

## ROMANIA

### CCPR A/34/40 (1979)

147. The Committee considered the initial report (CCPR/C/1/Add.33) submitted by Romania at its 135<sup>th</sup>, 136<sup>th</sup>, 137<sup>th</sup>, 140<sup>th</sup> and 141<sup>st</sup> meetings, on 17, 18, 19 and 20 April 1979 (CCPR/C/SR.135, 136, 137, 140 and 141).

148. The report was introduced by the representative of the State party who stated that his country attached the utmost importance to the need strengthen the role of the United Nations in the field of human rights and fundamental freedoms, which represented one of the main problems of the modern era.

149. The representative of Romania pointed out that when his country ratified the Covenant, all the rights set forth in it had already been embodied in the Romanian Constitution and ordinary law. In order to perfect the law, new codes and other important regulatory instruments were being elaborated with due regard for the provisions of the Covenant. He indicated that, in addition to means of jurisdictional control like those of other legal systems, in Romania the Grand National Assembly exercised general control over the implementation of the Constitution, the State Council exercised control over the implementation of the laws and decisions of the Grand National Assembly, and either the Assembly or the State Council exercised control over the activities of the Council of Ministers, of ministries and of the other central administrative bodies and over the activities of the Procurator's Office. Very special attention was being given to the realization of the right of petition and to the settling of claims made by citizens against administrative actions. A series of judicial guarantees and measures aimed at settling such claims quickly and legally was established in accordance with a recently adopted act. He supplemented the information contained in the report, particularly in respect of articles 3, 6, 7, 9, 10, 14, 22 and 27 of the Covenant.

150. Members of the Committee, while welcoming the additional information given in the introductory statement of the representative which had thrown much light on the report before the Committee, expressed reservations at one of the concluding statements of the report that "consideration of the problems of human rights in the Committee should take place in strict observance of the principle of non-interference in the internal affairs of States". It was pointed out that, by ratifying the Covenant, States parties accepted the Committee's competence to receive and study their reports in accordance with article 40. It was a reflection of the essence of current international co-operation that the Committee was able to deal, as a body of independent experts, with questions which, though formerly at the centre of internal affairs, were no longer exclusively within domestic jurisdiction. It was the Committee's responsibility to monitor as objectively and impartially as possible the observance of the rights laid down in the Covenant. Comments and questions put forward by members of the Committee at this stage of the consideration of initial reports were advanced for the sole purpose of obtaining additional information and with a view to assisting Governments in their implementation of the Covenant.

151. With reference of the main characteristics of the social and political system of Romania as laid down in the first four articles of the Constitution, it was noted that the working class was sanctioned

as the leading class in Romanian society and that the Romanian Communist Party was institutionalized as the leading political force. It was asked whether the working class included intellectuals and peasants, and whether this privileged position accorded in the Constitution to the working class and the Communist Party was consistent with the provisions of the Covenant. Information was requested on the relationship between the country's various political institutions, their powers and limitations and the controls to which they were subject and on the constitutional and legal framework within which the rights set forth in the Covenant were implemented.

152. Members of the Committee noted that whereas article 17 of the Constitution guaranteed equality of rights of citizens it prohibited discrimination only the grounds of nationality, race, sex or religion. More information was therefore required as to why some of the grounds on which distinction was prohibited under article 2 of the Covenant, such as language and political or other opinion, were not reflected in the relevant articles of the Constitution or the Penal Code. In this connection, questions were asked as to whether an individual who considered that the rights provided for in Romanian law were subject to restrictions not envisaged in the Covenant could invoke the Covenant without incurring the risk of being subjected to punitive measures; to what extent the remedies mentioned in the report were available to the individual in law and in fact; to what extent their application was left to the discretion of the authorities; and what was the status of the various decrees in force in Romania compared with the laws or general statutes emanating from the executive. Many members expressed interest in the statement in the report to the effect that persons whose rights had been infringed as a result of administrative acts might request the competent authorities to void the act and make reparation. Questions were asked as to what conditions were laid down by the law for voiding the act and for redressing the damage caused; whether the judge considered the administrative act in the abstract or whether he took into account the higher interest of the system; what steps could be taken in the civil, penal and administrative areas to request restoration of rights; which competent authorities could be requested and to make reparation; and whether compensation was only for physical or also for moral damage.

153. With reference to the right to life, dealt with in article 6 of the Covenant, it was pointed out that, although this right required that a State should take all necessary measures to reduce infant mortality, it was equally important to ensure the preservation of life in adulthood. That was why the Covenant provided that, in countries which had not abolished the death penalty, sentence of death may be imposed only for the most serious crimes. The fact that in Romania the death penalty could be applied for various kinds of offences, including misuse of public funds and embezzlement, seemed to indicate an excessively broad interpretation of that provision. Information was requested on the number of cases in which the death penalty had been applied in recent years, the offences involved, whether the death sentence might be imposed in the absence of malice or intent or for offences which were not mentioned in the report, and whether serious consideration was being given to limiting the death penalty to a very small number of serious crimes.

154. As regards article 7 of the Covenant, members asked what steps were taken in Romania to deal with accusations of ill-treatment made against the police and other security organs, what rules were applicable for solitary confinement and what regulations existed in Romania relating to visits to prisoners. Clarification was requested on the meaning of "medical treatment" which may warrant "scientific experiment" and on the procedures for the internment of dangerous mentally ill persons. Information was sought on whether the Procurator, as well as the judiciary, had the right to commit

a person to a mental institution even before the sentencing or in the absence of a court judgement, and on the safeguards and remedies available to individuals who believed that they had been wrongly confined in a psychiatric institution. Information was requested on the number of persons who had undergone psychiatric treatment and the number of persons who, without being offenders, had been ordered to undergo psychiatric treatment.

155. Commenting on articles 8 and 10 of the Covenant and noting that both the right and the obligation to work were envisaged under the Romanian system, one member asked about the proportion of labour that was employed on such projects as the Danube Delta or the Danube/Black Sea Canal without the free choice of the individuals concerned, the ground on which relevant court or administrative orders for enforcing such employment had been based and the safeguards which had been used to prevent the abuse of such orders. Questions were also asked as to the circumstances, other than punishment for a crime, under which a person might be compelled to work in specific places or occupations; what was meant by an order “that the penalty take the form of work to be carried out, without deprivation of liberty” and whether that could involve sending the accused away from his family.

156. In connection with article 9 of the Covenant, it was asked if, in Romania, there were people detained for political or other reasons without trial and what legal rules governed that situation; what was the average length of time for which accused persons could be detained pending trial; whether they had the right to appeal to a court to determine the legality of their detention; whether persons who had been victims of unlawful arrest or detention received due compensation and, if so, whether compensation was paid for injuries suffered during detention or for detention itself and what legal instrument covered such cases. It was noted from the report that “where the interests of the investigation so required” the prosecuting authority may prohibit an accused person under arrest from contacting his defence counsel for a maximum period of 60 days and the question was asked when that was applicable and whether any remedy was available to the accused for a reduction of that period.

157. As regards the freedom of movement referred to in article 12 of the Covenant, questions were asked as to whether any special permit was required to change one’s place of residence in Romania; whether it was customary to transfer individuals to another part of the country for employment or other purposes; what were the conditions under which Romanian citizens could travel or establish residence abroad; what proportion of applications to leave the country had been rejected; what remedies were available to individuals in respect of the denial of a passport or of the right to leave the country and whether the representative could provide formal assurances that no person would be subject to retaliatory measures simply for having expressed a desire to leave the country. In this connection, it was asked on what grounds a Romanian citizen living abroad could be requested to return to the country and under what conditions Romanians could lose their nationality on leaving the country for a temporary period.

158. As regards article 14 of the Covenant, it was stressed that the functioning of legal institutions as well as the extent to which the judiciary was independent from the executive power would make it possible for the Committee to determine whether human rights were respected in a given country. In that connection, it was important for the Committee to have more information on the Romanian judicial system, to know how judges were appointed or elected and whether their term of office

could be terminated before it expired and, if so, on what grounds. A definition was requested of the term “social morality” referred to in the report for the protection of which the trial proceedings might be held in camera. Questions were asked as to the provisions made for the presence of family members during trials held in camera; whether any restrictions were imposed on the right of the accused to secure the appearance of defence witnesses and if provisions were made to protect the accused against compelling him to give evidence.

