's Affairs had been created specifically to ensure the real equality of women, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women. A programme aimed at improving the situation of women had also been adopted by the Council of Ministers.

Right to life

69. With reference to that issue, members of the Committee wished to know whether the death penalty had been pronounced since 1980 for any crimes other than those involving homicide. If so, appropriate statistical data were requested. Members also wished to know what courts were empowered to pronounce the death penalty and whether the improper use of force by security personnel or the police had resulted in any loss of life, particularly during the period of martial law and, if so, what measures had been taken to prevent or to punish such abuses.

70. In replying to the questions raised by members of the Committee, the representative explained that the death penalty was an extraordinary measure that could not be resorted to except for the most serious crimes. Under the Penal Code currently in effect only 10 death sentences had been imposed, and during 1980-1986 no such sentences had been pronounced for crimes other than homicide. Military tribunals had imposed the death sentence in nine cases involving treason and espionage, but in eight of those cases the sentence had been pronounced in absentia and in the ninth case it had been commuted to 25 years in prison. Only military and voivodship courts could pronounce the death sentence, which was appealable to the Supreme Court. Police or security forces were

authorized to resort to the use of force only in accordance with applicable laws and each case involving loss of life was carefully investigated under the jurisdiction of a prosecutor. Such an investigation had been conducted in the case of Father Popieluszko and had resulted in the conviction of four officials. Such cases were rare but they did occur. The actions of security forces under martial law had resulted in 14 deaths, all of which had been investigated. A total of 983 persons had been injured as a result of rioting, including 814 members of the police.

Liberty and security of person

71. With regard to that issue, members of the Committee requested information on the law and practice relating to detention in institutions other than prisons and regarding the concept of a "warrant charge". They also wished to know how soon after arrest a person could contact a lawyer, how quickly after arrest a detainee's family was informed, whether there were any limits upon the repeated use of permitted 48-hour detention, whether there was a maximum limit on the length of preliminary detention prior or subsequent to court ordered prolongations, what controls were used to ensure that the period of pre-trial detention did not exceed the prescribed limits, whether preliminary detention as practised in Poland was compatible with article 9, paragraph 3, of the Covenant, and how the right of detainees to challenge the lawfulness of their detention before a court, as provided in article 9, paragraph 4, of the Covenant, had been affected by the law of 10 May 1985 on Special Penal Liability and the Supreme Court resolution of 10 November 1986 concerning preventive detention.

72. Members of the Committee also asked what percentage of persons in preventive detention were ultimately tried and why the repeated extension of the 48-hour maximum limit on detention was still authorized although martial law had been lifted. One member expressed anxiety that the combined effects of the law of 14 July 1983 and the repeated use of the 48-hour detention procedure gave the State broader powers than under martial law. Noting that the practice of obliging certain persons to perform labour "in the general interest" was found to be inconsistent with the provisions of the Forced Labour Convention, 1930 (No. 29) of the International Labour Organisation, one member requested clarification as to whether such a practice was consistent with article 8, paragraph 3 (c) (iii), of the Covenant.

73. In his reply concerning detention in institutions other than prisons, the representative explained that courts could order alcoholics to undergo treatment at special establishments for up to two years, that drug addicts could be held for treatment for up to two years at the request of their families, that detainees or convicts could be sent to a mental institution for up to six months by a judge or procurator upon the advice of two psychiatrists, and that minors convicted of illegal acts could be detained upon court order in a correctional institution. A "warrant charge" was a judicial procedure to which courts might resort, provided that the circumstances for doing so were appropriate and the guilt of the accused was clearly evident. The only authorized punishments under the procedure were certain restrictions on liberty and fines. Such judgements were subject to appeal, which, if successful, led to the annulment of the warrant charge and the reinstatement of the ordinary procedure.

74. Responding to other questions, the representative explained that detainees could contact a lawyer shortly after being arrested, but rarely did so since they could not be held for more than 48

hours. The Law of 14 July 1983 on the Ministry of Internal Affairs provided that the family of any arrested person and, if requested, also the employer, must be notified without delay. The possibility of repeatedly extending the 48-hour limit on preventive detention was restricted by the requirement that the detention must be justified. Without such justification, the detainee had to be released and could not be rearrested for the same reason. The Law of 14 July 1983 provided that any suspicion regarding the intention of a detainee to commit a crime or disturb public order, if released, must be objective. The maximum period of preventive detention under the powers of the voivodship procurator was three months, extendable in exceptional cases to six months. Only courts could prolong preventative detention beyond six months. All decisions relating to detention could be appealed to the appropriate courts and some 8 per cent of such appeals had been successful. The process of detention was under strict judicial control, particularly with regard to the prolongation of the detention period. Persons awaiting trial were generally not placed in preliminary detention: during the period 1979-1986, 75 to 85 per cent of convicted criminals did not undergo such detention. The Law of 10 May 1985 on special penal responsibility did not affect the right of detainees to challenge the lawfulness of their detention before a court. Any detainee could, at any time, request an end to his detention unless he was charged with serious crimes, such as homicide, rape or armed robbery, which were punishable by more than three years imprisonment, and even in such cases preliminary detention could be waived if it might jeopardize the life or health of the individual concerned or harm his family. The Supreme Court had ruled that any person who had been unjustly arrested had the right to sue for damages before a civil court. With regard to the application of article 8 of the Covenant, the representative stated that the Law of 21 July 1983, relating to compulsory labour designed to deal with the effects of the socio-economic crisis, had not been in force since 1 January 1986. However, the Law of 26 October 1982, which prescribed measures to be applied to persons who refused to work, was still in effect.

Treatment of prisoners and other detainees

75. With regard to that issue, members of the Committee wished to know the circumstances under which solitary confinement was resorted to during pretrial detention or imprisonment, whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with, and whether the relevant rules and regulations were known to the prisoners and accessible to them. One member requested further information in the latter connection in the light of allegations that such regulations were not made available at some prisons to all prisoners and that prisoners asking to consult them had been punished. Referring to allegations of relatively frequent beatings or mistreatment of persons during interrogation, preventive detention or imprisonment, the same member also asked how many cases involving such abuses had been brought to court. Members of the Committee also requested clarification of the provisions of the Law of 14 July 1983 on the Ministry of Internal Affairs, which authorized the use of force, including firearms, by state organs and asked for additional information regarding the supervision of prisons, including the role of social penitentiary councils and procedures for handling complaints.

76. In his reply, the representative of the State party explained that solitary confinement could be imposed under two circumstances: up to 14 days for attempted escape or repeated violations of prison rules, and from one to six months for grave violations of prison discipline, refusal to work, self-mutilation or inciting or abetting self-injury by other detainees. The latter punishment was not resorted to during preventive detention and must be approved in advance by the prison judge. Such

judges, as well as prison procurators, were attached to voivodship courts and their main responsibility was the supervision and control of prisons and the examination of complaints from inmates. Of some 8,200 complaints examined during 1986, 7.4 per cent had been found to be justified. In general, prison personnel carried out their duties appropriately but every case of alleged mistreatment was investigated. During the period 1979-1985, seven prison guards had been dismissed for maltreating prisoners, some of them had also been sentenced to terms in gaol. The United Nations Standard Minimum Rules for the Treatment of Prisoners were generally observed with few exceptions, such as those relating to the isolation of prisoners at night. Prisoners must be informed of relevant regulations, which must be posted. The main tasks of the social penitentiary councils, established in 1981, were examining the reports of prison directors on the activities of their institutions and assisting inmates and their families with various personal problems.

77. The use of force, including firearms, by state organs was regulated under the Law of 14 July 1983, article 8 of which defined the circumstances under which, for example, vehicles might be stopped or clubs, dogs or firearms used. The law prohibited the use of force except in case of necessity.

Right to a fair trial

78. With regard to that issue, members of the Committee wished to receive additional information concerning the organization of the judiciary, particularly the law of 20 June 1985 on the organization of the common courts of law, legal guarantees regarding the right of all persons to a fair and public hearing by a competent, independent and impartial tribunal, relevant rules and practices concerning the publicity of trials, the public pronouncement of judgements and the admission of mass media, accelerated court procedures and the extent to which they conformed with article 14, paragraph 3 (b) and (c), of the Covenant and with the Supreme Court judgement of 31 July 1979, the organization and functioning of the bar, and the operation of legal aid or advisory schemes, if any. Members also wished to know whether the judgements of special courts were appealable to the Supreme Court, what conditions governed the appointment of judges by the Council of State and for what period judges were appointed, on what grounds the Ministry of Justice could oppose the admission of lawyers to the bar, whether the interpretations of laws by judges were subordinated to those of the Council of State, how frequently judges had been transferred or demoted during the period covered by the report, and whether trials involving alleged defamation of the State were held in camera.

