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HUMAN RIGHTS COMMITTEE

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SUMMARY RECORD OF THE 1764th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 19 July 1999, at 10 a.m.

Chairperson: Ms. MEDINA QUIROGA

later: Mr. AMOR
(Vice-Chairperson)

later: Ms. MEDINA QUIROGA
(Chairperson)

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER
ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Fourth periodic report of Poland (CCPR/C/95/Add.8; CCPR/C/66/Q/POL/1/Rev.1)

1. At the invitation of the Chairperson, the Polish delegation took places at the Committee table.
2. The CHAIRPERSON welcomed the Polish delegation and invited it to introduce the fourth periodic report of Poland (CCPR/C/95/Add.8) and to reply to the questions contained in paragraphs 1 to 14 of the list of issues to be taken up (CCPR/C/66/Q/POL/1/Rev.1).
3. Mr. BORUSEWICZ (Poland) said that an intensive process of social and legal reforms had taken place in Poland during the period covered by his country's fourth periodic report (1 August 1991-31 December 1994) and in the years following its submission. The National Assembly had adopted a new Constitution on 2 April 1996. Under the new Fundamental Law, which had entered into force on 17 October 1997, the rights and freedoms of all citizens were now guaranteed and the mechanisms to ensure their protection had been considerably strengthened.
4. One of the most important changes in those years was the acceptance of international instruments as sources of law. In the terms of the Polish Constitution, "after promulgation thereof in the Journal of Laws of the Republic of Poland, a ratified international agreement shall constitute part of the domestic legal order and shall be applied directly, unless its application depends on the enactment of a statute". By virtue of that provision, the Covenant could be directly invoked in Poland. Indeed, the Polish courts and, in particular the Supreme Court and the Constitutional Court, were referring more and more in their judgements to that instrument, as well as to the European Convention on Human Rights.
5. Chapter II of the Constitution set forth the general principles governing the rights and freedoms of the citizen. Those principles were in complete harmony with the provisions of the Covenant. Human dignity was now considered to be the basis of all rights and freedoms. Equality before the law was guaranteed and all discrimination in the political, economic and social spheres was prohibited. For the first time, the rights of minorities were fully recognized. The personal rights guaranteed by the Constitution included the right to life, the right not to be subjected to any scientific experiment against one's will and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, including corporal punishment. A person deprived of his liberty by any means other than the decision of a court of law had the right to challenge that measure before the courts. Also protected were the right to privacy, freedom of expression, the freedom to choose one's place of residence, freedom of conscience and religion and the right to provide one's children with an education in accordance with one's own opinions. In the political sphere, freedom of assembly and association, the right to take part in public life, the right to submit complaints and petitions to public bodies and the

right to strike were guaranteed. The economic, social and cultural rights recognized in the 1996 Constitution included the right of ownership and other property rights, the right to exercise the profession of one's own choosing, the right to occupational safety and hygiene, the right to social security in the event of incapacity to work, the right to health care, the right to education and family rights.

6. One of the most important provisions of the new Constitution was the one that afforded citizens the possibility of appealing to the Constitutional Court from any decision contrary to the Fundamental Law. Lastly, mention should be made of the proclamation in the Constitution of certain general rules of criminal law, such as the principle of nullum crimen sine lege and the principle of the presumption of innocence.

7. The new Penal Code, which had been adopted on 6 June 1997 and had entered into force on 1 September 1998, instituted criminal responsibility for infringement of the rules of humanitarian law and human dignity. It had furthermore abolished the death penalty, so that life imprisonment was now the heaviest punishment that could be imposed. The new Penal Code also punished any act of cruelty inflicted on persons deprived of their liberty and established criminal responsibility for State officials who employed violence or the threat thereof or committed acts of physical or mental cruelty to obtain confessions or information. By those new provisions, Poland had incorporated into its legislation the principle of international responsibility for punishing acts of torture.

8. In accordance with the Act of 29 June 1995 amending the Code of Criminal Procedure, pre-trial detention could now be ordered only by the courts. The same Act had introduced a new procedure, that of cassation, which allowed for judgements in some cases to be reviewed in a second-instance proceeding and thus eliminated the administrative factor in judicial decision-making. The new Code of Criminal Procedure, which was contained in the Act of 6 June 1997, had considerably strengthened the guarantees enjoyed by the accused. The same Act had made changes to the Punishment Execution Code, which defined the rights and duties of the convicted person. The procedure for the execution of punishment was now governed by a series of rules aimed at guaranteeing the rights of prisoners.