159. With reference to article 18, it was noted with satisfaction that under the Romanian Constitution all religions were respected and received material and financial assistance from the State. Questions were asked on whether all religions were treated equally; whether or not Romania engaged in atheist propaganda; if there were any legislations or generally accepted principles prohibiting religious propaganda; whether parents were free to bring up their children in accordance with their own religious and moral convictions and whether a person could refuse to serve in the armed forces on the grounds of conscientious objection.

160. Commenting on the freedoms guaranteed in articles 19, 21 and 22 of the Covenant, members of the Committee asked what restrictions or controls were imposed or exercised in Romania on political thought, on the peaceful dissemination of opinions and ideas and on the press and other information media; what authority decided whether hostile purposes to the “socialist régime” or to the “interests of workers” were involved which justified restrictions on the freedom of speech, press and assembly and whether there were any specific criteria for defining those terms; whether there was any penal law limiting freedom of speech and peaceful assembly or association; if like-minded people were entitled to establish a trade union of their own and if the trade unions in Romania were free to exercise the right to strike in order to improve the conditions of work. Information was requested on political parties or organizations, other than the Communist Party, that may exist in the country and on the conditions or restrictions governing their activities.

161. As regards articles 23 and 24 of the Covenant, it was asked to what extent the right of a Romanian citizen to marry a foreigner was restricted and whether there was any discrimination between men and women in that respect. In connection with the responsibility of the State to protect the family and the child, information was requested on the status of children born out of wedlock.

162. As regards article 25 of the Covenant, reference was made to the report and to the introductory statement in connection with the concept of self-management and participation in public affairs, and additional information was requested concerning the composition, working methods and the competence of the newly established bodies. Further details were sought about the Socialist Unity Front, the role of public organizations and the people’s councils, the procedure governing elections to the Grand National Assembly and the right of voters to recall their deputies at all representative bodies. Questions were asked as to whether there were referendums and plebiscites in Romania; whether the population participated in any way in the formulation of laws; whether the principle of one man one vote applied in Romania; what were the conditions of public service; and what proportion of those in public service were not members of the Communist Party.

163. With reference to article 27 and article 1 of the Covenant, one member inquired as to how far self-determination could proceed in Romania, whether it meant some kind of autonomy for minority groups, and if the rights and obligations of minorities were set forth in a legal instrument that could

help in promoting legal certainty and clarity.

164. Commenting on the questions raised by members of the Committee, the representative of Romania stated that his Government had stressed its respect for and compliance with the international instruments to which it had acceded, including the United Nations Charter and the various instruments relating to human rights.

165. Replying to questions concerning the basic characteristics of the social and political system in Romania, he pointed out that there was no discrimination embodied in saying that the working class, which encompassed the active working population including the peasants and intellectuals, was the leading class in society; it was only right that those who were primarily responsible for building society owned the means of production and formed the vast majority of the population should occupy a position corresponding to their contribution to the progress of society. The Romanian Communist Party earned its leading political role due to the massive popular support it gained as a result of its long struggle for Romanian liberty and national independence, but that did not confer any privilege on its members, who had the same rights and obligations as other citizens. In a detailed description of the State system of power and its mechanism he pointed out that State power was vested in the Grand National Assembly and in the People's Councils which were representative bodies elected by universal, equal, direct and secret voting. The Grand National Assembly was the supreme constitutional authority through which the Romanian people expressed its sovereign will. All other State bodies were subordinate to it. Deputies to the Assembly benefited from parliamentary immunity.

166. With reference to questions raised under article 2 of the Covenant, the representative stated that it had been necessary to incorporate the provisions of the Covenant into Romanian law for, upon ratification, those provisions had been given the force of law and could therefore be invoked by individual citizens. Persons whose rights had been violated by illegal administrative acts or had suffered damages could request the competent court to annul the illegal act or oblige the administrative organ concerned to reinstate the person's rights and restitute any material loss. The court's judgement could be questioned by an appeal to a superior court or by any other method of recourse available under Romanian law. In order to ensure greater protection of the legitimate rights and interests of citizens, Act No. 1/1978 had been adopted, which established a series of legal guarantees and measures aimed at the prompt and legal settlements of claims against acts by the administration.

167. Replying to questions relating to the right to life, the representative stated that the death penalty, which was an exceptional measure, was currently resorted to for a small number of very serious offences, which he named, as an alternative to imprisonment of 15 to 20 years; that during the past 15 years it had not been applied in a single case involving an offence against State property and that it was not applied in cases of offences committed without intent. He added that the scope of application of the death penalty had been considerably reduced in new Romanian legislation being drafted and that the penalty would be applied exclusively as an exceptional and alternative measure in cases of homicide, treason, espionage and aerial piracy having particularly serious consequences.

168. As regards article 7 of the Covenant, the representative stated that, according to the Penal

Code, cases of ill-treatment of prisoners by the police or other public officials was punishable by three years' imprisonment. There was no provision for solitary confinement under Romanian law. The committal of mentally-sick persons for treatment in psychiatric hospitals was recognized under the law only for persons who were a danger to themselves or others, or who were liable to commit serious penal offences. Committal for medical treatment was ordered only by the judiciary on the authority of the procurator, after legal investigations had been made and the opinion of medical specialists had been obtained. The proceedings took place in public and in the presence of the family, who had to be questioned on the behaviour of the patient. The presence of a lawyer was compulsory. Committal decision was subject to appeal and the decision to end a period of committal was also taken by the judiciary, to which application could be made, inter alia, by the patient or his lawyer, a close relative or guardian or any other person.

169. In relation to questions raised under articles 8 and 10 of the Covenant, the representative reiterated his country's notion of work and stated that while it was the right of every citizen to work it was also his duty to society to do so and that this was in line with the Universal Declaration of Human Rights. In a developing country, whose economic and social system precluded the right to exploit the work of others, every person capable of working had to provide for himself by his own labour. The law provided for educational measures designed to reform those who had sought to live at the expense of society. There were at least four reasons why the obligation to work as applied in Romania could not be considered as forced labour: firstly, no coercive sanctions were applied in the case of refusal to work; secondly, the persons concerned were free to change their type of employment at any time; thirdly, all individuals enjoyed equal rights under their labour contract; and lastly, the only obligation imposed was that the economic units in which the work was to be done must employ the person concerned without delay.

170. He thought that there was an obvious misunderstanding of the penalty of correctional labour imposed in his country. The new form of correction was motivated by humanitarian considerations and was an improvement on the system of probation used in Western countries. An individual sentenced to five years imprisonment could instead continue to serve in his existing place of work. He lived at home with his family although he was not allowed to leave the area without permission. The person concerned was not obliged to work if he chose instead to serve this prison sentence. There were no forced labour camps in Romania and only salaried workers and young volunteers were employed in work in the Danube Delta or the Danube/Black Sea Canal.

171. Replying to questions raised under article 9 of the Covenant, the representative stated that there were no political prisoners in Romania; that no person could be arrested or detained in the absence of serious evidence against him; that the period of remand in custody could not exceed 24 hours but that, if it was necessary to hold the prisoner for a further period, remand in custody had to be replaced by arrest pending trial, which could be extended for a maximum period of five months by order of a State attorney, the Procurator's Office or the judiciary. The justification for the arrest and its extension had to be verified by the court. The right of the accused person to have contact with his defence counsel could only be withheld by the Procurator in exceptional cases for which justification had to be given. The Code of Criminal Procedure provided for appeal to the Chief Procurator in such cases.

172. In connection with article 12, the representative pointed out that, since the State provided each

citizen with housing, certain measures had been taken to avoid a population exodus towards certain centres which were already over-populated in order to avoid the creation of shanty towns. Neither in law nor in practice was there compulsory establishment of domicile or compulsory exile. Any request for residence in another country was treated with understanding and in the light of all the circumstances. The emigrant had the right to retain or renounce Romanian citizenship as well as the right to return to the country whenever he wanted either temporarily or permanently. However, Romania did not encourage emigration because it had invested very heavily in the training, education and well-being of its citizens and that, as a developing country, it needed all its human potentials. Applications for personal travel were decided upon within 60 days, or a shorter period in urgent cases. It was always possible to appeal against a refusal to issue a passport or a visa. Such appeals were handled by a ministerial commission acting in pursuance of the law.