79. Concerning the practice of accelerated court procedures, one member expressed concern and wished to know whether the relevant criminal investigations were carried out by the police alone, without judicial intervention, whether charges were formulated only verbally, whether the accused had sufficient opportunity to prepare their defence, and whether such procedures were resorted to in political as well as criminal cases.

80. In his reply, the representative of the State party confirmed that appeals against the judgments of the special courts, including the military tribunals, could be brought before the Supreme Court. Indeed, all courts in Poland were subject to the jurisdiction of the Supreme Court, to which questions regarding the interpretation of laws were also submitted. Judges of the Supreme Court were appointed for terms of five years, all other judges were appointed for indefinite terms that, in

practice, amounted to appointments for life. Judges were appointed by the Council of State, on the advice of the Ministry of Justice, which was empowered to raise objections to such appointments but did so only infrequently. Regarding admissions to the bar, the Ministry of Justice had raised objections to admission in 15 cases during 1986. The Council of State had the theoretical right to pronounce upon legal interpretations made by the courts, but did not do so in practice. Judges could not be sanctioned by demotion or transfer to inferior jurisdictions, but only by removal. Administrative practices relating to the transfer of judges did not compromise the independence of the judiciary. Trials were held in public when the question of defamation did not arise; trials involving the defamation of the State were also held in public.

81. Responding to questions concerning accelerated court procedures, the representative explained that such procedures were applicable only to cases specifically defined by law and could not be applied to persons detained by decision of the Public Prosecutor or to recidivists. Under the accelerated procedure, persons arrested at the scene of a crime were immediately taken before a court and charged, without any formal inquiry by an investigating magistrate. All relevant evidence had to be submitted by the arresting authority at that time, including statements by witnesses. Accused persons were informed of their right to counsel before their case was considered by the court and the defence had the right to examine the evidence and to challenge its validity. Courts were obliged to assure themselves of the admissibility of such evidence under the provision of the Code of Criminal Proceedings. Under article 3 (2) of the Code of Criminal Proceedings, accused persons had a right to the presumption of innocence and mere presence at the scene of a crime could not be adduced as proof of guilt. Their position was therefore no different from that under ordinary proceedings. Appeals against verdicts under the accelerated procedure could be lodged with the voivodship courts.

Freedom of movement and rights of aliens

82. With regard to that issue, members of the Committee requested clarification of the law prohibiting persons from leaving areas to which they had been restricted without police authorization, of the reference, in paragraph 136 of the report (CCPR/C/32/Add.9), to persons deprived of Polish citizenship after 5 May 1956, of the documentation required of passport applicants and of the charges such applicants had to pay. It was also asked whether there were any restrictions on the freedom of movement of aliens and whether appeals against expulsion orders had a suspensive effect. Members also wished to have additional information concerning passport regulations, including reasons for refusing passports and procedures for appeal against such decisions, and concerning the penalty of "restriction of liberty", referred to in paragraph 128 of the report (CCPR/C/32/Add.9).

83. In his reply, the representative of the State party said that there was no general legal provision imposing compulsory residence in any area. Compulsory residence could be imposed only by court order, in accordance with the Code of Criminal Proceedings, in cases where persons were suspected of wrongdoing on the basis of substantial evidence. Such persons could not change their permanent residence without specific authorization of the court and, if not completely restricted, were required to inform the police of their travel plans and expected date of return. A decision on restriction of liberty was subject to appeal. The date referred to in paragraph 136 of the report (CCPR/C/32/Add.9) should be 9 May 1945 and not 9 May 1956, in other words the relevant

provision applied to persons who had been deprived of Polish citizenship in the aftermath of the Second World War. Such persons, living abroad, had acted disloyally and against Polish interests. There had been few such cases in practice, and the records showed that it was mainly persons condemned for treason who had been affected. Citizens applying for passports had to fill in an official questionnaire and submit an application with two photographs. The accuracy of the information provided had to be confirmed by the applicant's employer. Students or military personnel had to obtain authorization from the appropriate authorities. Persons not employed were required to provide information regarding their financial resources. Applicants intending to stay with persons abroad had to produce certified letters of invitation. A major liberalization of the rules governing travel aborad by Polish citizens had been in progress since 1981. Some 4,320,000 persons had travelled abroad during 1986. The proportion of refusal of passport applications was 5.9 per cent, 6.1 per cent and 4.6 per cent in 1984, 1985 and 1986, respectively. Grounds for the refusal of a passport included the applicant being the subject of penal procedure, reasons of state security, national defence or the preservation of state secrets (as listed in para. 131 of the report (CCPR/C/32/Add.9)), but refusal was not automatic and the authority of first instance was required to state in writing the precise reason for the refusal . Citizens returning from abroad were required to return their passports to the issuing authority and to reapply for them on each subsequent occasion. Under a measure currently being introduced, travellers to other socialist countries would be able to keep their passports at home.

84. Concerning the freedom of movement of aliens, the representative noted that no special restrictions had been placed on that freedom, but that aliens were obliged to register their presence on Polish territory within 48 hours of entry. Aliens could be expelled only by the competent authorities who were required to establish a time-limit for the expulsion. Immediate expulsion was ordered only in cases involving significant public interest. In general, courts of first instance were not deemed competent to order such expulsions.

Right to privacy

85. With reference to that issue, members of the Committee wished to received additional information concerning protection against arbitrary and unlawful interference with privacy, the family and home, particularly with regard to postal and telephone communications and the placement of hidden microphones in the home, the act of "insult" and how it differed from defamation and libel, and the reported dismissal from their jobs of some 100 persons for political reasons during the previous six months.

86. In his reply, the representative of the State party explained that rights were protected not only against acts committed by individuals but also against unlawful state action. State organs had no generalized prerogatives beyond those expressly provided by law and there was no legal basis for placing hidden microphones in the homes of citizens. The tapping of telephones could be ordered only by the courts or the Public Prosecutor, in accordance with the Law of 10 May 1983. The act of "insult" was punishable if committed in the victim's presence or if committed publicly in such a manner that it came to the victim's knowledge. Whereas insult caused undeserved distress, defamation caused actual harm at work or in the victim's public or private life. Dismissal of workers with a valid contract was possible only on the authority of the director of the enterprise concerned and with the consent of the trade union concerned. Appeals were possible against

dismissals and there had been two such instances of appeal since 1 July 1985.

Freedom of religion and expression

87. With reference to that issue, members of the Committee wished to receive information concerning the law and practice relating to the recognition of religious denominations and their functioning, the controls exercised on the freedom of the press and the mass media, the circumstances under which persons could be arrested or detained for expressing political views and the incidence, if any, of actual cases of such detention, and the compatibility of Act No. 18 of December 1982 with articles 18 and 19 of the Covenant.

88. Members of the Committee also wished to have additional information on the mandate and functions of the Office for the Control of Publications and Performances, the scope and implementation of article 2 of the Law of 31 July 1981, the scope of the Press Law of 26 January 1984 and of the requirement for requesting authority to publish, the extent to which foreign publications and broadcast were available and any restrictions on imports and sales of foreign periodicals, the implementation of article 271 of the Penal Code, which prohibited the spreading of "false information damaging to the Republic", the number of foreign correspondents in Poland and the nature of the restrictions, if any, placed on their activities, and the number of challenges of censorship decisions that been brought before the courts and the outcome thereof. It was also asked whether the denial of a licence to publish was appealable and, if so, under what provision of law.

89. Noting that the Law of 31 July 1981 on the control of publications and performances, which had relaxed some press controls, had been amended following the lifting of martial law, that previous restrictions had been reintroduced, and that the Press Law of 26 January 1984 also contained restrictions impinging upon the freedom of journalists and the independence of the press, one member requested additional information on the action of the Office for Press Control, the amendments to the Law of 31 July 1981 as well as the Press Law of 26 January 1984, and the compatibility of various prohibitions contained in that legislation, particularly the prohibition of alleged actions to "revile, deride or humiliate the constitutional system of the Polish People's Republic or incite its overthrow", with article 19 of the Covenant. In the foregoing connection, information was also sought as to the application of the new code of misdemeanours and regarding the scrutiny and dismissal of academics.

90. Responding to the questions raised by members of the Committee, the representative of the State party explained that the legal status of religious denominations was governed primarily by the law relating to the formation of associations and that there were 38 different denominations in the country, which produced some 100 publications. Control of publications was exercised by a body established under the Law of 31 July 1981 and censorship was very limited, with only 3,075 cases in 1985 and some 2,500 cases in 1986; censorship decisions could be appealed to the Supreme Administrative Court, which had reversed such decisions in 4 out of the 16 cases it had considered during 1985-1986. No one could be arrested or detained in Poland for peaceful expression of political views and no one was currently being held on such grounds; such restrictions of the exercise of freedom of expression as were in effect, as described in paragraph 214 of the report (CCPR/C/32/Add.9), were in conformity with the provisions of the Covenant. Act No. 18 of December 1982, which in effect banned strikes and certain protest demonstrations, had been adopted

under the state of martial law as an ad hoc measure and was no longer in force.