9. Important changes had also been made in the Civil Code. The guarantees relating to private poverty had been extended. Anyone sustaining financial injury could now claim compensation. Attention should be drawn, in that context, to the Personal Data Protection Act of 29 August 1997, which placed restrictions on the disclosure of information concerning an individual's ethnic origin, political views, religious beliefs and membership of religious organizations, parties or trade unions, as well as information about his or her health, genetic code, addiction to toxic substances or sexual life of individuals. Furthermore, the Act of 1 July 1996 had instituted a cassation procedure in civil cases.

10. The competence of the courts had been extended and it was now possible to appeal to the supreme administrative court from any decision taken by the administration. The Mental Health Protection Act of 19 August 1994 empowered the courts to verify the lawfulness of the placement or treatment of persons suffering from mental disorders in psychiatric hospitals or in centres for social rehabilitation.

11. Poland had taken new measures to harmonize its legislation with international human rights standards. The European Convention on Human Rights and its Additional Protocols Nos. 2, 3, 5 and 8 had entered into force for Poland on 19 January 1993. Poland had signed Additional Protocols Nos. 1 and 4 in 1994 and had made a declaration recognizing the competence of the European Commission of Human Rights and the jurisdiction of the European Court of Human Rights. It had also recognized the competence of the Committee against Torture to consider communications submitted by private individuals. The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had come into effect for Poland on 1 February 1995. By a Presidential decree, Poland had withdrawn its reservations concerning the compulsory jurisdiction of the International Court of Justice with respect to the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Political Rights of Women, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Prevention and Punishment of the Crime of Genocide. It should be pointed out, in addition, that the Council of Ministers had in 1998 adopted a resolution recognizing the competence of the Committee on the Elimination of Racial Discrimination to receive and consider complaints from individuals or groups of persons under Poland's jurisdiction.

12. Following the amendments to the Penal Code abolishing the death penalty, Poland intended shortly to accede to the Second Optional Protocol to the Covenant and Additional Protocol No. 6 to the European Convention on Human Rights. Lastly, it should be pointed out that human rights standards were being made more widely known and included in the curricula of an increasing number of Polish educational institutions. There were currently human rights chairs in several Polish universities. Furthermore, decisions by the European Commission of Human Rights and by the European Court of Human Rights were now reported in various professional publications and in the media. Seminars and training courses were also organized for judges, prosecutors and State officials.

13. The CHAIRPERSON thanked Mr. Borusewicz for his introduction and invited the Polish delegation to reply to the questions put by the Committee in the list issues to be taken up (CCPR/C/66/Q/POL/1/Rev.1).

14. Ms. JANISZEWSKA (Poland) said that the answer to the first question was already contained in the statement by Mr. Borusewicz. She would add only that, since the entry into force of the new Constitution, the courts no longer saw any reason not to refer to the International Covenant on Civil and Political Rights. In the event of a conflict between domestic law and the provisions of the Covenant, Polish courts referred to the sources of law mentioned in the Constitution and thus gave precedence to international instruments, including the Covenant. It was now common for the courts, and in particular the High Court, the Court of Appeal and the Constitutional Court, to base their decisions on the provisions of the Covenant and other international instruments. In one of its judgements, for example, the High Court, referring to article 19 of the Covenant, had found in favour of a citizen in a legal dispute between that person and the State. The same court had taken an extremely important decision in 1997, when it had ruled that the Polish regulations concerning the extension of detention pending trial should be aligned with the provisions of the European Convention on Human Rights. The Constitutional Court for its part, had adopted a similar position on numerous occasions.

15. Ms. DABROWIECKA (Poland), replying to question 2, said that the text of the Optional Protocol, like that of any other ratified instrument, had been published in the Official Gazette, which was available to everyone. It had also been reproduced in various compendiums of human rights instruments, as well as in some newspapers and specialized magazines. At least six universities offered courses on human rights, within which the Optional Protocol was, of course, studied. In addition, members of the public were becoming increasingly familiar with their rights and a growing number of individuals inquired with the Ministry of Justice or the Ministry of the Interior to find out how to institute proceedings in the event of a violation of their rights. It should, however, be recognized that people still tended to bring their complaints before the European Court of Human Rights rather than before United Nations bodies.