173. Replying to questions concerning article 14 of the Covenant, the representative pointed out that judges were independent and subject only to the law. They were elected for a period of five years, on the basis of a proposal by the Ministry of Justice, from among Romanian citizens holding a law degree and having a reputation above reproach. They were eligible for re-election until they retired. They could be removed from office, as a disciplinary measure, for serious professional errors. The decision concerning removal was taken by those who had elected them on the basis of a decision pronounced by the disciplinary commission composed of judges of the departmental court or of the Supreme Court. He indicated that offences against “socialist morality” that may justify holding trials in camera were understood to mean any acts contrary to public policy. Public trials could be attended by all citizens, foreigners and foreign press correspondents accredited to Romania. A request for admission of evidence could not be denied if the evidence was reliable and useful. The use of compulsion with a view to obtaining a confession from the accused was a punishable offence and an uncorroborated statement by the accused had no probative force.

174. In relation to article 18 of the Covenant, the representative emphasized that all forms of worship were permitted without any discrimination and that persons had the right to express their beliefs, whether religious or atheistic. The legislation did not permit conscientious objection. In fact, the members of certain religious dominations performed military service not in operational units but by carrying out administrative work.

175. Replying to questions raised concerning article 19 of the Covenant, the representative stated that Romanian legislation contained no provision restricting the rights of a person to hold or to express an opinion; however, it did not permit abuse of the exercise of this freedom, irresponsible attitudes, attacks on the reputation of others or the dissemination of anti-democratic concepts. The expressions “aims contrary to the socialist order” and “the interests of the workers” contained in the Constitution were clarified in article 69 of Act No. 3/1974, which dealt at length with what could be considered as abuse of the exercise of freedom of opinion. Responsibility for ensuring respect of the said article 69 was vested in editorial bodies or the chief editor of each press organ. There was no external control of the press or other mass media.

176. As regards the right to freedom of association provided for in article 22 of the Covenant, he pointed out that public organizations in which citizens were associated, such as trade unions, co-operatives, youth and women’s organizations and scientific associations, encompassed the entire population and were supported by the State which created conditions for the development of their

material base and protected their heritage. The membership of a trade union could be lower than 15, and individual belonging to a particular occupation had the right freely to form a union without prior authorization.

177. In connection with questions raised under article 23 of the Covenant, the representative indicated that his country attached a great importance to the solution of problems arising from marriages between Romanian citizens and nationals of other countries. It took account of the feelings of the partners, of the existence of guarantees that young people leaving the country to join their spouses should have adequate living and working conditions, and of the views and consent of their parents.

178. As regards questions raised under article 25 of the Covenant, he explained in detail the application of the principle of self-management in the economic sphere and described the direct participation of working people in Government activities and in State affairs. He defined the Socialist Unity Front as a permanent revolutionary, democratic and elected political body with a representative character, formed by the Romanian Communist Party or by other public, professional and co-operative organizations, by the councils of the co-inhabiting nationalities and a wide range of community organizations. The objective of the Front was to provide for mass participation in the major political activities of the country at the national and local levels and to act as a forum for debate on all economic and social plans. It nominated candidates for elections to various representative bodies of State power. Its supreme forum was a congress convened every five years and composed of representatives appointed by the component organizations or elected by conferences at local levels. The representative also stated that there was no political pre-condition for nomination to public office. In the case of refusal to nominate a person on the grounds of religious persuasion or political views, the citizen could seek redress according to the law.

179. Replying to a question raised concerning article 27 in the light of article 1 of the Covenant, the representative pointed out that the situation and the size of the co-inhabiting national groups militated against any provisions for autonomy. In the spirit of General Assembly resolution 2625 (XXV), the right of peoples to self-determination excluded any action aimed at the dismemberment of a State such as Romania, which was a unitary and not a multinational State.



## **CCPR A/42/40 (1987)**

294. The Committee considered the second periodic report of Romania (CCPR /C/32/Add.10) at its 740<sup>th</sup> to 743<sup>rd</sup> meetings, on 13 and 14 July 1987 (CCPR/C/SR.740-743).

295. The report was introduced by the representative of the State party, who said that Romania had made substantial progress in the implementation of human rights since the submission of its initial report in 1979. At the same time, Romania had an institutional system that facilitated the participation of the population in public and civic life through self-administering and self-managing mechanisms that enabled all citizens freely to express their opinions concerning important problems. He referred to the principles of freedom for all and non-discrimination in the matter of human rights, as enshrined in his country's legislation, and cited percentages concerning the participation of women in key sectors of national life. He pointed out, moreover, that Romanian legislation guaranteed full equality of rights to the co-inhabiting nationalities. Particular attention was given by the Romanian authorities to the problems of young people, their schooling and vocational training. At the international level, the Government of Romania was doing its utmost to ensure the right to life and the right to peace through cessation of the arms race, to further the achievement of better living conditions for young people, to promote the right of peoples to self-determination, and to support the establishment of a new international economic order.

### Constitutional and legal framework within which the Covenant is implemented

296. Members of the Committee inquired about the views of the Romanian Government on any important changes affecting implementation of the Covenant that had occurred since the examination of the previous report in 1979. They also requested additional information on the role of the Socialist Unity and Democracy Front and on its possible impact on implementation of the Covenant, as well as an explanation of the differences between the appeals procedure provided for under Act No. 1/1967 and the procedure under the special legislative enactments, of which the most recent was Act No. 1/1978. In addition, they asked what factors and what difficulties, if any, affected the implementation of the Covenant and what steps had been taken, other than those mentioned in the report, to disseminate information concerning the Covenant. Members also requested fuller information on the substance, scope and limits of the various forms of supervision of the activities of administrative bodies in Romania that were additional to the methods of recourse and control normally encountered in other legal systems, on the bodies responsible for control of the constitutionality of laws, on laws against which appeals might have been lodged on the ground of unconstitutionality, on procedures for such an appeal and the effects of a decision of unconstitutionality, and on the nature of the right of petition and recourse provided for in articles 34 and 35 of the Romanian Constitution. Furthermore, clarification was requested on the meaning of paragraphs 15 and 16 of the report, on whether it was possible for an individual to invoke the Covenant before a court, on whether it was possible to challenge in the courts the legality of a legislative text submitted to the Grand National Assembly because it was claimed to be at variance with the Covenant, on any measures that had been taken to make the Covenant known among the various nationalities that inhabited the territory of Romania, and on whether or not there were non-governmental organizations in the country that might play a role in that regard. Questions were also asked concerning supervision of the implementation of laws in Romania and the position of the Council of State, the relationship between judicial and executive bodies, and the number and results

of appeals lodged under Act No. 1/1967.

297. In reply to the questions raised by members of the Committee, the representative of Romania explained that the provisions of the Covenant were incorporated in Romanian legislation and were taken into account, as appropriate, whenever legislative provisions were amended or new ones adopted. There had been no particular change in Romania's legislative framework since the submission of his country's initial report, but the competent bodies had also been guided by the Covenant in continuing to improve the functioning of the State, governmental and social machinery, and the Government had ratified or planned to ratify all international instruments relating to civil and political rights.

298. The representative of the State party explained that the Socialist Unity and Democracy Front constituted a form of political and social life as well as the expression of the social pluralism and political and moral unity of Romania. He reviewed the activities of the Front and observed that, because of its prestige, the Front played a particularly important role in the implementation of the Covenant.

299. The difference between Act No. 1/1967 and Act No. 1/1978 was that the former dealt with a narrow field, whereas the subject of the latter was general. However, even if Act No. 1/1978 was applied, the person concerned could always invoke Act No. 1/1967 and avail himself of its appeal provisions.