91. In his reply to other questions, the representative stated that the Office for the Control of Publications and Performances, established under the Law of 31 July 1981, was subordinate to the Council of State, which reviewed the Office's activities at least once a year with the assistance of the Presidents of the Supreme Court and the Supreme Administrative Court. The Office dealt with both press matters and cultural manifestations. The grounds for or the practices relating to the application of press censorship had not changed in recent years. All censorship activity was under the control of the Supreme Administrative Court and the Supreme Court. Authorization prior to publication was necessary to assure conformity with existing laws and regulations, including access to print and paper, which were in short supply. Of 459 requests received in 1985, some 394 had been granted and during 1986 some 471 out of 503 requests (94 per cent) had been granted during 1986 some 471 out of 503 requests (94 per cent) had been approved. Only a few appeals against denials of authorization had been lodged with the Supreme Administrative Court. A large number of foreign publications were available in Poland - over 13,000 different titles - and only a few titles were unavailable. While the dissemination of false information prejudicial to state interests was illegal, prosecutions were extremely rare - only five in 1985 and none in 1986. Foreign correspondents were entirely free to exercise their profession subject only to considerations of professional ethics, truth and respect for the law. A total of 137 foreign correspondents were currently accredited and in all some 1,000 correspondents paid temporary visits to Poland annually.

92. Concerning other questions raised with regard to press censorship, the representative stated that press censorship in Poland was applied with a view to preserving freedom of expression while at the same time affording protection to the State and to individuals. The law adopted in 1983 only made previous censorship slightly more restrictive. The Press Law of 26 January 1984 was in no way intended to limit the plurality of press opinion or the dissemination of information but, rather, represented progress toward greater press freedom. Its provision included the requirements that state organs must inform the public effectively, that journalists must serve the public as well as the State and must respect the ethics of their profession, and that the interests and reputations of individuals must be protected. Accordingly, the law was fully compatible with article 19 of the Covenant. Regarding misdemeanours, the new law, adopted in 1986, reflected the normalization of the situation in Poland. It dealt with infractions that were less serious than those covered under the Penal Code, such as the dissemination of prohibited publications, and provided for lesser sanctions, such as confiscation of the vehicle used to transport the publication or a fine - the maximum fine being 40,000 zlotys. As to the dismissal of academics, in 1985 only 1 per cent of the personnel involved with higher education had failed to meet the requirements of the law on higher education, and it should be borne in mind that all workers, not just academics, were obliged to undergo periodic evaluations.

Freedom of assembly and association

93. With regard to that issue, members of the Committee wished to know whether the right to establish voluntary organizations, pursuant to the Law on Associations of 27 October 1932, as subsequently amended, included the right to establish political parties and associations or groups to promote human rights, whether any attempts had been made to establish new political parties, and whether any political parties had been prohibited. They also asked whether the registration of

applications of non-governmental organizations wishing to help promote human rights had been refused and, if so, on what grounds, and whether there were currently any non-governmental human rights organizations in Poland. Information was requested on the scope of the expression "factual situation", mentioned in section 12 of the Council of Ministers Order dated 15 October 1982, which specified that a trade union was not to be registered if "registration is incompatible with the provisions in force or the factual situation", and it was asked whether any trade unions had been refused registration under the foregoing provision of law and, if so, how many and on what specific grounds, and what the term "implementing thereby the postulates of the trade unions", used in connection with the Law of 24 July 1985 amending the Law of 8 October 1982 on trade unions, meant (see CCPR/C/32/Add.13, para. 30). It was also asked whether the provision authorizing the authorities to prohibit meetings on the ground that were contrary to the "public interest" was not incompatible with article 21 of the Covenant, which did not admit of restrictions of the right of assembly on such grounds but only on grounds of "public safety" or "public order".

94. With reference specifically to legislation relating to trade unions and to the actual situation in Poland in respect of trade unions, members of the Committee also wished to know whether, inasmuch as the Law of 8 October 1982 recognized the leading role of the United Polish Worker's Party, existing trade unions had to espouse the views of that party as distinct from other parties, whether political, judicial or administrative bodies were responsible for determining that a strike was "political" and hence prohibited and whether such prohibitions could be appealed. They also wished to know whether there was a time-limit on the transnational period mentioned in paragraph 251 of the report (CCPR/C/32/Add.9), what the structural differences were between the current trade-union movement and that envisaged under the Law of 1949, superseded by the Law of 8 October 1982, whether that Law, under which only one trade union could be established in a given enterprise or institution, was not in fact incompatible with ILO Convention No. 87 and with article 22 of the Covenant, what the rationale was behind the distinction, made in paragraph 249 of the report, between the right to strike, which was an individual right of the employee, and the right to organize a strike, which was the right of trade unions, and whether the drop in the number of union members in Poland from some 14 million in December 1981 to some 5 million currently was due to the fact that the right to form and to join trade unions, in conformity with article 22 of the Covenant, had been abrogated or restricted on grounds not authorized under that article.

95. In his reply, the representative of the State party explained that the right of association, including the establishment of political parties, was freely exercised in Poland subject only to the prohibition, in paragraph 3 of article 84 of the Constitution, of associations "whose aims are incompatible with the political and social régime or the legal order of the Polish People's Republic". Article 2 of the Law of 27 October 1932 also prohibited the establishment of organizations that were illegal or a threat to public order or to state security. Nothing in the law prevented the creation of political parties provided that the principles embodied in the law were respected. The representative was not aware of the existence of non-governmental organizations dealing exclusively with human rights or of attempts to create such organizations. However, there were numerous non-governmental organizations working for the realization of rights in general, including human rights, such as the Association of Polish Jurists. The procedures for the registration of trade unions set out in section 12 of the Council of Ministers Order dated 15 October 1982 were based entirely on the Law of 8 October 1982 on trade unions. That Law provided for the registration of new trade unions after each case was examined by the court from both a factual and a legal standpoint. There had never been

any problem in applying the procedures envisaged under section 12 of the Order, which were identical to those contained in article 3, paragraph 2, of the Code of Civil Procedure.

96. With reference to the question relating to information contained in paragraph 30 of the addendum to the report (CCPR/C/32/Add.13), he stated that, as envisaged in the Law of 1982 itself, the implementation of the law had been reviewed by the Council of State three years after its entry into force. The Law of 24 July 1985 contained modifications resulting from that review. Polish trade unions were established autonomously and had legal status. There were currently some 15 national unions and 134 federations of local unions. Regarding freedom of assembly, the Law of 29 March 1962, as amended, provided for the refusal of authorizations to assemble where such assembly was contrary to the law or the public interest, as well as to public order and safety, but refusals were rare and usually related to questions of public order.

97. Responding to specific questions raised by members of the Committee concerning laws and practices relating to trade unions, the representative pointed out that the Law of 8 October 1982 provided for the complete independence and autonomy of trade unions with respect to their activities and the methods of selecting their leadership. They must, of course, respect the principles enunciated in the Constitution. The autonomous character of trade unions had been explicitly recognized at the Tenth Congress of the United Polish Workers' Party. Currently, there were some 6 million trade-union members in Poland. Some 14 million workers had belonged to trade unions at the end of December 1981 because at that time every worker had been affiliated to a union. It was now up to each worker to decide whether or not to join a union. A trade union itself had the power to decide whether or not to organize a strike, but a politically motivated strike was not permissible. The Procurator-General could bring suit before the voivodship court of Warsaw against any union that engaged in illegal activities and the latter had then to conform to the legislation in force within three months. It was a fact that, during the current period of transition, the establishment of more than one union was prohibited under the law. That interdiction had been made necessary by the social, political and economic situation in Poland and would remain in effect until the Council of State decided otherwise.

Right to participate in the conduct of public affairs

98. With regard to that issue, members of the Committee wished to know whether there were any restrictions on the exercise of political rights, whether legislation existed regarding access to public office and, if so, how such legislation was implemented, and whether Polish law recognized the notion of "discretionary employment". One member asked why detainees who had not been duly judged or sentenced were deprived of their right to vote.