16. Ms. JANISZEWSKA (Poland) said that the declaration of a state of emergency was governed by article 11 of the new Constitution, under which civil rights, the applicability of humanitarian law and access to the courts could in no way be limited when a state of emergency was declared. Turning to question 4, she said that the Committee's views had been considered by an ad hoc parliamentary commission, which had found there to be no need for the existing legislation to be amended.

The meeting was suspended at 11 a.m. and resumed at 11.10 a.m.

17. The CHAIRPERSON said that, in view of problems of interpretation, she invited the delegation to reply only to those questions it could answer in English, namely questions 5, 6, 7, 8, 11, 12, 14 and 17 of the list of issues.

18. Ms. KOWALSKA (Poland) said that the new Government, which had taken office in November 1997, was making policy concerning the family one of its priorities and had launched a programme aimed at guaranteeing the same rights, including the right to maternity leave, for men and women. Within the Government, the plenipotentiary for family affairs was charged with proposing legislative measures and coordinating the efforts of the various ministries and bodies for the advancement of women. Attention should also be drawn to the very active role played in that regard by the Commission on Family Affairs, the Commission on Social Welfare and the Parliamentary Women's Group at the national level, and by the specialized bodies and family support centres within local communities. Poland had ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1980, the Convention on the Rights of the Child in 1991 and the European Convention on Human Rights in 1993. Many domestic provisions could also be applied for the protection of women's rights. The Constitution, in articles 32 and 33, guaranteed the equality of all persons before the law and the equal rights of men and women, while the Labour Code in its article 11 ensured equal treatment for men and women and recognized the principle of equal pay for equal work. A citizens' rights commissioner, or ombudsman, was available for anyone who felt that his or her human rights had been violated. It nevertheless had to be admitted that in practice, although some progress had been made, discrimination was still a reality and there were relatively few women in high-level posts. The Government was focusing its efforts on giving practical effect to the provisions of the Constitution, notably through a national plan of action approved in April 1997 following the Beijing Conference.

19. Concerning abortion, she referred the members of the Committee to the information given in paragraph 41 of the report. It should be pointed out that the law on the voluntary termination of pregnancy had been made more flexible in 1996 in order to allow a woman whose life was endangered or who found herself in difficult personal circumstances to have an abortion up to the twelfth week of pregnancy; however, for social reasons, abortion had been deemed unconstitutional in 1997 and as of 1998, therefore, it was again the 1993 Act described in the report that applied. According to official figures, a total of 218 abortions had been practised in 1998 to safeguard the mother's life or health, 46 of them because of serious damage to the foetus and 53 because the pregnancy had resulted from rape. With the widespread use of contraceptives, especially oral contraceptives, of which sales had doubled since 1987, the number of early pregnancies had dropped considerably in recent years. In that regard, she wished to point out that family planning services were available for boys as well as girls. Those services could provide all the existing types of contraceptives, some of which were reimbursable and could be supplied without a prescription. Although the law required doctors to advise a patient about family planning only at the patient's request, in practice they often took the initiative in providing such information. Sterilization was allowed only on medical grounds.

20. Since November 1998, the legal age for marriage had been 18 years for women as well as for men. There was only one exception to that rule: the guardianship magistrate could under some circumstances, generally in cases of pregnancy, allow a person below 18 years of age to marry provided that the future spouse was at least 18 years of age.

21. Mr. STRUMINSKI (Poland), replying to question 5 (e), said that under article 12.3 of the 1994 Employment Act, men and women enjoyed equal access to work and had to be informed of the reasons for any refusal to employ them. In fact, however, employers did sometimes refuse to employ a woman because she was pregnant, without giving any reason for their decision. When a pregnant woman was unable to find work, she was entitled to a compensatory allowance that was normally paid for up to a month after the child's birth, but could be extended for a year or even more in certain special cases.

22. Ms. KOWALSKA (Poland), replying to question 6, said that an inquiry could be conducted when there was a suspicion of domestic violence, whatever the source of the information giving rise to that suspicion. Individuals were protected against domestic violence both by the ratified international instruments already mentioned and by national law. The Penal Code provided, in particular, for a prison term of six months to five years for perpetrators of domestic violence, and the sentence could range from 1 to 10 years' imprisonment when there were aggravating circumstances. Alcohol and poverty seemed to be the commonest causes of domestic violence. It was, of course, very difficult to obtain data on that problem. However, it could be said that in 1998 the police had intervened in 124,000 cases of domestic violence, the victims being women in 60 per cent of the cases, children in 22 per cent of the cases and adolescents in 18 per cent of the cases. The perpetrators of the violence had been men in 93 per cent of the cases, women in 6 per cent of the cases and adolescents in 1 per cent of the cases.