300. As to the dissemination of information concerning the Covenant, that international instrument was circulated and studied in schools and universities. The fundamental rights laid down in the Covenant were also dealt with in articles in periodicals and annals, and there was a movement in the country dedicated to studying the legal nature of human rights, as well as radio and television programmes on human rights.

301. The right of petition was defined by a 1978 law. In practice, all socialist "units" had to examine citizens' complaints in accordance with a hierarchical principle, such examination being entrusted to professionals having appropriate experience.

302. As to the meaning of paragraphs 15 and 16 of the report, the representative of Romania stated that, for his Government, all rights were of equal importance, but the right to life was the prerequisite for the enjoyment of all other rights, and civil and political rights were conceived in the context of the development of the nation and not in an individualistic perspective.

303. The possibility of challenging decisions of courts and administrative bodies was guaranteed by article 12 of Act No. 1/1967. Such challenge took the form of an ordinary appeal and, pending the result of the appeal, the challenged decision was suspended and could not become operational. With regard to the relationship between Romanian legislation and the Covenant, the representative of the State party explained that internal legislative measures were necessary in Romania to ensure implementation of the provisions of the Covenant and that the rights of Romanian citizens did not derive from international treaties but from Romanian legislation, which, however, was drafted in the light of international commitments. The provisions of the Covenant were included in Romanian legislation and a person injured in respect of rights protected by the Covenant could invoke the text

of the relevant law before an authority.

304. The Covenant had been disseminated in the languages of the co-inhabiting nationalities in Romania and it was not necessary for non-governmental organizations to take any action in that respect.

305. Under the Romanian constitutional system, there was no separation of powers: the supreme organ was the Grand National Assembly, which formulated legislation and appointed ministers and Supreme Court judges; the Council of State was a permanent organ headed by the President of the Republic, who supervised the enforcement of the laws and decisions of the Grand National Assembly and the activity of the Council of Ministers; the Council of Ministers was an administrative organ; the Supreme Court was responsible for judicial matters, under the overall supervision of the Grand National Assembly; and the people's councils, whose membership reflected social and national life, performed a supervisory role in all areas of public activity. Under the Romanian system, higher organs had the right to rescind unlawful acts of the organs subordinate to them.

#### Non-discrimination and equality of the sexes

306. In this connection, members of the Committee observed that article 17 of the Romanian Constitution did not seem to prohibit discrimination based on political opinion; they asked whether there was a legal basis to guarantee the absence of discrimination in that area, in accordance with article 2, paragraph 1, and article 26 of the Covenant, and whether there were other grounds for discrimination. In connection with the treatment of foreigners, they asked in what respects the rights of foreigners were restricted as compared with those of Romanian citizens, how their fundamental rights were protected, why their treatment in criminal matters was more favourable than that of Romanians, what areas were covered by those treaties that established discrimination between various categories of foreigners and whether they concerned rights enunciated in the Covenant, how many aliens were resident in Romania on a permanent or temporary basis, and how they were treated when emergency regulations were in force. Members also inquired whether, in practice, there had even been candidates for election to the Grand National Assembly who had expressed differing political opinions and how they had fared in the elections, and what the exact proportion of women in academic life was.

307. In his reply, the representative of Romania stated that, when the Constitution had been promulgated in 1975, discrimination in Romania had already been eliminated in practice. As to the treatment of foreigners, there was a special law containing provisions on that question; it related in particular to the entry of foreigners into and their departure from Romania and their recruitment for work. In general, the treatment of foreigners, in particular with regard to residence, ownership of property, employment and social insurance, was no different from that of Romanian citizens, even when emergency regulations were in force. Act No. 25/1969 relating to foreigners provided, in particular, that foreigners in Romania enjoyed all fundamental rights, including civil rights granted to Romanian citizens, with the exception of political rights. Romania avoided making distinctions between foreigners, unless it had concluded a treaty under which Romania and another State had agreed on particular treatment for their citizens. The areas in which such treaties made distinctions regarding certain categories of foreigners were primarily dual taxation, investment guarantees and

the abolition of visas. In addition, under Decree No. 24/1970, foreigners could receive more favourable treatment than Romanian citizens in the event of criminal proceedings, including a more rapid trial and the possibility of bail to enable the foreigner to leave Romanian territory within a short period. Lastly, the representative of Romania mentioned the facilities for tourists in his country, and pointed out that the deputies in the Grand National Assembly were not all members of the Romanian Communist Party and included representatives of the various religious faiths.

#### Right to life

308. With reference to that issue, members of the Committee wished to know how often and for what particular offences the death penalty had been pronounced in Romania and in how many cases it had been carried out in the last eight years. Statistical data were also requested with regard to infant mortality in the country and it was asked whether investigations were carried out by competent and impartial bodies when an official used his powers to deprive someone of his life, what disciplinary measures were taken if the official was found guilty of abuse and whether the family or dependants of the victim could file a suit for compensation.

309. In his reply, the representative of Romania stated that the death penalty currently existed in the legislation of his country only as an exceptional measure for the most serious offences. The alternative penalty of imprisonment for 15 to 20 years further restricted its sphere of application and pardon or commutation of sentence was also granted in many cases. The death penalty could not be imposed on anyone under 18 years of age, pregnant women or women with children under the age of three. During the past year, the infant mortality rate had been reduced to a low level; infant mortality had accounted for 9,181 deaths in 1985 as compared with 26,680 in 1960.

#### Liberty and security of person

310. With regard to that issue, members of the Committee wished to know under what circumstances and for what periods persons could be held in preventive detention without being charged with a criminal offence, what remedies were available to persons who were arbitrarily deprived of their liberty by arrest or detention, and whether any criminal or disciplinary action had been taken against officials for arbitrarily depriving persons of their liberty. Additional information was requested on the law and practice relating to detention in institutions other than prisons. In addition, it was asked whether there were any prescribed limits in Romania to repeated resort by a court to 30-day extensions of pre-trial detention, how soon after arrest a person could contact a lawyer, whether a person might be refused to access to counsel until the beginning of a trial or immediately before it, how quickly after arrest a person's family was notified, what the relevant decrees were and what care was taken to ensure that administrative measures taken against an accused person conformed to the requirements of security of person under the Covenant, what possibilities for appeal and remedy existed on that matter, and whether there was any remedy whereby a detainee could apply to a court of law for a decision on the lawfulness of his detention.

311. In his reply, the representative of the State party drew the Committee's attention, in particular, to articles 143, 146 and 148 of the Romanian Code of Criminal Procedure establishing the various circumstances under which pre-trial custody was applied. Preventive detention could be ordered for a maximum of 24 hours and extended only after questioning and when the persons had been notified

of the offence with which he was charged and the grounds for the detention. Article 141 of the Code of Criminal Procedure prescribed remedies for persons arbitrarily deprived of their liberty through arrest or detention; article 278 of the Code provided for appeal against pre-trial detention and Act No. 60/1968 dealt with inquiries on the legality of detention by judicial authorities. A victim of arbitrary detention was entitled to compensation by the State under article 504 (2) of the Code of Criminal Procedure and unlawful detention or arrest was punishable by imprisonment of six months to three years. The Code did not set a limit on repeated resort by a court to 30-day extensions of pre-trial detention, but, in practice, repeated extensions were rare and administrative measures could be taken in the event of failure to settle cases with due speed.

312. Article 31 of the Romanian Constitution and articles 6, 7 and 172 of the Code of Criminal Procedure guaranteed the right to defence counsel both during pre-trial proceedings and during the proper trial. The family of an arrested person was immediately notified of his arrest. Convicted persons serving their sentences through the performance of correctional labour under Decree No. 218/1977 were not incarcerated. With respect to administrative measures against an accused person when a criminal offence involved labour relations, the rules applicable were those of labour law, not of penal law. In the case of abuse by an administrative body, Act No. 1/1967 provided for the possibility of raising objections to arbitrary measures before a court.

#### Treatment of persons, including prisoners and other detainees

313. In connection with that issue, members of the Committee asked how many court orders had been issued under Act No. 25/1976 concerning compulsory labour for persons leading a parasitic life and whether such court orders were appealable, whether prison sentences normally comprised compulsory labour and, if so, what kind of labour was involved, what the meaning of the term “political prisoner” was in Romanian law as interpreted by the Romanian authorities, whether the Standard Minimum Rules for the Treatment of Prisoners were made known and accessible to prisoners, and what procedures existed for receiving and investigating complaints by detainees. With reference to the Application of Penalties Act No. 23/1969, it was asked how the conditions of detentions of persons awaiting trial differed from those of already convicted persons.