99. In his reply, the representative of the State party explained that under the new electoral law, which had just been promulgated, all citizens over 18 years of age, regardless of race, sex or social origin, had the right to vote. Electoral rights were denied only to the mentally incompetent, those who had been deprived of civil rights by virtue of a court decision and those sentenced by a State court. More than 5,000 persons had been deprived of their voting rights during 1985, mostly as a result of criminal convictions. The law made a distinction between those who had been stripped of their civil rights and those who had no right to participate in elections. Thus, for example, offenders who had been sentenced to imprisonment had no right to participate in elections but had not lost

their civil or electoral rights. Access to public office, under Polish law, was unrestricted and did not depend on one's beliefs or membership in a political party. Candidates for public office must have Polish nationality, be entitled to the enjoyment of civil rights, have the necessary qualities of character for the proper discharge of the functions of office, and be in good health. The notion of "discretionary employment" did not exist in Poland.

Right of minorities

100. With regard to that issue, members of the Committee wished to know whether there were any special factors or difficulties concerning the effective enjoyment by minorities of their rights in accordance with article 27 of the Covenant.

101. In his reply, the representative stated that, as indicated in the report, no special difficulties were being encountered in Poland in assuring the effective enjoyment by minorities of their rights under that article.

General observations

102. Members of the Committee expressed appreciation for the thoroughness of the report and for the spirit of co-operation, competence and courtesy, with which the representative of the State party had responded to the numerous questions raised. They considered that the representative's patient and practical approach had made it possible to establish a very useful and constructive dialogue with the Committee. It was recognized that the State party's second periodic report had been presented following a difficult and troubled period in Poland, during the course of which numerous incidents relating to human rights had occurred that had given rise to considerable concern both within Poland and in the outside world. Against that background, the representative's efforts to provide explanations and clarifications were especially appreciated.

103. Some members noted, however, that some civil and political rights were still restricted in Poland and that, despite the progress achieved since the lifting of martial law, problems still remained to be solved. In the foregoing connection, they referred to their continuing concerns regarding the right to return to one's country, freedom of expression and of assembly, the practice of accelerated procedures, censorship of publications, and restrictions on trade unions whose procedures and objectives were not subject to government regulation.

104. In concluding the consideration of the second periodic report of Poland, the Chairman thanked the Polish delegation once again for its co-operation, expressing the hope that the Polish Government would continue in the future the efforts it was already undertaking to improve the human rights situation in Poland.

125. The Committee considered the third periodic report of Poland (CCPR/C/58/Add.10 and Add.13) at its 1102nd to 1105th meetings, on 28 and 29 October 1991 (see CCPR/C/SR.1102-1105). (For the composition of the delegation, see annex VIII).

126. The report was introduced by the representative of the State party, who pointed out that one of the most crucial problems was to ensure that the rules and standards established by legislation conforming to the Covenant were observed in actual practice. Under the previous system in Poland, all rights and freedoms had been recognized but there had been limitations in practice that had made it virtually impossible actually to exercise such essential rights as the right to freedom of speech, freedom of association and participation in public affairs. Significant changes in the legal system had been made since the formation of the first non-communist Government in 1989, including the abolition of censorship and the one-party monopoly of the press. The independence of the communications media, which had been giving extensive coverage to human rights issues, was considered highly important in that regard. Another important change had been the establishment of new laws, based on pluralism, for the activities of political parties, trade unions and other associations. In particular, Poland attached great importance to the activities on non-governmental organizations as a means of ensuring the observance of human rights.

127. There had also been a number of changes to protect people from arbitrary or unlawful detention. All detention was now subject to the control of the courts, to which detainees could appeal and, if successful, be granted immediate release. A bill was before Parliament which provided that the courts, not the public prosecutor, were responsible for any decision to hold a person in custody. The police force was being completely restructured. In that connection, a special parliamentary commission had reported on cases in which the former security organs were suspected of causing deaths or committing other serious violations of human rights. Investigations were in process regarding, in particular, 91 cases involving deaths, where the report had recommended that criminal proceedings be instituted.

128. Recognizing the importance of an independent and impartial judicial system in protecting all rights and freedoms, numerous changes had been made in the court system since 1989. They included the establishment of institutional guarantees for the independence of the courts and judges, the broadening of the competence of the courts and the placing of administrative cases under the control of the Administrative Court. A National Council of the Judiciary had been established with the vital task of proposing to the President procedures for the appointment of judges. The election of magistrates by the Supreme Court had been abolished and the new composition of the Supreme Court itself had been announced in June 1990.

Constitutional and legal framework within which the Covenant is implemented

129. With regard to that issue, members of the Committee wished to know the status of the Covenant within the Polish legal system and, in particular, how contradictions between domestic legislation and the Covenant were resolved; what provisions governed the appointment of judges in Poland; the status and functions of the Civil Rights Spokesman as well as the impact of his

decisions; whether a case that had been settled could be reopened through an appeal to the Civil Rights Spokesman; the composition and functions of the Social Committee on Human Rights and the Human Rights and Legality Commission; and what progress had been achieved in preparing for Poland's accession to the Optional Protocol.

130. Members of the Committee also wished to know how the conformity of Polish law with the Covenant was assured; whether the provisions of the Covenant on the issue of discrimination would be given constitutional force in Poland despite the discrepancy between them and the provisions of article 81 of the Constitution; whether special courts, referred to in article 56 of the Constitution, still existed; what further amendments to and reforms of the criminal law system were being considered; whether the misdemeanour commissions were independent and what their relationship was with other courts; whether the misdemeanour commissions could impose imprisonment; what the relationship was between the prosecutor's office and the courts; whether there had been any action taken to ensure that fundamental rights enshrined in the Constitution were no longer regulated at a level below that of the law; what kind of compensation was envisaged for victims of repression during wartime and the post-war period; what controls existed to ensure that the President's decisions on the appointment of judges were not arbitrary; what efforts were being made to disseminate information on human rights at the grass-roots level; how Polish citizens would be informed of the provisions of the Optional Protocol and of their possibilities of recourse to the Human Rights Committee; and what efforts were being made to introduce basic human rights education into school curricula.

131. In reply, the representative of the State party said that the relationship between the Covenant and domestic legislation had not yet been fully decided upon, since it had not been specified clearly in the Constitution. However, the Constitutional Court had stated that the international human rights instruments prevailed over ordinary national legislation. Draft amendments to the Constitution, which would be approved shortly by Parliament, had been prepared with the Covenant as a model. Since Poland became a democratic State in 1990, international legal instruments came increasingly to be regarded as having direct application in the Polish system.

132. The legal tradition in Poland of incorporating, in effect, the provisions of international agreements into national legislation continued to be reflected not only in statute law but also in the judicial precedents of the courts. Thus, for example, article 14, paragraph 1, of the Covenant was invoked in a decision of the Administrative High Court on 5 July 1991 and article 18, paragraph 1, of the Covenant was cited as the basis for a decision of the Constitutional Court on 30 January 1991. The International Covenant on Economic, Social and Cultural Rights has similarly been invoked by the courts. With regard to the status of the Covenant in the Polish legal system, the following rules had been proposed in connection with the drafting of a new Constitution: Polish law should be compatible with international conventions ratified by Poland and with generally accepted international norms; an international treaty ratified by consensus in Parliament should have priority when it was not compatible with national law; and the rights and freedoms laid down in the Constitution should not be interpreted as limiting the human rights enjoyed by individuals under the provisions of international law.

133. The publicity given to the provisions of the Covenant had not been as extensive as it should have been and measures were now being taken to remedy that shortcoming. A joint initiative was

under way with the Centre for Human Rights of the Secretariat to strengthen human rights documentation and information services in Poland and the Government was cooperating closely with the Council of Europe and the Helsinki Committee in promoting human rights in Polish schools, law faculties and work-related courses.

134. With regard to judges, the representative of the State party pointed out that judges in all Polish courts were appointed by the President on the motion of the National Council of the Judiciary. The participation of the Minister of Justice in the process was confined to his role as a member of the Council. The Civil Rights Spokesman was an independent agent who, in conformity with the Constitution and the Act of 14 July 1987 as amended by the Act of 24 August 1991, was responsible for monitoring the exercise of rights and freedoms, particularly with regard to the issuing of passports, the activities of the misdemeanour commissions and conditions of detention. The Spokesman was entitled to act at the request of citizens or on his own initiative and it was his duty to consider whether there had been a violation of the law on the part of State bodies. Judicial proceedings, whether criminal, administrative or disciplinary, could be initiated against those bodies. In 1990, the Spokesman had received more than 40,000 complaints, most of which related to disputes between individuals, and had considered more than 4,800 cases. As a result, the Spokesman had made 164 general presentations questioning the implementation of the law and had submitted 15 motions to the Constitutional Court as well as 4 questions relating to the interpretation of the law.

