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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC SOCIAL AND CULTURAL RIGHTS

Second periodic reports submitted by States parties to the Covenant
concerning rights covered by articles 6 to 9, in accordance with the
first stage of the programme established by the Economic and Social
Council in its resolution 1988 (LX)

Addendum

POLAND*

[28 April 1986]

ARTICLE 6. THE RIGHT TO WORK

1. The information below follows paragraph 7 (r) of E/1984/7/Add.26.
2. During the period after 31 March 1985, the following major legal acts were issued:

- (a) Act of 18 April 1985 respecting examination by the courts of matters in the field of the labour law and social insurance (Journal of Laws, No. 20, p. 85);
- (b) Act of 18 April 1985 respecting the change of the Act: Code of Civil Proceedings (Journal of Laws, No. 20, p. 86).

* The present document contains supplementary information submitted by the Government of Poland in connection with its second periodic report on the implementation of articles 6 to 9 of the Covenant as well as a number of modifications updating that report. It should, therefore, be read in conjunction with the second periodic report of Poland (E/1984/7/Add.26).

3. Those acts implemented the demands of the trade unions, crews of establishments from the end of the 1970s with regard to reinforcing adherence to socialist law in the sphere of labour relations, as well as better implementation of the constitutional principle, in accordance with which justice can be administered in the Polish People's Republic only by the common courts, special courts and boards judging petty offences. These acts, which entered into force on 1 July 1985, inter alia, provide that:

(a) Each worker may vindicate claims in the field of labour law in a court;

(b) Disputes in the field of labour law are examined by the labour courts, which are separate units of the district courts and, in the upper instance, labour and social insurance courts, which are separate units of the voivodship courts;

(c) These courts are composed of judges and lay judges, who are thoroughly familiar with labour law problems;

(d) Disputes in both instances are examined by one judge and two lay judges, with the following exceptions: the dispute may be examined by three judges, instead of one judge and two lay judges, if it is especially complex; in addition, the judge himself may pass some decisions outside the hearing;

(e) The Minister of Justice, Minister of Labour, Wages and Social Affairs, First President of the Supreme Court, Public Prosecutor and the All-Poland Consensus of Trade Unions are entitled to an extraordinary appeal against a final sentence, if this sentence violates in a shocking way the law or the interests of the Polish People's Republic. The extraordinary appeal is lodged with the Supreme Court, which examines it during a hearing. Parties and the Public Prosecutor of the Polish People's Republic are informed of the date of the hearing;

(f) A worker may ask for arbitration before the dispute is directed to a court. For this purpose works arbitration committees have been established in all socialized establishments employing over 50 workers. Such committees may also be established in smaller establishments if the crew so wishes. Beside those committees, arbitration committees also exist at the labour courts, composed of lay judges of those courts (the so-called district arbitration committees). They examine the disputes relating to matters of persons employed in non-socialized establishments, socialized establishments employing less than 50 workers in which no arbitration committee has been established and of the managing personnel of all establishments;

(g) The former works and district arbitration and labour appeals committees have been dissolved since 30 June 1985. They were the social organs that examined disputes relating to claims by workers and their functions have been assumed by the labour courts.

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4. The legal acts mentioned in the following sub-items of paragraph 7 have been abrogated:

- (a) Respecting retirement;
- (b) This Ordinance was changed (Journal of Laws, No. 2, 1985);
- (c) Respecting supplements for workers changing employment;
- (n) Respecting special legal regulations during the period when the socio-economic crisis was overcome;
- (o) Respecting obligatory mediation in employment;
- (p) Ordinance on employment of graduates has been changed (Journal of Laws, No. 51, 1984, p. 262).

5. At the end of paragraph 18, add the following:

The final text of the Ordinance of the Council of Ministers of 17 July 1981 (see Journal of Laws, No. 2, 1985, p. 10) was issued.