23. Institutional measures to combat violence within the family were of several kinds. Telephone hotlines, set up by State bodies dealing with problems related to alcoholism, offered information and advice free of charge. That service had been provided mainly in the large cities,

but it was gradually being extended to various other parts of the country. In addition, a number of crisis intervention centres worked together with the social welfare services, but there were unfortunately still too few of them. There were also more than 100 homes catering for single women, mothers with children and people with no fixed abode. As part of the programme to ensure equal opportunities for women, nine other homes of that kind would be working by the beginning of the year 2000. Mention should also be made of the programme launched in 1997 by the services dealing with problems of alcoholism, which was designed to inform the public about various aspects of violence within the family. Lastly, several NGOs were working in that field, along with numerous local associations.

24. The authorities considered that the most urgent tasks were to coordinate the existing bodies and institutions, to support them with funding and human resources, including training for their staff, to create and develop institutional networks and to pursue information campaigns to raise public awareness of the problems posed by domestic violence, in particular by encouraging the establishment of self-help groups. While it was essential to assist the victims, however, there was also a need to address the root causes of acts of violence and deal with the problems of those committing them.

25. Mr. STRUMINSKI (Poland), replying to the question in paragraph 7, said that the relevant law was very recent, having been adopted in December 1998. Social Security Fund pensions, under the new law, were related to age. To be entitled to a pension, persons born before 1 January 1949 had to be 60 years of age in the case of women and 65 for men. A woman needed to have been in full-time employment for 20 years, as against 25 years for men. By virtue of the new law, persons born after 31 December 1948 were now subject to the same conditions. It should be pointed out that women were generally satisfied with the situation, which involved some inequality of treatment, of course, but that was in their favour.

26. Ms. DABROWIECKA (Poland), answering the question in paragraph 8, indicated that the new Penal Code did not provide for capital punishment and consequently there should no longer be any obstacle to ratification of the Second Optional Protocol. The new Penal Code also provided that persons who had been sentenced to death prior to its entry into force would have their sentences commuted to life imprisonment. Poland had now begun the process of ratification of Protocol No. 6 to the European Convention on Human Rights, which likewise concerned the abolition of capital punishment, and the next step should be to ratify the Second Optional Protocol to the Covenant.

27. Mr. LAPTAS (Poland), replying on issues 11 and 12, indicated that the procedure for prison inspections was governed by Ministry of Justice order No. 2 of 22 January 1992, as amended in 1996. It should be pointed out, first of all, that prisons and remand centres were placed under the supervision of the district prison administration, which was accountable to the central prison administration. Inspections of detention centres were conducted by teams from one or the other administration at least once every three years. The inspection teams were made up of experienced prison administration staff, doctors and psychologists. They visited all cells, including solitary confinement cells and high-security or disciplinary blocks, and all other buildings of the penal institution. Inmates could submit complaints, petitions or requests to them, either orally or in writing, and that helped the inspectors to form a more accurate picture of conditions of life in the prison. After their visit, the inspectors drew up a report, which was

forwarded to the prison director, and a copy was sent to the central prison administration. The prison director was required to take action on the report, in principle within a month, and to implement all its recommendations. Where an offence had been committed in the institution inspected, the central prison administration was informed and had in turn to inform the Public Prosecutor's Office.

28. He then presented statistics on the number of complaints concerning the attitude of prison staff towards inmates in 1995 and 1996. The competent authorities had recorded 1,496 complaints in 1995, of which 26 had been well-founded, and 1,462 complaints in 1996, of which 11 had been well-founded. In 1995, the authorities had also recorded 127 complaints relating to the use of force, of which 3 had been well-founded, and in 1996 they had registered 78, of which 4 had been well-founded. The most recent statistics, which had been compiled in June 1999, indicated that the number of complaints directed towards the prison administration (in 1996, 1997 and 1998) had totalled 8,133, 8,495 and 8,786, respectively. Complaints relating to medical treatment accounted for nearly 30 per cent of all complaints, the remainder dealing with living conditions, the supply situation within prisons and the delivery of parcels, freedom of correspondence, visiting rights, etc. However, there had been no complaint of torture or ill-treatment. As to the use of force, the latest statistics were not yet available, but his delegation would not fail to communicate them to the Committee as soon as possible.