135. The Social Committee on Human Rights was a registered association which had approached the authorities on a number of human rights issues. They include questions concerning the rehabilitation of victims of Stalinist persecution; the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment as well as the Optional Protocol to the International Covenant on Civil and Political Rights; the rights of individuals to appeal to the Constitutional Court; and matters relating to non-discrimination. The Human Rights and Legality Commission was a body of the Senate responsible for verifying the conformity of Polish law with the two International Covenants and the Universal Declaration of Human Rights and to assess the implementation of those instruments by State bodies. The Commission could also prepare legislation on human rights questions and was entitled to express views on candidates for the office of the Civil Rights Spokesman and on the budgets of various government ministries. Additionally, the Commission disseminated international human rights standards in cooperation with the parliamentary commissions of other countries and with other international human rights bodies.

136. The Optional Protocol had been signed by the President and the instrument of accession by Poland would be deposited with the Secretary-General of the United Nations in the near future.

State of emergency

137. With reference to that issue, members of the Committee wished to know under which circumstances martial law or a state of emergency could be proclaimed; which authority was empowered to take such a decision and the procedures that were to be followed; and what rights could be derogated from during such a situation. Clarification was also requested as to the powers of the police and the military in a state of emergency and whether Polish authorities were considering shifting the authority to order detention during a state of emergency away from the local

police to a court.

138. In reply, the representative of the State party explained that, according to the Constitution and applicable law, martial law could be proclaimed by the President of the Republic in all or part of the country if required by external threats to security. A state of emergency could be proclaimed for a period of three months in the event of a threat to internal security or disaster and could be extended by a maximum of three months with the agreement of the Senate and the Diet. The proclamation of martial law or a state of emergency entailed the temporary suspension or limitation of certain fundamental civil rights and permitted house searches, the censorship of correspondence, the monitoring of telephone or telex communications, the suspension of the rights of association and assembly and a ban on demonstrations. Persons over the age of 18 could be arrested if the authorities considered that they were liable to break the law.

139. In case of a declaration of a national state of emergency for reasons of internal security, the police could take preventative action by questioning persons over the age of 14 who were acting suspiciously or attempting to demoralize the population. Persons over the age of 18 could be arrested, tried and imprisoned if the provincial police commander considered that such persons, remaining free, would jeopardize the security of the State or break the law. Provincial police commanders could also restrict the movements of certain persons, expel them, forbid them to change their place of residence, or forbid the taking of photographs or video recordings. The representative pointed out that, although detention decisions under a state of emergency were not subject to appeal to ordinary courts, they could be appealed to the Administrative High Court. As remedies were still insufficient, further revision would be necessary of the National Emergency Act of 5 December 1983, as amended in 1989.

Non-discrimination and equality of the sexes

140. In connection with that issue, members of the Committee wished to have information on any legal provisions governing non-discrimination and equality of the sexes. Additionally, members of the Committee wished to know what measures had been taken to eliminate discrimination on the grounds of sex, particularly with regard to access by women to some professionals and posts and also with regard to salaries and wages; whether any distinction was made between the father and mother regarding the transmission of nationality to children; how the rights of former Communist Party officials were restricted, if at all; and the scope of the exceptions guaranteeing freedom of conscience and religion to aliens and stateless persons.

141. In reply, the representative of the State party said that, although Polish legislation prohibited any type of discrimination, including discrimination based on sex, in practice everything was not perfect. Consequently, statistics for 1990 showed that the percentage of women holding high-level appointments in the Government, for example, was substantially lower than that of men. The figures also showed that, for equal work, the average wage received by women was less than that of men. The Polish authorities were aware that the situation needed to be improved, but current economic conditions offered little scope for manoeuvre. However, the Government had established a special post to study problems concerning women and the family with a view to formulating new policy proposals in this area. Concerning the transmission of nationality to children, no distinction between the father and mother was made in the Polish legal system.

142. In regard to non-discrimination in the guarantee of freedom of conscience and religion, the representative of the State party explained that, under the Act of 17 May 1989, foreigners and stateless persons had equal rights with Poles with two exceptions. First, it was necessary for church authorities to inform the Minister of Trusteeship of an impending appointment of a foreigner to an executive post. The Minister might express a reservation on the appointment to be taken into account by the church authorities. The second exception concerned the requirement that a religious association wishing to obtain legal personality under Polish law needed, in effect, at least 15 Polish citizens as members.

Right to life

143. With reference to that issue, members of the Committee wished to know the current status of the bill intended to abolish the death penalty; the results, if any, obtained through the activities of the ad hoc commission set up to consider cases of deaths in mysterious circumstances during the 1982-1988 period; and what measures had been taken against environmental pollution to protect the right to life. In addition, members of the Committee wished to know whether any cases of involuntary disappearances had occurred under the former régime; whether Poland had launched any information campaigns on AIDS and its prevention; and how the new bill on the legal protection of unborn children differed from the 1956 Act concerning termination of pregnancy.

144. In reply, the representative of the State party said that the ad hoc Commission established by the Diet to consider the cases of deaths which might be attributable to officials of the civic militia or the security services had examined 115 of the 120 cases of unexplained death before it. In 24 of those cases the Commission established that there had been no connection with activities of the Ministry of the Interior. In the 91 other cases, the Commission recommended either that the case be reopened if it had been previously dropped or that criminal proceedings be instituted. The Parliament had endorsed the Commission's proposals and ordered the public prosecutor to investigate the cases to identify those responsible. The Prosecutor was required to report on the results of his inquiry by 31 December 1992. With regard to AIDS, Polish authorities had undertaken information campaigns on the disease and its prevention and a great many publications on the subject were available in Poland. On the subject of the termination of pregnancy, the debate in Parliament in 1989 on that complex question had proven inconclusive. The new Parliament, therefore, would have to decide the question.

145. Responding to questions concerning environmental problems, the representative pointed out that 11 per cent of Polish territory was threatened by pollution as a result of the industrialization policy of the former régime. An act on the monitoring by the State of ecological conditions had been promulgated in 1990 and, as a result, industrial polluters had been closed down or otherwise penalized. Other measures recommended in a policy statement adopted by the Government in October 1991 still needed to be implemented. The economic situation posed serious constraints in that respect, although measures such as the conversion of foreign debt into ecological investments, financial assistance from the World Bank and loans granted by the European Community and the 24 most industrialized countries were steps in the right direction.

Liberty and security of the person

146. With regard to that issue, members of the Committee wished to know the impact of the process of reform of criminal law on the implementation of article 9 of the Covenant; the maximum length of pretrial detention; whether there was any provision for a regular review by a court of such detention; the composition and activities of the misdemeanour commissions; and what progress had been achieved in the work on the mental health bill guaranteeing the protection of the rights of persons confined in psychiatric hospitals.

147. In reply, the representative of the State party noted that a number of reforms in the criminal code had been undertaken. As a result, it was possible for detainees to have recourse to the courts and the principle of compensation had been extended to wrongful detention. Detainees also had to be informed of the reasons for their detention. Under the proposed new provisions of the criminal code, only the court concerned could order pretrial detention for a period of more than three months and not more than six months unless that decision was taken by a higher court. Only the Supreme Court could order pretrial detention for more than one year. In general, the maximum duration of pretrial detention did not exceed 18 months, or 2 years in the case of murder. Only the Supreme Court could extend those periods. The maximum length of pretrial detention was not established by law in Poland. At each stage of the judicial proceedings the detainee had the opportunity to apply for review and to appeal against a rejection of that application. With reference to the right of a suspect to consult a lawyer, the relevant regulations had been changed so that this was now possible without anyone else being present.

148. The bill prepared by the Minister of Justice relating to the protection of mental health was now ready for submission to the Council of Ministers. The original draft of the bill had incorporated a number of progressive measures, including free treatment and free medicine for the mentally ill, special protection for their employment contracts and special social benefits. However, as such proposals would have entailed significant financial implications difficult for the State to bear, some of the provisions of the draft had to be abandoned. The limitation of freedom of persons confined to psychiatric hospitals was an important problem. At present, the lawfulness of such confinement was monitored by the prosecutor. There was an urgent need to amend the regulations of the protection of mental health with a view to ensuring that persons in psychiatric hospitals were treated in accordance with generally accepted international norms. A law on the matter was to be discussed in Parliament in the near future.

Treatment of prisoners and other detainees

149. With reference to that issue, members of the Committee wished to know whether investigations into the cases of ill-treatment mentioned in the report had taken place and, if so, whether any criminal or disciplinary measures had been taken against those found guilty; how extensive was the practice of ill-treatment of persons remanded in custody and what specific measures had been taken to prevent it; the number and nature of protests against abuses of authority by officials submitted under the procedure mentioned in the report; whether prosecution had been initiated against members of the civic militia and security forces suspected of abusing their authority; what had been done in regard to the training of officials having control over detained persons; whether, under the reformed system, the public prosecutor retained the power to limit access to a person held in pretrial detention by his family of defence counsel; what had been done to reduce the length of pretrial detention; whether the human rights of detainees were explained to

them; what reforms had been undertaken with respect to the police; and whether there were minimum accommodations standards for detention centres. Additional information was requested on the conditions of detention, especially with regard to detention of juvenile offenders, and on the composition, powers and activities of the Prison Patronage Association.