ARTICLE 7. THE RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK

6. At the end of paragraph 34, add the following:

- (k) Resolution No. 25 of the Council of Ministers of 4 March 1985 on ensuring the further improvement of occupational safety and health (Official Gazette, No. 6, 1985, p. 42);
- (l) Resolution No. 127 of 28 March 1985 of the Council of Ministers on hours of work of persons employed in especially onerous or harmful conditions (Official Gazette, No. 21, 1985, p. 162), and resolution No. 207 of 19 December 1985 of the Council of Ministers changing the above-mentioned resolution (Official Gazette, No. 46, p. 298).

7. At the end of paragraph 54, add the following sentence:

For the years 1986-1988, the resolution of 18 December 1985 is valid. (Journal of Laws, No. 59, 1985, p. 299).

8. Replace paragraph 55 by the following:

In the reporting period, hours of work have been shortened from 46 to an average of 42 hours a week owing to the gradual increase in the number of additional days off, and the daily norm of 8 hours has been maintained. The number of such days amounted to 14 in 1979, 16 in 1980 and 38 during the period from 1981 to 1985. Provisions for the years from 1986 to 1988 allow for various forms of hours of work management on condition that the average 42-hour work week is preserved.

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9. At the end of paragraph 57, add the following:

After abrogation of the above-mentioned Act, the Council of Ministers issued, on 21 February 1986, the Ordinance on Prolongation of Hours of Work in Some Establishments in the Years from 1986 to 1990 (Journal of Laws, No. 6, 1986, p. 34).

ARTICLE 8. TRADE UNION RIGHTS

10. At the end of paragraph 61, add the following:

On 24 July 1985, the Seym of the Polish People's Republic adopted the Act amending the Trade Unions Act and some other Acts determining trade union rights (Journal of Laws, No. 35, 1985, p. 162).

The amended Act is the result of work of the Committee established in March 1985 by the Chairman of the Council of State, in close co-operation with the trade unions, which expressed their opinion after wide consultation.

Proposed changes have also been examined in detail by two Seym committees, which have taken into account many observations, especially an opinion of the Socio-Economic Council. The Council has expressed a positive attitude towards the changes proposed and has submitted its own proposals, stating, inter alia, that "... separate regulations have been elaborated within limits of the legal order in force in the country and on the basis of the international instruments ratified by the Polish People's Republic".

11. Changes introduced by the Act aim at:

(a) Reinforcement of the trade union role as the representative of all the workers and not only the trade unions' members;

(b) An increase of the general trade unions' competencies and reinforcement of their influence on the functioning of certain state organs dealing with personnel problems;

(c) An increase of the control functions as regards observance of workers' rights and obligations;

(d) Regulation of certain organizational problems which might obstruct the integration of the trade union movement;

(e) Improvement of the co-operation of trade unions with the state administration organs;

(f) Reinforcement of the position of the trade union organization at the establishment level and protection of the employment relationship of trade union militants.

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12. In accordance with amended article 5 of the Act, trade unions represent the rights and interests of all the workers - not only their members. This provision reflects the existing situation because all the regulations respecting workers' rights and obligations are elaborated in co-operation with the trade unions.

13. The Act of 1982 emphasized the protective functions of trade unions, although it also included other tasks, however, without setting them forth in detail. Thus, the new Act determines (in article 6 a) the obligation of co-operation of the trade unions with managers of establishments and self-management organs acting in those establishments, in creating conditions favouring performance by establishments of their statutory tasks, promotion of technical and organizational progress, development of workers' innovative activity, improvement of the quality and productivity of labour, economic efficiency and occupational safety and health.

14. The new Act also determines trade union tasks in the fields of:

(a) Development and dissemination of culture and education, especially the creation and running of cultural institutions and centres in the workers' milieu;

(b) Organization and participation in the development and dissemination of physical culture, sport and recreation in the workers' milieu;

(c) Protection of workers' health (co-operation with social health service establishments and centres, especially with the industrial health service, supervision of the distribution of places in sanatoria and running of their own sanatoria);

(d) Social insurance and protection of pensioners.

15. Article 23, paragraph 3 of the Act establishes the new legal institution, emphasizing the participative function of trade unions, namely, agreements on co-operation in implementation of tasks listed in article 6. Parties to these agreements will determine methods and ways of implementation of trade union tasks.