314. Additional information was also requested on the supervision of prisons and other places of detention, the number of complaints of torture received, the number of persons detained in connection with accusations of parasitism and the application of the Standard Minimum Rules for the Treatment of Prisoners in the prisons of Aiud and Glava.

315. Moreover, it was asked whether the fact that there were no political prisoners in Romania was a result of the 1986 amnesty or whether it was more generally true that there were no prisoners in the category of political prisoners, under what special circumstances a prisoner could be permitted to leave a prison for a brief period, whether evidence of the subjection of accused persons to cruel, inhuman or degrading treatment was admissible in court, what remedies were available to victims of abuses by police authorities, what instructions were given to security forces in order to avoid the imposition of cruel, inhuman or degrading treatment, whether access by or to representatives of religion was granted to prisoners of the same religion, and what guarantees existed in Romania to protect a person against being deprived of liberty without the necessary safeguards. Clarification was also requested on the relationship between Decree No. 153/1970 on parasitism and Act No.

25/1976, and on the extent to which Acts Nos. 24/1976 and 25/1976 were applied.

316. In his reply, the representative stated that prison sentences did not comprise compulsory labour under Romanian legislation. Correctional labour for convicted persons was a means of applying a penalty with re-educational and humanitarian objectives and it was not to be confused with compulsory labour, which was applied in the case of a person who, in spite of the assistance given by public institutions, refused to engage in any work or vocational training and continued to lead a parasitic life. There was no appeal against decisions taken under Act No. 25/1976, but the number of persons who refused to work was very small and very few orders under that Act had been issued.

317. Under Romanian legislation, no distinction was made between political and common offences, but political offences were generally understood to mean offences against State security and in that sense there were no political prisoners in Romania. The Standard Minimum Rules for the Treatment of Prisoners were reflected in Romanian penal legislation and prison regulations were brought to the attention of prisoners at the time of their imprisonment. The president of the court or a judge delegated by him had the right of access to the place of detention and conditions of detention were supervised by delegates of relevant bodies. Persons in pre-trial detention were detained separately from convicted persons and enjoyed more favourable conditions. Victims of abuses by the police or other authorities were entitled to redress and places other than prisons were not used in Romania to deprive a person of his liberty. Regarding Acts Nos. 24/1976 and 25/1976, they were both designed to give the persons concerned the opportunity to recognize their error and engage in useful activities. Over six decrees had been issued in Romania during the past eight years offering measures of clemency and amnesty for offences of a less serious nature.

#### Right to a fair trial

318. With reference to that issue, members of the Committee requested information on legal guarantees with regard to the right of all persons to a fair and public hearing by a competent, independent and impartial tribunal and on the right of an accused to obtain the attendance and examination of witnesses on his behalf at his trial. Information was also requested on relevant rules and practices concerning the publicity of trials and the public pronouncement of judgements, as required by article 14, paragraph 1, of the Covenant, specific rules concerning the admission of the mass media to court hearings, and facilities for accused persons to obtain the services of a lawyer and legal aid in cases of need.

319. Furthermore, members of the Committee asked for what reasons the Ministry of Justice could propose that a judge should be relieved of his duties with a view to his election in another department and to what extent that prerogative of the Ministry of Justice affected the independence and impartiality of judges. In addition, further information was requested on the composition of the People's Councils and the election of their members and on the various circumstances under which it was possible to request that judges should be relieved of their duties. Clarification was requested on the provisions of article 64 (6) of the Romanian Constitution. With reference to issues concerning the independence of the judiciary, it was asked for what purpose the publication or circulation by the press of information concerning ongoing proceedings was prohibited, whether a judge could be re-elected at the end of his five-year term of office, what happened to a Supreme Court judge if he was not re-elected, what was meant by the term "socialist morality" in relation to

the provisions of article 229 of the Code of Criminal Procedure and by the term “serious misconduct” in relation to the dismissal of justices of the peace or judges of the departmental courts, and whether military courts were competent to try civilians.

320. Replying to questions raised by members of the Committee, the representative stated that equality for all the administration of justice was provided for in Act No. 58/1968 and that the principles of competence, independence and impartiality of the tribunal were guaranteed, as was the right to appeal against violation of such principles, by the relevant provisions of the Code of Criminal Procedure. Article 229 of the same Code provided for a public hearing and specified the cases in which proceedings should be held in camera. In accordance with article 310 of the Code, judgements had to be publicly announced and, therefore, there was no particular reason to have specific rules relating to the admission of the media. Article 6 of the Code made provision for the accused to be defended. A judge was relieved of his duties often at his own request for personal or other reasons. The Minister of Justice could propose that a judge should be relieved of his duties, but the People’s Council, which was composed of persons belonging to all sectors of Romanian society, was the body empowered to approve or to reject the proposal. Respect of the principle of the independence of judges was assured by the regulations governing the organization and activities of legal bodies. Judges in Romania were eligible for re-election. If a judge was not re-elected, an alternative employment was available in some related sphere. Judges could be removed from office for serious misdemeanours. The term “socialist morality” referred to the morality of Romanian society, in which people were respectful of the law and relationships were founded on social justice. Military courts were competent to try military personnel.

#### Freedom of movement and rights of aliens

321. On that point, the members of the Committee wished to know what restrictions, if any, could be imposed on the freedom of movement of citizens in Romania and on the right to leave the country, which authority was competent to review decisions refusing the issue of a passport or visa, what the exact meaning of the term “visa” was, whether Romanian citizens in possession of a valid passport were required to obtain an exit visa and, if so, on what grounds such a visa might be refused, whether there were any special restrictions on the freedom of movement of aliens and on their choice of residence, whether there were any restrictions on the right of family reunification or any other regulations in that field, and which authority was responsible for reviewing expulsion orders. It was also asked whether there were any grounds other than those enumerated in Romania’s report for the refusal of a passport or visa, how many appeals had been lodged against such refusals of a passport, and what proportion of favourable decisions had been delivered.

322. Some members of the Committee wished to refer to a specific case that concerned the practical application in Romania of the right to leave one’s country: that of Mr. Liviu Bota, former Director of the United Nations Institute for Disarmament Research. They reminded the Committee that Mr. Bota, an international civil servant, who had returned to Romania for consultations at the end of 1985, had been held there ever since and they pointed out that, under article 12, paragraphs 2 and 3, of the Covenant, everyone was free to leave any country, including his own, subject to the restrictions provided by law and necessary only to protect national security, public order (ordre public), public health or morals. They pointed out that Romania had ratified the Convention on the Privileges and Immunities of the United Nations (General Assembly resolution 22 A (I) of 13

February 1976). They asked how Romania could reconcile its legislative situation with refusal to allow Mr. Bota to leave the country and, in more general terms, what explanation could be given for refusal to issue a passport to a Romanian citizen on the grounds that his departure abroad could damage the interests of the Romanian State or affect that State's good relations with other States. It was observed that those grounds for refusal to issue a passport were not among the restrictions provided for in article 12, paragraph 3, of the Covenant, and it was asked how many applications for a passport had been rejected pursuant to that provision, whether persons who had been denied a passport on those grounds could lodge an appeal before a court; and how the courts interpreted the clause in question.

323. In that connection it was felt that it would be useful to communicate to the Committee the content of all the decrees regulating freedom of movement in Romania and, in particular, that of the provisions setting a six-month period of validity for exit visas and authorizing only one journey abroad every two years. It was also asked how long it took to obtain a passport, what the cost of obtaining a passport meant in relation to the average monthly wage earned by Romanians, whether it was true that some Romanian citizens sometimes had to pay a certain sum in order to make it easier to obtain permission to travel, whether there were any provisions guaranteeing that persons seeking permission to leave Romania would not be subjected to sanctions designed to discourage them, and whether the restrictions on movement within the country applied only to aliens. It was further inquired whether the criminal penalties incurred by persons who emigrated illegally were accompanied by other, supplementary penalties such as being forbidden to return, exactly what the penalty of banishment mentioned in Romania's report consisted of, whether persons deprived of their nationality ipso facto forfeited the right to remain in Romanian territory, and whether competence to issue passports was vested in the executive or the legislative power.