150. In reply, the representative of the State party pointed out that the civic militia and the security services had been disbanded and that the composition of the police force had changed substantially. The previous force had been dissolved and the new force was now headed by civilians and subject to monitoring by a central body. In cases where it had been established that officials had been neglectful in performing their functions, they had been dismissed. In some cases, criminal proceedings had been instituted and trials were pending. In 1990, 414 complaints of ill-treatment had been filed by persons remanded in custody, 11 of which later proved to be well founded. Penalties had been applied against 21 Prisons Service officers, 6 of whom had lost their jobs. Also in 1990, over 8,000 complaints had been filed against police officers, and disciplinary proceedings had been instituted in 4,000 cases. Some 3,200 officials had already been sentenced and the statistical services of the Ministry of Justice regularly published data on that question. In 1991, the committee responsible for ensuring the implementation of the Helsinki agreements had transmitted to the Polish authorities a list of 93 cases of ill-treatment of detainees by police. An inquiry had shown that there had in fact been 590 cases of that nature; 33 of the cases resulted in charges. In the eight months since March 1991, 17 police or prison officials had been charged for cases of that kind.

151. Among the measures adopted to end the ill-treatment of persons remanded in custody had been the replacement, since 1990, of over 7,000 employees of the Prisons Service. Additionally, 176 high-ranking officials of the Service had been removed from office and another 410 had been reassigned elsewhere. As a result, only 35 per cent of the present officials had been in their posts for over five years. In 1990, professional training courses had been organized for 2,000 prison staff and a further 1,400 staff members had followed such courses in the first half of 1991. In addition, 3,900 persons had taken specialized courses, indicating the importance that the Minister of Justice attached to such training. The Prisons Service in Poland was headed by a scientist trained in social reintegration and rehabilitation. Broad international contacts with prison officials from other European countries were being developed in an effort to ensure that prison standards in Poland were brought into line with international norms.

152. Standards relating to the amount of space for each detainee in a cell were in keeping with international norms. Until 1990, persons could be placed in detention centres belonging to the civic militia, with disastrous consequences for their rights and living conditions. At present, 56,000 persons were in prisons or penitentiary establishments in Poland, whereas only one or two years previously that figure had been over 100,000. Detention conditions had been improved inasmuch as the number of detainees had decreased and pretrial detention was being applied less and less. In the future, no prisoners could be remanded in police cells for longer than 48 hours, after which they had to be kept in prisons under the control of the Minister of Justice.

153. The professional qualifications of doctors working in prisons were often not very good. Many complaints of detainees had proven to be well founded and, as a result, 40 per cent of the senior staff of the Prisons Service had been replaced. Medical chambers had been established to supervise the practice of doctors working in prisons. The number of complaints concerning prison medical

services had declined sharply from 860 in 1990 to 299 as at 18 October 1991.

154. The Prison Patronage Association had been established in 1989 and assisted convicted persons in prison establishments on their release and also helped their families. The Association's representatives were allowed to enter prison establishments, could freely contact detainees and obtain information from the Prisons Service. Additionally, the Association had a home for housing detainees without resources on their release from prison and it operated a service to assist with housing and employment problems.

Right to a fair trial

155. In connection with that issue, members of the Committee wished to know what changes had been introduced in the draft code of criminal procedure relating to guarantees for a fair trial; the scope of jurisdiction of the military courts and their position in the court system in Poland; the current mechanisms for legal aid; the experience of the National Judicial Council; and the size of the backlog of cases before the ordinary courts. Members of the Committee also wished to know whether new legislation contained any rule guaranteeing the right not to be compelled to testify against oneself or to confess guilt; whether there was trial by jury; and whether judges in the military courts were required to have any special qualifications. Clarification was sought on the right of judges to question accused persons; on the composition of the various types of courts; and on the role of assessors in the judicial system.

156. In reply, the representative of the State party said that the most important change in the legal reforms now before the Polish Parliament was the provision in the draft code of criminal procedure for wide-ranging intervention by the courts in the pretrial examination of cases. Under that procedure, the courts could question the accused and witnesses, and the accused person himself might request a court hearing or appeal against a failure to investigate his case. The powers of the defence counsel would be broadened and those of the prosecuting counsel reduced. Any court inquiry required the presence of defence counsel and the decisions of the judge were to be pronounced in open court in the presence of all the concerned parties. Court proceedings would no longer be inquisitorial but follow a procedure in which questions could be asked by the prosecution, the defence, the defendant and the judge, in that order. Accused persons would have the right to refuse to make statements. Legal aid was provided by lawyers and legal advisers whose respective professional organizations were independent of the State. About 4,000 lawyers were currently practising and there were approximately 16,000 legal advisers.

157. The composition of courts varied with the type of proceedings. A court of first instance was presided over by one professional judge and two elected, non-professional assessors, except in cases which might carry the death penalty, when there would be two professional judges and three assessors, and appeals cases, where there were always three professional judges. Under the simplified procedure, which was used only for straightforward cases carrying a light penalty, the hearing might be conducted before only one judge. The National Judicial Council, established in December 1989, chiefly considered applications for posts in the judiciary. A recommendation by the Council, consisting of 26 members representing different branches of the judiciary and elected representatives, was necessary for appointment as a judge. Requests were also considered by the Council for assignment to another court or for extension beyond the normal retirement age of 65

years. A backlog of cases, which was not excessive in number, had resulted from the radical changes being made in the organizational structure of the courts and the judiciary and the increased powers that the courts in Poland had acquired since 1989. It was hoped that, as the reforms in the legal system and judiciary were completed, the courts would return to full effectiveness.

158. Military courts were the only special courts in Poland and their purpose was to provide the judicial machinery to deal with military offences. At present, crimes against the interests of the State were also tried in military courts but, under the proposed new Code of Criminal Procedure, military courts would in the future try military offences only. Appointments to the post of military judge were made on the same basis as for ordinary courts, except that the candidates had to be career officers.

Freedom of movement and expulsion of aliens

159. With regard to that issue, members of the Committee wished to know the period of time needed, under normal circumstances, for the issuance of a passport, the costs incurred and the administrative formalities to be followed; what difficulties were experienced with regard to the securing of permanent residence of Poles domiciled in the Soviet Union; and what the law and practice were in relation to the expulsion of aliens. Members of the Committee also wished to know the numbers and nationality of Arab refugees in Poland and whether they had come to Poland under the auspices of the Office of the United Nations High Commissioner for Refugees (UNHCR).

160. In reply, the representative of the State party said that the new Passport Act of 1990 made it possible for citizens to exercise their right freely to leave and return to Poland. Passports were now issued by provincial authorities and not the police, as had formerly been the case. No complaints of backlogs or excessive delays had been received and many provincial offices issued passports within two weeks of application. Passports were valid for 10 years and remained in the possession of the holder. The large numbers of Soviet citizens of Polish origin applying for permanent residence in Poland had sharply declined by the end of 1990. In all, 20,000 foreigners had been granted permanent residence in Poland. In 1991, 1,600 applications had been received of which over 1,000 had been granted, 37 had been rejected and the remainder were still being processed. Rejection was decided on the grounds that the applicant had nowhere to live in Poland and no source of income.

161. Expulsion of an alien was ordered if there was clear proof that the person had acted against the interests of Poland, had been convicted of an offence, had infringed customs regulations or posed a threat to law and order in a manner specified in the Code of Administrative Procedure. An expulsion order was signed by the provincial governor and an appeal could be made to the Ministry of the Interior or a complaint brought to the relevant administrative court. In cases where an alien refused to comply voluntarily with an expulsion order, the person might be detained at an observation centre. Appeals against expulsion orders and detention could be made to the ordinary courts. With regard to Arab refugees in Poland, most of the several hundred persons concerned were Yemenis who had attempted to reach Sweden via Poland..

Right to privacy

162. With reference to that issue, members of the Committee wished to know whether investigations into cases of unlawful opening of correspondence, telephone-tapping and bugging had taken place; whether any criminal or disciplinary measures had been taken against those found guilty; what measures bad been taken to eliminate such devices and the recurrence of such practices; and whether telephone-tapping and bugging, if permitted, had been legalized by the Police Act of 1990.