29. With regard to disciplinary action taken against prison staff who had committed violations, eight proceedings had been instituted in 1995 and 1996, and they had led to sanctions against the eight officers concerned. The applicable sanctions included a warning, a reprimand, a severe reprimand and complete or partial disqualification from armed service for a period of two years or more, during which time the officer in question would have no possibility of promotion and could have his bonuses reduced or eliminated. With regard to the prison population, there had been 54,367 prisoners in Poland at the end of June 1999, and that represented 84.5 per cent of the capacity of penal institutions. There was therefore no problem of prison overcrowding. A total of 1,295 juveniles had been in correctional centres as at 31 March 1999.

30. In conclusion, he drew the attention of Committee members to the procedures affording safeguards against ill-treatment of prisoners. There was a law which laid down all the rules to be observed by prison staff before and after any measure of coercion was used against a violent inmate. In particular, they were required to ask the inmate, using means other than force, to stop being violent and, after using force, they had to meet a number of requirements. The prison director had, for example, to interview the inmate subjected to a coercive measure and inform him of his rights. The inmate could complain to the penitentiary court, which was a kind of appeal body. If an inmate was placed in a high-security block, the prison service had to give him a medical examination and draw up a report when he was returned to his normal cell. Any new inmate had to be given a medical examination within two days of entering the institution; if, for example, the examination showed traces of blows on the body that might be attributable to the police, the director had to inform both the Public Prosecutor's Office and the police service of such findings.

31. The procedures designed to guarantee no ill-treatment by the police were very similar and likewise afforded satisfactory safeguards.

32. Mr. LEWANDOWSKI (Poland), replying to question 14, said that many changes had taken place, since the drafting of the fourth periodic report. In particular, a new law on aliens had entered into force on 27 December 1998, which specified the conditions applicable to their deportation. That law established no obligation to deport an alien and it stipulated that the police or border guards could detain an alien for only 48 hours; the fact that it might prove impossible to return the person to the border in time did not provide grounds for extending the deadline. Only the provincial courts could order a person's arrest or remand in custody for a longer period, which could in no case exceed 90 days. Should it not be possible to return the alien to the border within that time or to establish his identity, he would have to be released.

33. With regard to the implementation of article 13 of the Covenant, there had been practically no cases that raised issues under those provisions, since the aliens expelled from Polish territory had generally been persons living illegally in the country.

34. Ms. DABROWIECKA (Poland), replying to the question in paragraph 17, said that homosexuality was not a punishable offence in Poland. Nor was there any law or regulation establishing a particular status for homosexuals. Furthermore, the Constitution clearly guaranteed the general principle of non-discrimination and the new Personal Data Protection Act also contained provisions relating to the protection of information concerning a person's sexual life. Sexual minorities had, moreover, created their own associations and newspapers, and there was no law or regulation allowing their rights to be restricted.

35. The CHAIRPERSON invited the members of the Committee to put questions orally on the replies given by the Polish delegation concerning paragraphs 1, 2, 5, 6, 7, 8, 11, 12, 14 and 17 of the list of issues.

36. Mr. KLEIN observed that Poland had made considerable progress with regard to human rights since the end of the authoritarian regime and had laid the foundations of a free and democratic society.

37. With regard to the prison population, he was pleased to learn that prisons were not overcrowded. That was a rare and therefore noteworthy achievement. Paragraph 79 of the report did, however, indicate that there had been serious rioting in some houses of correction between 1991 and 1994. Had there been any further riots since then? He also wondered whether those events could be attributed solely to the personality of the juveniles or whether the living conditions in the institutions had also been a factor. He would welcome information about the current situation in such institutions.

38. With regard to question 14 concerning persons subject to deportation, he recalled that, under an agreement with Germany, Poland had committed itself to sending back persons who attempted to cross Polish territory in order to enter Germany and seek asylum there. He would like to know how the Polish authorities dealt with such persons, in what premises, and for what length of time they were detained, after what period they were returned and, in general, whether the new legislation concerning aliens applied to them. More specifically, if they were not expelled after being held in custody for 90 days, were they then released?