324. In his reply, the representative of the State party said that all Romanian citizens were free to travel within the country without restriction and could establish their domicile anywhere they wished. Citizens intending to travel abroad were required to obtain a visa which could be refused in the cases referred to in Decree No. 156/1970. The authority competent to review decisions to refuse the issuance of a passport or visa was the Passport and Visa Commission of the Council of Ministers. In accordance with Decree No. 156/1970, passports were issued by the competent Romanian authorities, but in order to travel abroad a citizen was required to obtain a visa that contained more information than was given in a passport. The reasons for refusing a visa were the same as those mentioned in connection with the refusal of a passport. Aliens intending to spend more than 120 days in Romania were required to inform the Ministry of the Interior of their intention on arrival and to keep the Ministry of the Interior informed of their place of residence. There were no restrictions or other rules governing family reunification in Romania. In the case of an alien who committed an offence, expulsion was decided on by the court in accordance with article 117 of the Penal Code, and in certain cases expulsion could be ordered by the Ministry of the Interior; in either case the person concerned could appeal against such decisions to the competent State bodies in accordance with Act No. 1/1978.

325. With regard to the questions asked concerning Mr. Liviu Bota, the representative stated that he was not familiar with the file on the case and had nothing to add to the explanations given by the Ambassador of Romania at the forty-first session of the General Assembly. He considered, however, that in principle any citizen, even if he had the status of an international civil servant, was



always bound by certain inescapable obligations to the country of which he was a national. He also stated that the restrictions imposed by Romanian law on the right to leave the country were in keeping with article 12, paragraph 3, of the Covenant. As an example of a departure abroad that might affect the State's good relations with other States, he mentioned the case of persons who had applied for a passport for travel abroad but who still had to wait for a visa from the host country. If a passport or visa was refused either by the competent authorities or by the Commission established under the Council of Ministers, then in so far as the person concerned could prove that the action of the administrative body was unlawful and harmful, he could resort to Act No. 1/1967.

326. The representative then gave some figures concerning tourism and emigration by Romanian citizens in recent years. He explained that the reason why Romanians could go abroad only once every two years was that the countries that received foreign tourists wanted a guarantee that they could support themselves. In a socialist country it was the State that provided the financial resources, and the State could not give the category of citizens who wished to travel privileges over society as a whole. With regard to emigration, too, a developing country like Romania could not allow itself to let its workers, or its managers whom society had made great sacrifices to train, go abroad.

#### Right to privacy

327. On that subject, additional information was requested concerning protection against arbitrary and unlawful interference with privacy, the family, the home or correspondence. It was asked, in particular, whether it was true that there was a decree restricting contacts between Romanians and foreigners, whether that decree placed Romanians under an obligation to report to the authorities all their contacts with foreigners, whether Romanians were forbidden to provide foreigners with shelter as private guests, and lastly for what reasons Romanians were required to obtain official authorization before being allowed to own a typewriter.

328. In his reply, the representative of Romania drew the Committee's attention to the constitutional and legislative provisions of his country that protected individuals against any form of interference with privacy. As to contacts between Romanians and foreigners, he referred to the good relations that were being forged in the country between Romanians and tourists. He added that the law required a landlord housing a foreigner to inform the Ministry of the Interior of the fact and that Romanian citizens were required to inform the authorities of any discussions they had with foreigners during official contacts.

#### Freedom of religion and expression

329. On that subject, the members of the Committee asked for additional information concerning the legislation applicable to the recognition and activities of religious dominations. They asked, in particular, in what cases recognition of a religious denomination might be refused or withdrawn, whether any appeal lay from a decision taken on those lines, and how article 18, paragraph 4, of the Covenant was applied in Romania. They also inquired what legislative and administrative control was exercised over freedom of opinion and expression, including the freedom of the press and information media, whether peaceful campaigns in favour of reform of political, social and economic institutions were permitted by law, what the scope of the limitations mentioned in paragraph 202 of Romania's report was, how the provisions of article 69 of Act No. 3/1974 had been

applied by the Romanian courts and what judicial decisions had been delivered in that field, whether the provisions of article 317 of the Penal Code had already been applied and, if so, how many times.

330. With regard specifically to freedom of expression, it was observed that the scope of the limitations prescribed in Romania in the Constitution, in Act No. 3 of 1974 concerning the press and in the Romanian Penal Code seemed to go beyond the restrictions allowed by article 19, paragraph 3, of the Covenant. Detailed explanations of the practice followed in the country in that respect were requested, for the information supplied by the Romanian Government was not sufficient to enable the Committee to understand whether the system in force in the country was compatible with article 19 of the Covenant. Again, with regard to freedom of worship, article 30 of the Romanian Constitution did not seem to be consistent with article 18, paragraph 4, of the Covenant and it would be interesting to know how that freedom was secured in practice, to what extent the authorities intervened in denominational activities, whether the Government intended to amend the existing legislation on religious matters, many of whose provisions were dated, and whether the liberty of parents to ensure the religious education of their children in conformity with their own convictions was not limited to being able to take them to church, to the temple or to the synagogue.

331. In addition, members of the Committee wished to know what extent foreign newspapers and journals were available in Romania and whether there were any restrictions on the work of foreign press correspondents, how the Romanian authorities had reacted with regard to the allegations of religious oppression in Romania made by non-governmental organizations and other bodies, including the alleged destruction and poor distribution of religious books, what exactly the situation was with regard to the destruction of churches in Bucharest, whether there had been any new applications for recognition by religious denominations in Romania since 1979 and, in the case of refusal, on what grounds the decision had been taken, and what criteria were applied in granting assistance to a particular church for the construction of a new place of worship.

332. Replying to the questions put to him by the members of the Committee concerning freedom of religion, the representative of Romania stated that in his country religious denominations could organize and function freely provided that they did not violate the law or threaten public safety and order. The conditions for the practice of religion were laid down in detail, in particular, in Decrees Nos. 177/1948, 410/1959 and 150/1974. The religions practised in Romania were all equal before the law and no church was privileged. The Roman Catholic Church was not recognized because it did not accept Romanian law. The State contributed financially to the maintenance of churches, and a total of 14 denominations were carrying on their activities on the basis of statutes adopted in agreement with the State. The representative then gave some statistical information concerning the size of the congregation for each of the principal Churches and the number of religious publications circulating in Romania. He added that denominations were recognized or ceased to be recognized by decree of the Council of State, and gave some information on the institutes at which clergy were trained and the agreements with the churches concerned with regard to the publication of the Bible.

333. In addition, he stated that parents were free to provide religious education for their children outside school. In Romania, 471 orthodox churches had been rebuilt after the Second World War and between 1975 and 1986 a total of 420 churches of various denominations had been built or rebuilt. During the past five years, as a result of massive urban reconstruction, a number of churches in Bucharest and other cities had been moved to other locations.

334. With regard to freedom of the press, the representative stated that censorship had been abolished in Romania but that restrictions on the freedom of the press were provided for in article 69 of Act No. 3/1974. With regard to peaceful campaigns for the reform of institutions, he said that in his country the reality of the socialist régime was such that that question was no longer relevant.

#### Freedom of assembly and association

335. Members of the Committee requested additional information concerning legislation relating to freedom of assembly and association, including the right to establish political organizations as well as examples of how such laws had been applied in practice. Clarification was requested on the operation and the legal, social and political nature of trade unions and their constitutional position. It was also asked how trade-union rights were guaranteed in keeping with the Covenant and with ILO Conventions Nos. 87 and 98 to which Romania was a party.