16. The Act broadens the scope of trade union rights. The trade unions have been granted considerable influence on labour law and social insurance norms, as well as on the practice of application of those norms. Thus, trade unions are entitled to submit, through the All-Poland Consensus of Trade Unions, proposals on the issuing or amendment of legal provisions. The new Act partly modifies the procedure of examination by the trade unions of the governmental drafts of legal provisions, stating that the trade union opinion should be expressed in time prescribed by the state organ - in any case not shorter than one month (article 21, para. 4). That provision aims at shortening the procedure in this regard.

17. The all-Poland representation of trade unions has been granted the right to apply to the Supreme Court for a special review of final sentences in matters connected with labour law and social insurance, as well as the right to apply for formulating the guidelines and the legal practice and for explaining legal provisions raising doubts or divergences in judicature.

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18. The rule of law in labour relations is to be reinforced by increasing the control functions of trade unions. For implementation of these tasks the new Act establishes appropriate legal bases, which:

(a) Grant to the trade unions (at all the levels) the right of exercising the social inspection of the working and living conditions of workers and their families;

(b) Grant to the trade unions the right of supervising the social labour inspection, as well as the right of participation in the supervision of the State labour inspection activities. The trade unions will collaborate with other organs exercising supervision of the observation of the occupational safety and health provisions.

19. The new scope competence of the trade unions will also include the supervision of the activities of the Social Insurance Institute. This supervision will be exercised in accordance with principles determined in the separate legal provisions.

20. The new Act also governs certain organizational matters of the trade unions, namely:

(a) Foundation of the trade union in the multi-establishment enterprise;

(b) Change in the number of founding members of the trade union organization at the national level (30), as well as a trade union association workers of one establishment (10);

(c) Creation of the interestablishment trade union organizations for enterprises in which the small number of employed workers does not allow for creation of organizations at the establishment level (for example, in handicrafts and small industries);

(d) Determination of the over-establishment trade union structures at the national level. Such an organization can be established only by workers (uniform union) or trade unions (federation);

(e) Creation, on principles determined by the national inter-union organization, of the institution of co-operation of the unions functioning in a given region or in similar branches of activity for implementation of the trade union tasks. On this basis the All-Poland Consensus of Trade Unions has established the voivodship consensus of trade unions, which act as its local representation.

Among the provisions of the organizational character, articles 26 and 29 should be mentioned, which enable the trade unions to carry out economic activity for statutory purposes, as well as the organization of the research centres.

21. In the part of the Act dealing with trade union organizations (article 30), the amended Act states, inter alia, that union organization at the establishment level is the basic element of each trade union, functioning through its statutory

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organs. The system of remuneration in an establishment and rules of granting bonuses, as well as rules concerning employment, hours of work and vacations with pay are all determined in agreement with the union organization. In addition, agreement with the trade unions is also required in such matters as the establishment of principles of the utilization of the social and housing fund and the granting of benefits therefrom.

22. A new form of activity of the trade union organization at the establishment level will be appraisal of the situation in regard to the realization of workers' rights and social activity in a given establishment, which will be done in co-operation with the manager of an establishment at the initiative of trade unions. Appraisals should be carried out at least once a year.

23. The Act introduces new provisions respecting release from work for performing trade union social functions. It authorizes the Council of Ministers to determine the principle of releasing workers for this purpose, as well as the principle of retaining the right to remuneration for this period, in consultation with the inter-union organization at the national level. It should be emphasized that the trade union organization at the establishment level performs its tasks in the interest of the crew, the establishment as a whole and in the public interest. It justifies granting to members of the organization the right to paid release from work for performing statutory functions.

24. When regulating the protection of the employment relationship of trade union militants, the respective provisions of the Labour Code concerning trade union representatives and works council members have been taken into account (employment relationship protection during their term of activity and one year afterwards). And thus it was provided that an establishment cannot terminate a contract of employment in the case of a member of the board of the trade union organization at the establishment level during his term of activity or for the period of one year after its expiration unless there are grounds for terminating his contract without notice. If the trade union organization at the establishment level is a member of the trade union organization at the national level, the termination of the contract of employment requires, in accordance with the statute, the consent of the competent organ of that organization.