39. Concerning the application of article 15 of the Covenant, he noted from paragraph 100 of the State party's report that all penal provisions were governed by the nullum crimen sine lege principle, which was a generally recognized rule of international law. Nevertheless, he would like to know whether the Polish courts actually applied the provisions of article 15, paragraph 2, of the Covenant which stated that "nothing shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal", when dealing with crimes committed in the past in Poland. Article 52 (5) of the Polish Constitution stipulated that anyone whose "Polish origin" had been confirmed in accordance with statute could settle permanently in Poland, and he wondered what was meant by the term "Polish origin": did it mean ethnic or national origin and did that provision of the Constitution, read in the context of article 12, paragraph 4, of the Covenant, mean that only persons of Polish origin could consider Poland as their own country? Lastly, he would like to know whether the provisions of article 77 of the Constitution, which stated that "everyone shall have the right to compensation for any harm done to him by any action of an organ of public authority contrary to law", were self-executing or whether a statute had been needed to guarantee the enforcement of those provisions.

40. Mr. SCHEININ asked whether the Covenant and the European Convention on Human Rights had the same status in domestic law and whether the two instruments were applicable in the same way. He noted from paragraphs 11 and 12 of the State party's report that the procedures for ratifying the Optional Protocol and the European Convention were not identical and he would appreciate some clarification on that subject. Furthermore, he asked whether the new Penal Code also abolished capital punishment for crimes committed during war time and whether, in the event that Poland decided to ratify the Second Optional Protocol to the Covenant, it might not consequently enter a reservation concerning the applicability of the death penalty to war crimes.

41. In response to question 7, the delegation had indicated that women in Poland were generally not against there being a difference between men and women regarding the age of entitlement to a pension, but he wondered whether a problem of indirect discrimination might not arise from the fact that women were more likely to be excluded from the labour market: employers might be reluctant to hire women who, for example, had brought up children and were looking for a new job, given that they would soon become eligible for a pension. Also on the subject of discrimination between men and women, perhaps the delegation could indicate whether any distinction was made in the legislation concerning citizenship and whether foreign men who married Polish women had more difficulty in acquiring Polish citizenship than the foreign wives of Polish nationals. Lastly, he was surprised at the very low number of legal abortions in Poland in 1998, the figure being reportedly only 310. It would seem that the provisions of the law allowing abortion were so restrictive that the lives and health of many women in Poland could be at risk and that women might be victims of ill-treatment if they were unable to secure their right to a legal abortion, particularly in cases of rape. Perhaps the delegation could comment on how far the applicable law was really compatible with the provisions of articles 6 and 7 of the Covenant.

42. Mr. YALDEN said that he was particularly interested in the role of the Ombudsman, who had a very prominent place in Poland in the field of human rights. Regrettably, the figures and information provided in the State party's report were largely out of date and he hoped that the

delegation would be able to supply more recent and detailed information about the number of complaints submitted to the Ombudsman, the nature of such complaints and the outcome of their consideration. He noted that, under the Constitution and applicable statute law, the Ombudsman was empowered to deal only with cases arising in the public sector. What authority could take action in the private sector in cases relating, for example, to employment or housing?

43. With regard to the status of women, the report contained very little information concerning article 3 of the Covenant (para. 34 of the report) and article 26 (para. 146), although the question of equality between men and women was extremely important. Article 32 of the Polish Constitution certainly guaranteed the equality of all persons before the law, but nothing was said about the situation in practice. Many sources, including the Committee on the Elimination of Discrimination against Women, reported on the inequality of women, particularly in remuneration and employment. In that regard, he would like to know whether there was any law to prevent discriminatory measures from being taken by companies and employers, both in the public sector and in the private sector. He shared the concerns expressed by Mr. Scheinin regarding the law on abortion and the right to a pension, which in his view was hardly compatible with the provisions of the Covenant. Lastly, if homosexuality was not punishable by law, he would like to know for what reason all specific references to sexual orientation had been deleted from the approved final version of the new Constitution.

44. Mr. Amor took the Chair.

45. Mr. ANDO, referring to the status of the Covenant in domestic law, noted that article 9 of the Constitution called for the Republic of Poland to respect any international law which was binding upon it. He wondered whether that provision also applied to the rules of customary international law, particularly in the field of human rights, and whether there was any case law on that subject. He also noted that, under article 91 (2) of the Constitution, any ratified international agreement had precedence over statute law. What, however, was the status of the Covenant vis-à-vis the national Constitution? A comparison of article 235 (4) of the Constitution, as amended, with article 90 (2) suggested that the requirements for ratification of a treaty by Parliament were more severe than those for ratification of a law amending the Constitution. He would appreciate some clarification of that matter.