336. In his reply, the representative of Romania referred to the constitutional and other legislative provisions concerning freedom of assembly and association mentioned in his Government's report and stated that the question of establishing political parties did not arise in his country since it was a single-party State. Nevertheless, the people participated in political opinion-forming bodies throughout the country, such as the Romanian Communist Party, the Socialist Unity and Democracy Front, the Socialist Unity and Democracy Organization, trade-union bodies, the Union of Communist Youth and women's committees. All workers could form and join trade unions as long as certain legal requirements were fulfilled. All professional trade unions were encompassed within the General Union of Trade Unions, and the presidents of various trade unions and organizations were members of the Government. The right of petition against a decision to prohibit a meeting was guaranteed by legal provisions.

#### Protection of the family and children

337. With reference to that issue, members of the Committee wished to know whether the law permitted a Romanian citizen to marry a foreigner and whether there was any discrimination between men and women in that regard, why the authorization of the President of the Republic was necessary for a mixed marriage, whether any possibility of recourse or appeal existed when the President of the Republic denied that authorization, whether a foreign man or woman who married a Romanian had to renounce his or her citizenship and whether he or she had the right to residence and to work in Romania, and why there had been delays of up to three years in the granting of authorizations for foreigners to marry Romanians. It was also asked whether there was a particular legal status provided for children born out of wedlock, under what conditions and on whose initiative the establishment of affiliation could be requested, and whether under the nationality regulations anyone born within the territory was granted Romanian nationality.

338. In replying to those questions, the representative of Romania stated that the requirements governing the authorization of mixed marriages were the same for men and women. An appeal could be lodged against a rejection and delays occurred because it took time to determine the sincerity of requests. Between 1980 and 1985, 5,460 mixed marriages had been authorized. After marriage to a foreigner, a Romanian was entitled to retain or renounce his or her citizenship. The foreign spouse could acquire Romanian citizenship if the couple decided to settle in Romania. The

principle of jus sanguinis applied to the nationality of children. Adultery was unlawful but the position and respectability of a child born out of wedlock, whose affiliation had been recognized by the father or by a judicial decision, was no different from that of a child born to a married couple.

#### Right to participate in the conduct of public affairs

339. In regard to that issue, members of the Committee asked whether the right to nominate candidates to the Grand National Assembly and the People's Councils could be reconciled with article 25 of the Covenant. Information was also requested on legislation and practice regarding access to public service and it was asked whether access to public office was only open to those who belonged to the Communist Party of Romania. In addition, it was asked how the nominating process was carried out by the Socialist Unity and Democracy Front and whether all persons submitting candidatures were given a fair hearing. In connection with statistics showing that a high proportion of deputies had been elected unopposed, it was asked whether any measures existed to guarantee more than one candidate per constituency and what the conditions laid down by law were for the submission of complaints against the admission or rejection of a candidature.

340. In his reply, the representative of Romania referred to the provisions of the Romanian Constitution and of the Electoral Act that regulated the participation of all citizens in the election of representative bodies of State power. He said that, although no legislation existed providing for access to public service, it was a common practice in Romania to ensure proportionally equal representation of all social categories, men and women, and citizens of all co-inhabiting nationalities. In addition, nominations for inclusion in the list of candidates for election were made by the community on the basis of merit and the National Assembly represented all social categories and reflected the ethnic composition of the population.

#### Rights of minorities

341. With reference to that issue, members of the Committee wished to know what subjects were taught in the Romanian language in primary and secondary schools for co-inhabiting nationalities, whether those subjects were taught only in Romanian and, if so, whether that could have detrimental effects on the entrance examinations of students belonging to the co-inhabiting nationalities with regard, in particular, to testing in the language of their nationality. It was also asked why in Romania no census figures relating to the Serb and Croat minorities had been available since 1979 and why cultural and educational facilities for the Hungarian national minority appeared to have diminished in recent years.

342. In his reply, the representative of Romania referred to the subjects that were taught in the Romanian language in primary and secondary schools attended by students of co-inhabiting nationalities and stated that, in accordance with the Romanian Education Act, knowledge of Romanian was necessary to give young people of co-inhabiting nationalities the opportunity to participate fully in Romanian society and to ensure effective equality before the law for all citizens. He also stated that the total school population of Romania was 5,532,000 of whom 323,236 were students of co-inhabiting nationalities, and that there were 28,917 teaching institutions in Romania, 2,997 of which dispensed instruction in the languages of co-inhabiting nationalities.

## General observations

343. Members of the Committee thanked the representative of Romania for the efforts he had made to reply the questions that had been raised. However, it was noted that some of the many questions posed had not been answered or had only been partially answered. Members also regretted that the comments and questions raised by the Committee when the State party's initial report had been considered had not been fully taken into account in preparing the second periodic report.

344. In that connection, members requested that the State party's next periodic report should address questions relating to the practical implementation of the various rights guaranteed under the Covenant, including, in particular, liberty and security of persons, freedom of movement and freedom of conscience, religion and expression. More detailed information was also requested concerning the availability of effective remedies in cases of abuse or ill-treatment by officials, conditions of detention in prison, the concept of social parasitism, and legislation and practice relating to the issuing of visas and passports. It was also emphasized that the Covenant contained not only general principles but also specific rights.

345. In concluding the consideration of the second periodic report of Romania, the Chairman again thanked the representative of the State party and noted that the dialogue between the Committee and the delegation of Romania had been constructive and mutually beneficial.

## CCPR A/49/40 (1994)

132. The Committee considered the third periodic report of Romania (CCPR/C/58/Add.15) at its 1284<sup>th</sup> to 1286<sup>th</sup> meetings, held on 1 and 2 November 1993, and adopted 24/ the following comments:

### 1. Introduction

133. The Committee welcomes the third periodic report of Romania and expresses its appreciation for the detailed and comprehensive information contained therein, particularly with regard to the many legislative developments that have recently taken place. In particular, the Committee expresses its appreciation to the delegation for the additional detailed information it presented to the members of the Committee in response to their questions and comments. The frankness of the report and the openness displayed by the delegation facilitated a most constructive and encouraging dialogue with the State party.

### 2. Factors and difficulties affecting the application of the Covenant

134. The Committee notes with concern the legacy of the totalitarian past in Romania, during which time serious and systematic violations of human rights occurred. In this respect, the Committee notes, in particular, that some political and social attitudes still prevalent and generally tolerated in the country are not conducive to the promotion and protection of human rights.

### 3. Positive aspects

135. The Committee welcomes the many recent developments in Romania that represent significant progress in the transition towards democracy and pluralism. In general, the Committee is encouraged by the provisions of the new Constitution and the firm legal basis it provides for a democratic order. In particular the Committee expresses satisfaction that the Covenant and other international human rights instruments have been incorporated into domestic law and that they appear to occupy a superior position within the legal hierarchy.

136. The Committee notes with appreciation the political reforms undertaken in Romania and the establishment of democratic institutions. The efforts to undertake a thorough legal reform have already yielded many accomplishments, particularly with respect to the new law on the judiciary, reforms in the Penal Code and Penal Procedure and the prospective repeal of certain discriminatory laws such as those which had victimized homosexuals.

137. The Committee welcomes the abolition of the death penalty and the adherence of Romania to the Second Optional Protocol. It also appreciates Romania's recent accession to the First Optional Protocol recognizing the competence of the Committee to receive complaints from individuals alleging a violation of their rights under the Covenant.

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24/ At its 1289<sup>th</sup> meeting (forty-ninth session), held on 4 November 1993.

138. The Committee also welcomes the openness of the Government in affirming the multicultural

nature of Romanian society and the efforts that have been made to engage the participation of minorities in public life.

#### 4. Principal subjects of concern

139. The Committee is concerned that the legal framework may not be in full conformity with the Covenant, particularly in that the general restriction of rights under article 49 of the Constitution is much broader than what is allowed under the Covenant.

140. The Committee expresses concern at the continuing problems in Romania regarding discrimination against persons belonging to minorities and, in particular, offences committed as a result of incitement to ethnic or religious intolerance. This situation is especially threatening to vulnerable groups, such as the Roma (gypsies). The Committee is concerned that the Government has not been sufficiently active in combating such discrimination or effectively countering incidents of violence committed against members of minority groups.