163. In reply, the representative of the State party said that police activities such as telephone-tapping and bugging were subject to severe restrictions and could be authorized only by the Minister of Justice or at the request of the Minister of the Interior. An inquiry into the cases of telephone-tapping and bugging referred to in the report had been discontinued when it was learned that these devices had not been used. Bugging devices had also been discovered on the premises used by Solidarity during the 1989 presidential election. Following a special appeal made by the Ministry of Justice, the Supreme Court had overruled the decision by a district court to close the proceedings and the case was to be reviewed.

Freedom of religion and expression

164. In connection with that issue, members of the Committee wished to know the legal restrictions, invoked on grounds of public safety, order, health or morals, or the rights and freedoms of others, that had been placed on individuals or groups in expressing their religious beliefs; the length of community service as compared to the length of military service; the progress achieved with regard to the implementation of the rights and freedoms provided for under article 19 of the Covenant, in particular in the light of the reform of the Penal Code and the criminal law; developments related to the implementation of the Press Act as amended by the Act of 11 April 1990; and whether the fact that the Press Act was now in force meant that inciting others to commit offences or praising others for having committed offences was prohibited.

165. Members of the Committee also wished to know what control, if any, was exercised by the Government on television broadcasting; to what extent authorities were obligated to provide information being sought by a citizen; whether Catholicism had been accorded a special status as the State religion or if all faiths were on an equal footing; and whether the importation of foreign publications or the activities of foreign correspondents were in any way restricted.

166. In reply, the representative of the State party said that there were no restrictions on religious belief or worship or on associations formed for that purpose. Acts of parliament had been prepared or adopted in relation to a number of churches, such as the Roman Catholic, Orthodox and Evangelical Churches, particularly in cases where church property had been nationalized earlier. Catholicism, which was not a State religion, accounted for 90 per cent of the population, with 65 other registered religious communities accounting for the remaining 10 per cent. Military service at present lasted 24 months and community service 36 months, although measures already adopted would change that to 18 months and 24 months, respectively. Regarding the Press Act, the elimination of censorship had resulted in the appearance of a large number of new publications reflecting a wide range of opinion. During the first 9 months of the year, 36 libel cases had been brought against journalists, reflecting the philosophy underlying the abolition of censorship, namely that people were now expected to assume responsibility for their words and deeds. The Control of

Publications and Productions Act had been repealed, thereby ending preventive censorship, but inciting others to commit offences and praising others for having committed offences were now punishable under the Code of Criminal Procedure.

167. Restrictions on the exercise of the freedom of expression set out in the 1989 Act amending the Control of Publications Act had recently been repealed. Censorship had been completely abolished and the restrictions described in paragraph 123 of Poland's report were no longer in force. Those restrictions unfortunately still formed part of the Code of Criminal Procedure but a broad revision of the Code was currently taking place. In any event, there had been no convictions on the basis of those provisions. Television broadcasting was still a State monopoly as an act on private television and radio broadcasting had not yet been adopted by Parliament. Anyone refused access to information had the right to appeal to an administrative court. There was no restriction on the import of foreign publications, which were readily available at newsstands, nor were there restrictions on foreign correspondents.

Freedom of assembly and association

168. With reference to that issue, members of the Committee wished to know the composition and powers of the administrative bodies that were competent to monitor the activities of associations; the relevant legal provisions governing the registration of associations; what criteria were used to determine the restrictions necessary for the protection of public order; and in what specific cases meetings had been prohibited. Further information was also requested on the right of members of the police force and prison service to form trade unions.

169. In reply, the representative of the State party said that the authority competent to deal with the monitoring of the activities of associations was the provincial governor, who reviewed applications for registration submitted by associations. The administrative authority could revoke any provision in the regulations of an association not in conformity with its statutes and could request a court to dissolve an association if it infringed upon the law, if its numbers fell below the level required by law, or if it had no leadership. The prohibition of meetings was severely restricted, and any exceptions were subject to review by the courts. In that regard, the inclusion of the general clauses of the Covenant into national law served to protect the rights and freedoms of individuals. Police and prison officers were able to join a union but they did not have the right to strike. The right to join trade unions did not extend to frontier guards, officials of the Office for the Protection of State Officials, civil servants or professional soldiers.

Right to participate in the conduct of public affairs

170. In connection with that issue, members of the Committee wished to know the current status of the law on political parties and whether the Polish Government was considering prohibiting political parties that advocated national, racial or religious hatred constituting incitement to discrimination, hostility or violence or which were responsible for propaganda for war in violation of article 20 of the Covenant.

171. In reply, the representative of the State party said that political parties were governed by a law enacted in 1990, requiring that all parties be entered into a registry deposited with the provincial

court in Warsaw. Only the Constitutional Court was empowered to refuse to register a party furnishing the required documents. Such refusal could be invoked only if the party aimed at changing the constitutional order by force or if the leaders of the party sought to use violence in public life. Forty parties had been registered in 1990 and 51 applications for registration had been received in the first half of 1991. It was the responsibility of the Constitutional Court to decide if a party was conducting unconstitutional activities and to recommend a change in the party's statutes or programme.

Rights of persons belonging to minorities

172. With reference to that issue, members of the Committee wished to have information on ethnic, religious and linguistic minorities in Poland and regarding measures taken to guarantee their rights under article 27 of the Covenant; on the composition and powers of the National and Ethnic Minorities Commission; and on the situation of gypsies in Poland. Further clarification was sought concerning the possibility of minorities receiving general education instruction in their mother tongue.

173. In reply, the representative of the State party said that there were numerous ethnic minorities in Poland, representing a total of 800,000 persons and including 300,000 Ukrainians, 250,000 Belarusians, 200,000 Germans, 20,000 Lithuanians and 15,000 Jews. The National and Ethnic Minorities Commission, which was chaired by the Minister of Culture and the Arts, was responsible for programming State policy and initiatives and for coordinating the administration's actions with regard to minorities. An essential aspect of that policy was to guarantee ethnic minorities the possibility of studying in their mother tongue, although that was easier to provide for those minorities which were not highly dispersed. There were a total of 197 schools where minority languages were taught. Minorities were entitled to set up associations and the State budget provided them with funds. Minorities participated in local government through territorial self-management and the membership of cummune-level administrative bodies included minorities. Ethnic minorities were now entitled to days off to observe their religious holidays even if those holidays did not coincide with the official holidays in Poland. A special commission had also been set up in the Diet, composed of about 20 delegated, who met regularly with minority representatives.

174. There were between 10,000 and 15,000 gypsies in Poland, although their numbers were decreasing owing to immigration to Germany. A gypsy publication, sponsored by the Ministry of Culture and the Arts, had appeared in Poland for the first time in 1990. Many gypsy children did not attend school and efforts were being made to set up special classes for them. Consideration was being given to the teaching of the gypsy language in Polish schools. A special commission was inquiring into recent violence in Poland directed at gypsies and their property. The authorities had strongly condemned those acts and criminal proceedings had been instituted against 16 persons suspected of being responsible. It was felt that the incidents did not represent a general attitude of intolerance towards gypsies in Poland.

Concluding observations by individual members

175. Members of the Committee expressed their thanks to the representatives of the State party and welcomed the excellent dialogue that had been established between the Polish delegation and the

Committee. In view of Poland's economic difficulties and its totalitarian past, the efforts of the county's authorities to implement international human rights instruments and carry out democratic reforms were all the more praiseworthy. The detailed information provided by the delegation on the implementation of the new laws adopted in Poland had given the Committee a better understanding of the process to bring those laws more into line with the provisions of the Covenant. Poland had made impressive progress in that regard in very little time. The important role played by the Civil Rights Spokesman, the steps taken to ratify the Optional Protocol, and the submission of a large number of bills to amend legislation so as to ensure greater respect for human rights were also noted with satisfaction.

176. At the same time, members of the Committee expressed concern over the treatment of detainees in Poland. The prolongation of pretrial detention, which could last up to two years, was excessive and inconsistent with the provisions of the Covenant. Legislation should be amended in such a way that questions relating to family visits and access to a lawyer would not be settled by the public prosecutor, but by the courts. New legislation should also provide for the possibility of filing an appeal against a decision to place a person in a psychiatric institution, in keeping with article 9 of the Covenant. In the current process of amending the Constitution, the principle of the presumption of innocence, enshrined in article 14, paragraph 2, of the Covenant, should be given due attention.

177. With regard to the implementation of article 19 of the Covenant, the replies given did not appear to be entirely satisfactory and it would be helpful if the Polish authorities would again define the criteria applied in restricting freedom of expression. Concern was voiced in particular over the Act of 29 May 1989, limiting freedom of expression in certain areas. It was also noted that legislative provisions restricting the freedom of television stations and of publications undermined freedom of expression and should be revised.

178. Members of the Committee also expressed concern regarding the treatment of minorities. The Polish Government should take all necessary measures for dealing with that issue, particularly by strictly observing the provisions of the Covenant. It would also be advisable to enact a law in Poland prohibiting the legalization of political parties that violated article 20 of the Covenant by inciting people to violence or advocating racism.