46. With regard to gender equality, he associated himself with the questions put by Mr. Scheinin and Mr. Yalden. He also wondered whether the fact that a married woman needed her husband's approval to transmit property to her children did not constitute discrimination based on sex. Lastly, with regard to question 11, he would like to have more information about reported cases of sexual harassment of younger persons by adults, in the army and in prisons.

47. Ms. Medina Quiroga resumed the Chair.

48. Ms. CHANET said that a number of questions had been left pending after the consideration of Poland's third periodic report in 1990 and, bearing in mind the time in which that report had been considered, those questions had been fully justified. The fourth periodic report dated from 1996, which meant that the information contained in it was largely out of date and the Committee would need much more information to be able to understand the significance of human rights developments in Poland.

49. Regarding the status of the Covenant in the internal legal order, she shared the concerns of Mr. Ando and Mr. Scheinin. She noted that the Covenant was actually mentioned in some court decisions where there was a gap in national legislation, but nothing was said about what happened in the event of a conflict between the Covenant and domestic law or about the possibility of invoking Covenant provisions directly before the courts. She would like to have some specific details on that subject. With regard to the application of article 2 of the Covenant, she noted that article 79 of the Polish Constitution provided that anyone whose freedoms or rights had been infringed could appeal to the Constitutional Court, but those provisions were not applicable to the rights referred to in article 56 of the Constitution, which dealt with the rights of foreign nationals. Were such persons consequently unable to avail themselves of the same remedies as Polish nationals when their rights were violated? Perhaps the delegation could comment on the question of whether those provisions were in conformity with article 2 of the Covenant.

50. Concerning the status of women, she noted that article 168 of the Penal Code, which dealt with rape, provided for heavier penalties when rape was committed with unnecessary cruelty. In her view, that raised the question as to whether any cruelty could be “necessary” in the case of rape. Furthermore, in 1990 the Committee had asked questions about the law relating to the voluntary termination of pregnancy, and the delegation at the time had been unable to answer them because a discussion on that subject had been under way in the country. That discussion had led to a law of 1993, which had been amended in 1996 and again in 1997 in a restrictive way that not only impinged on a woman's freedom of choice but also paved the way for the practice of clandestine abortions, thus endangering the woman's life and health, as well as creating discrimination between women who could obtain abortions abroad and those who were unable to afford them. That restrictive legislation forced some women to continue their pregnancy, which constituted an additional handicap for them when they were looking for work. Lastly, it would appear that the principle of equal pay for equal work as between men and women was not respected and that women were also being discriminated against in the exercise of their right to a pension. It was not surprising, therefore, that few women in Poland had access to high-level posts.

51. Mr. KRETZMER said that he shared the concerns already expressed by other members of the Committee. Regarding the specific issue of gender-based discrimination in employment in the private sector, while Polish law prohibited discrimination among employees, he wondered whether there might be some discrimination between job seekers and, in particular, whether the law prohibited any reference to gender in job advertisements and in replies to such advertisements. What remedies were available to the victims in cases of discrimination of that kind? Furthermore, did the law prohibiting discrimination in employment also prohibit discrimination based on sexual orientation?

52. With regard to the status of women, he associated himself with the questions put by Ms. Chanut. In fact, according to the new Penal Code of 1998, the punishment for rape with cruelty had been reduced from between 3 and 15 to between 2 and 12 years' imprisonment, and some sources indicated that the courts tended to impose even lighter sentences, which would suggest that rape was not considered to be a particularly serious offence. Could the Polish delegation provide some information on that subject?

53. Although, as the delegation had indicated, corporal punishment was now prohibited by law, schoolchildren were apparently still being subjected to some undesirable sanctions, often involving verbal abuse. He wondered whether there was not a violation of article 7 of the Covenant in that regard, and what measures might be taken to eliminate such practices. Lastly, concerning question 11, on the conduct of law enforcement officials, it would seem that out of 8,000 complaints filed for acts of violence or other abuse of power, only eight had been found to be justified. Could the delegation explain that disparity? He would also like to know whether the authority responsible for handling complaints made against prison staff or members of the police was actually independent of the prison administration and the police.

54. The CHAIRPERSON indicated that the Polish delegation would reply to the supplementary questions raised orally by members of the Committee at the next meeting.

The meeting rose at 1.05 p.m.