141. The Committee is concerned over abuses committed by the police, such as forcible entry into homes, failure to inform detainees of their rights and ill-treatment of prisoners. In this regard, the Committee notes that the number of investigations, charges and convictions are extremely few compared with the number of complaints received or abuses reported; that penalties prescribed by law are not commensurate with the gravity of the crimes committed; and that compensation to the victims of abuse is not always forthcoming, all of which contribute to an atmosphere of impunity. This situation is particularly alarming in view of the way it undermines harmonious relations with minorities, thus leading to ethnic marginalization and escalation of violence.

142. The Committee notes with regret the decrease in the participation of women in public life and in their employment and opportunities in recent years. The increasing rate of infant mortality is also a matter for concern.

143. The Committee also expresses concern that the full independence of the judiciary has not yet been ensured. In this connection, the continuing powers of the Ministry of Justice over judicial decisions and the power to remove judges creates a situation which greatly undermines the independence of the judiciary.

#### 5. Suggestions and recommendations

144. The Committee emphasizes that continuing review is needed to ensure that all relevant laws, regulations and administrative procedures conform to the provisions of the Covenant. In this regard, relevant draft legislation under active consideration should also be in strict compliance with the obligations of Romania under the Covenant. This is especially important in regard to the exercise of freedom of expression since restrictions under article 49 of the Constitution are significantly wider in scope than those permitted under article 19 of the Covenant. The Committee recommends that legal reforms be closely followed by effective changes in practice, particularly in regard to administrative regulations and procedures.

145. The Committee recommends that further measures be taken to protect persons belonging to

minority groups and to enable them to exercise their rights under the Covenant, including participation at all levels in public institutions. The Committee also recommends that the Government take more active steps to combat racist and xenophobic attitudes and promote tolerance and understanding among the various ethnic, religious and national groups in Romania. In this connection, a positive approach should be taken to counter negative attitudes in the media which are likely to reinforce racist attitudes among the public, particularly in regard to the Roma.

146. The Committee emphasizes the need for greater control over the police, particularly in the context of the recent authoritarian past from which Romanian society is emerging. Determined and continuing efforts need to be undertaken to ensure that there is no element of racism in law enforcement, either in practice or in public perception. Further progress should be achieved in fully returning the police to civilian control. There should be intensive training and education programmes aimed at law enforcement officials as well as a determined effort to ensure adequate minority representation in the police force. Steps should also be taken to strengthen recourse procedures for victims of police abuse and ensure adequate follow-up to reports of abuse by thorough investigation and by applying criminal rather than merely administrative sanctions against offenders.

147. The Committee emphasizes the need for the Government to take positive measures to strengthen the situation of women and children, particularly with respect to participation in public life, equal opportunities to employment and remuneration and equal rights and responsibilities in the family. The Committee also recommends that measures be taken to reduce infant mortality.

148. With regard to the independence of the judiciary, the Committee recommends that steps be taken to speed up the reform process and end the present monitoring powers of the Ministry of Justice. Further vigorous efforts should be made to encourage a culture of independence among the judiciary itself.

149. The Committee underlines the need for the Government to take a more active approach in overcoming public attitudes that hamper the effective implementation of human rights standards. Public information and education activities need to be strengthened so that the general public may be better acquainted with the provisions of the Covenant and the steps taken to apply it in practice. In this connection, greater use could be made of non-governmental organizations and the media.



## **CCPR A/54/40 (1999)**

360. The Committee considered the fourth periodic report of Romania (CCPR/C/95/Add.7) at its 1766<sup>th</sup>, 1767<sup>th</sup> and 1768<sup>th</sup> meetings (CCPR/C/SR.1766-1768), held on 20 and 21 July 1999, and adopted the following concluding observations at its 1777<sup>th</sup> meeting (CCPR/C/SR.1777), held on 27 July 1999.

### **1. Introduction**

361. The Committee welcomes the State party's efforts to respond in a comprehensive manner to the issues raised by the Committee on the basis of its fourth periodic report. It also appreciates the presence of a substantial delegation from Bucharest, and the detailed information provided in response to questions by members of the Committee.

### **2. Positive aspects**

362. The Committee commends the State party for progress made in bringing the Romanian legal order into harmony with its obligations under the Covenant, and for the establishment of institutions which contribute to the promotion and protection of human rights, e.g. the People's Advocate (Ombudsman) and the Department for the Protection of National Minorities. It especially welcomes the establishment, within that Department, of a National Office for Roma, to initiate, support and coordinate actions to improve respect for the rights of the Roma.

363. The Committee notes with satisfaction that changes have been made to improve the administration of justice and to strengthen the independence of the judiciary, in particular the irremovability of judges. The Committee also notes that during recent years the Romanian courts have made frequent reference to international legal provisions, in particular those of the Covenant.

### **C. Principal subjects of concern and recommendations**

364. A matter of grave concern to the Committee is the situation of street children and abandoned children, an exceedingly serious problem which remains unresolved in Romania (art. 24).

The State party should take all necessary measures to comply with article 24 of the Covenant, by protecting and rehabilitating these children, by guaranteeing them a name, and by ensuring that all births are duly registered in Romania.

365. The Committee expresses its concern about continuing discrimination against the Roma (arts. 26 and 27).

The State party should pursue further measures, both legislatively and in practice, to ensure the rights of the Roma in the public and private sectors, particularly with respect to access to education and support for the Roma language.

366. While the Committee appreciates steps taken by the State party to promote gender equality, it remains concerned about discrimination against women, particularly the absence of women in

decision-making positions and in politics (arts. 3 and 26).

The State party should take prompt action to combat discrimination against women and, in particular, to ensure greater representation of women in politics and Government and in more senior positions in the public and private sectors.

367. The Committee also expresses its serious concern about domestic violence against women, a problem which cannot be resolved exclusively by penal sanctions (arts. 3, 7 and 9).

The State party should take appropriate action, in legislation and in practice, to provide women victims of domestic violence with access to protective measures before the courts in order to prevent renewed violence by their aggressors.

368. The Committee is concerned at the lack of a clear legal framework defining and limiting the role of the security forces and providing for effective civilian control over them.

The State party should promptly provide for such limitations and control by legislation and appropriate regulations.

369. The Committee is deeply concerned about threats to the independence of the judiciary through interference by the executive, and about the powers exercised by the Ministry of Justice in regard to judicial matters, including the appeal process, and its powers of inspection of the courts (art. 14).

The Committee urges the State party to establish a clear demarcation between the competence of the executive and judicial bodies.

370. The Committee is concerned at the extent of pre-trial detention, the broad prerogatives of the Public Ministry to allow the withdrawal of procedural safeguards in situations of deprivation of liberty, and the possibility of extending the 30-day period of detention without suitable limits or judicial control (art. 9).

371. The Committee is disturbed at continued incidents involving the use of firearms by the police, especially in cases of petty offences committed by minors (arts. 6, 7 and 9).

The use of firearms by the police should be closely regulated in order to prevent violations of the right to life and personal security.

372. The Committee is also concerned at the lack of legislation invalidating statements of accused persons obtained in violation of article 7 of the Covenant.

The State party should adopt appropriate legislation that places the burden of proving that statements made by accused persons in a criminal case have been given of their own free will on the State, and that excludes statements obtained in violation of article 7 of the Covenant from being presented as evidence.

373. The Committee is concerned about the conditions in prisons, including continued

overcrowding (art. 10).

The State party should take measures to improve conditions in prisons, particularly overcrowding, in the shortest practicable time.

374. The Committee is concerned that freedom of expression and of the press are unduly limited by article 31, paragraph 4, of the Romanian Constitution and by the application of the law on defamation (art. 19).

Article 238 of the Penal Code should be abrogated, and articles 205 and 206 appropriately modified. Article 31, paragraph 4, of the Constitution should be interpreted in the light of article 19 of the Covenant.

375. The Committee is concerned about restrictions on the right to privacy, in particular in regard to homosexual relations between consenting adults, which are penalized by article 200, paragraph 1, of the Penal Code (art. 17).

The State party should take timely action to ensure that this provision is amended so as to conform with the Covenant.

376. The Committee is concerned that the State party has not provided for the right to conscientious objection without discrimination (arts. 18 and 26).

The State party should amend its legislation to provide for conscientious objection, in a manner that is consistent with articles 18 and 26 of the Covenant.

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