179. The Polish delegation had given a remarkably frank description of the human rights situation in Poland and the changes that had occurred in recent years. It was hoped that the Polish Government would take the Committee's observations into account when continuing its restructuring of the Polish legal system.

180. The representative of the State party noted that the report just considered by the Committee was the first one to be prepared by Poland under democratic conditions. She sincerely thanked the members of the Committee, who had thoroughly and sympathetically analysed the report and who had not hesitated to point out gaps. The remarks, doubts and concerns expressed would help the Polish authorities to improve their legal system and implement it better. She hoped that Poland's valuable relations with the Committee would not be limited to submitting reports and that Poland would shortly accede to the Second Optional Protocol aiming at the abolition of the death penalty.

181. In concluding the consideration of the third periodic report of Poland, the Chairman joined in paying tribute to the remarkable progress made in Poland since the submission of that country's previous report five years before. Thanks to those developments, Polish practice and legislation had become more consistent with the Covenant and obvious progress had been achieved not only regarding civil rights but political rights as well. Countries like Poland, which were undergoing deep upheavals, often failed to submit their reports to the Committee in order to avoid revealing their difficulties and exposing themselves to criticism. Yet the Polish authorities had allowed the Committee to study the situation in their country at a crucial time, precisely when such an exercise could be the most useful. He was convinced that Poland's fourth periodic report, due in 1994, would indicate still further progress.

334. The Committee considered the fourth periodic report of Poland (CCPR/C/95/Add.8) at its 1764th and 1765th meetings (CCPR/C/SR.1764-1765), held on 19 July 1999, and adopted the following concluding observations at its 1779th meeting (CCPR/C/SR.1779), held on 28 July 1999.

Introduction

335. The Committee welcomes the fourth periodic report of Poland and the State party's recently submitted revised core document (HRI/CORE/1/Add.25/Rev.1), as well as the explanations given in answer to the written and oral questions put by the members of the Committee. The Committee also appreciates the presence of the substantial delegation which represented various branches of the Government. The Committee furthermore commends the State party for having given wide publicity to its report and to the work of the Committee.

Positive aspects

336. The Committee commends the State party for its ongoing process of bringing its legislation into harmony with the provisions of the Covenant. It welcomes the adoption of a new Constitution specifically protecting the fundamental rights of the individual, including the rights of persons belonging to ethnic minorities, and ensuring the precedence of international agreements over domestic statute law in cases of conflict.

337. The Committee is appreciative of the enactment of a new Code of Criminal Procedure, including a new right of appeal by way of cassation, a Penal Executive Code and a new Penal Code, the last providing for personal accountability for acts of ill-treatment by public officials.

338. The abolition of the death penalty, even during wartime, is welcomed.

339. The Committee notes with satisfaction the ratification by the State party of the Optional Protocol to the Covenant.

340. The Committee welcomes the fact that the Commissioner for Citizens' Rights has a substantial staff and is vested with broad competence, such as (a) recommending remedies for breaches of human rights; (b) the power to file a cassation appeal in the Supreme Court against judicial decisions; and (c) to request the Constitutional Tribunal to verify the conformity of laws with the Constitution and ratified international conventions.

341. The Committee welcomes the presumption in favour of granting bail and requiring a court to refuse it only in limited circumstances.

Principal subjects of concern and recommendations

342. The Committee expresses its concern about the absence of any legal mechanism allowing the State party, on a systematic basis, to deal with views of the Committee under the Optional Protocol

and to implement them.

343. The Committee reiterates its concern about the numerous forms of discrimination against women, both in Polish society and in the national legal system. The Committee notes with regret that the State party devoted very limited attention to the issue of gender equality (art. 3) in its fourth periodic report (para. 34), but welcomes the additional information made available by the delegation.

344. The Committee notes with concern: (a) strict laws on abortion which lead to high numbers of clandestine abortions with attendant risks to the life and health of women; (b) limited accessibility for women to contraceptives owing to high prices and restricted access to suitable prescriptions; (c) the elimination of sexual education from the school curriculum; and (d) the insufficiency of public family planning programmes (arts. 3, 6, 9 and 26).

> The State party should introduce policies and programmes promoting full and non-discriminatory access to all methods of family planning and reintroduce sexual education at public schools.

345. The Committee is also concerned about the lack of gender equality (art. 3) in the employment sector. For example, the State party's figures and other information received show that: (a) the number of women holding high technical, managerial or political posts continues to be low while relatively large numbers occupy less well-rewarded positions; (b) average salaries earned by women amount to only 70 per cent of those earned by men; (c) women do not receive equal remuneration for work of equal value; and (d) employers continue to tend to require pregnancy testing.

> Further measures should be taken by the State party to counteract these forms of discrimination against women and to promote the equality of women in political and economic life.

346. The Committee is concerned about the effects of the Polish pension system which results in lower pensions for women by preserving different retirement ages for men (65) and women (60). It notes that the theory of allowing women to retire later than the age of 60 is not reflected in practice, and since the amount of the pensions is directly linked to the number of years of work, women receive lower pensions (arts. 3 and 26).

> Different retirement ages for men and women are discriminatory and should be eliminated.

347. The Committee acknowledges the State party's efforts to implement a programme against domestic violence but is concerned at: (a) the large number of reported cases of such violence; (b) the lack of any protective remedy in the civil courts; and (c) the shortage of hostels and refuges for family members suffering from domestic violence (art. 9).

> Legislative and administrative measures should be put in place to correct such deficiencies.

348. The Committee is concerned about the persistence in the army of the practice of "fala", whereby new recruits are subjected to abuse and humiliation (art. 7).

The State party should adopt firm measures to eradicate this practice.

349. While noting the measures taken by the State party to implement article 10 by improving conditions in the penal system, the Committee remains concerned at the complete inadequacy of cell space per inmate (art. 10, para. 1).

The State party should effectively improve facilities for prisoners so as to comply with the Standard Minimum Rules for the Treatment of Prisoners.

350. The Committee is also concerned at the lack of an independent system of supervision of: (a) abuses of human rights by police officers; (b) the conditions in penal institutions, including those for juvenile offenders; and (c) complaints of violence or other abuse by members of the Prison Service.

Mechanisms should be established for independent monitoring of these matters in order to protect the rights enshrined in articles 7, 9 and 10 of the Covenant.

351. The Committee expresses the view that the maximum length of pre-trial detention (12 months), and especially the ability to extend this up to another 12 months, is incompatible with article 9, paragraph 3.

The period of pre-trial detention should be reduced, and in any event persons who have to be detained should be brought to trial within a reasonable time or released.

352. The Committee notes that figures have been given of the overall number of advocates and counsellors qualified to act in the courts; it regrets the absence of information about: (a) the number of lawyers available to provide free legal aid; and (b) any systems to check the quality of their performance (art. 14 (3) (d)).

353. The Committee is concerned at the excessive delays in criminal and civil trials (art. 14 (1) and (3)(c)).

The State party should: (a) proceed urgently with the steps in progress to improve the infrastructure so as to reduce delays in all courts; and (b) present in its next report realistic statistics showing the results of these reforms.

354. The Committee is concerned at information about the extent to which military courts have jurisdiction to try civilians (art. 14). Despite recent limitations on this procedure, the Committee does not accept that this practice is justified on the grounds that it is convenient for the military courts to try every person who may have taken some part in an offence committed primarily by a member of the armed forces.

These provisions of the Code of Criminal Procedure should be amended or repealed.

355. As regards telephone tapping, the Committee is concerned that the Prosecutor (without judicial consent) may permit telephone tapping and that there is no independent monitoring of the use of the

entire system of tapping telephones.

> The State party should review these matters so as to ensure compatibility with article 17, introduce a system of independent monitoring, and include in its next report a full description of the system by then in operation.

356. The Committee regrets that the reference to sexual orientation which had originally been contained in the non-discrimination clause of the draft Constitution has been deleted from the text; this could lead to violations of articles 17 and 26.

357. The Committee is concerned that current mechanisms for monitoring new religious movements may pose a threat to freedom of religion (arts. 18 and 26).

> The State party should include in its next report information on the activities of these mechanisms and their effect on the actual enjoyment of religious freedom on equal terms by members of all religious denominations in Poland.

358. The Committee welcomes the abolition by law of corporal punishment in schools; it is concerned, however, that this change in the law is not fully being implemented (arts. 7 and 24).

359. The Committee sets the date for the submission of Poland's fifth periodic report at July 2003. It urges the State party to make available to the public the text of the present concluding observations in appropriate languages. It requests that the next periodic report be widely disseminated among the public, including non-governmental organizations operating in Poland.