25. The special protection of the employment relationship comprises not only the prohibition of terminating the contract of employment, but also the prohibition of changing such a contract with respect to working or wage conditions to the detriment of a worker. The described protection also covers the workers fulfilling social functions in the organs of the trade union organization at the national and federation levels. Article 53 temporarily maintains the principle that "in the period determined by the Council of State, in one establishment one trade union organization shall function".

26. With regard to paragraph 79, as of 31 December 1985, there were 5.7 million trade union members, the great majority of whom were manual workers. Courts registered about 25,000 union organizations at the establishment level. The Voivodship Court in Warsaw registered 133 trade union organizations at the level above the establishment level, namely, the All-Poland Consensus of Trade Unions, 15 uniform union organizations at the national level and 117 federations.

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27. In the reporting period, the national union structures were reinforced, which gives the trade union movement full exercise of its statutory rights, especially the right to consult with the Government on the proposals to amend the pay system, as well as other matters influencing the living conditions of the working population in Poland, and to participate in Government decisions in these fields.

ARTICLE 9. RIGHT TO SOCIAL SECURITY

28. Although the economic situation of the country was unfavourable, efforts have been carried out to protect the living conditions of the working population, especially persons maintaining families and pensioners.

29. The following activities should be mentioned for 1985:

(a) Since 1 May 1985, family allowances have been increased for families with the lowest incomes and the nursing allowance has been increased for disabled children or children requiring special care (see para. 117);

(b) Since 1 March 1985, the level of pensions has been raised by increasing the basis of the calculation of the pensions. The increase of the basis was higher in the case of persons whose former basis of calculation was lower and vice versa. Pensions calculated on a basis exceeding 18,000 zlotys were not covered by the increase;

(c) On 1 January 1985, the principle of suspending pensions was changed for those who are employed or have income from other economic activity. The upper limit of earnings not causing a decrease in a benefit or its suspension has been increased. In addition, it is permitted to combine the right to a pension with unlimited earnings from part-time employment in cases where there are not enough manual workers in state enterprises.

30. Data in the table presented in paragraph 117 should be replaced by the following (see Journal of Laws, No. 9, 1986, p. 50):

(In zlotys)

<u>Average monthly per capita income in a family</u>	<u>Value of monthly family allowance per entitled person</u>
Up to 4 000	2 400
4 000-6 000	1 900
Over 6 000	1 300

31. The following changes were introduced on 1 March 1986:

(a) In the field of allowances for families, bringing up children, and nursing, as well as benefits from the alimony fund:

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- (i) Income limits on which the amount of the allowances depend have been increased;
- (ii) Rates of family and nursing allowances have been increased;
- (iii) For disabled children, the admissible limit of earnings has been increased from 2,700 to 14,000 zlotys monthly (incomes up to this limit do not cause loss of the right to the family and nursing allowance);
- (iv) The admissible limit of monthly earnings has also been increased to 14 000 zlotys in the case of an allowance for bringing up children (incomes up to this limit do not cause loss of the right to such an allowance) (see also para. 8);
- (v) The admissible limit of monthly earnings has been increased from 4,000 to 6,000 zlotys in the case of the right to benefits from the alimony fund (see also para. 120);

(b) The adjustment of the pension benefits has been started effective 1 March 1986. From this date, it will be carried out each year and it will consist of increasing the basis of benefits' calculation in proportion to the increase of the average wage in the socialized economy in the preceding year. The aim of the adjustment is to restore and maintain the real value of pensions, the value they had at the time they were granted. In the first year of adjustment, two increases in pension benefits are planned:

- (i) After 1 March 1986, there was an increase of 15 per cent of the basis of calculation of pensions granted before 1 January 1985 (this increase could not exceed 3,000 zlotys);
- (ii) After 1 September 1986, there will be an additional increase in those benefits granted before 1 January 1983 and, in particular cases, (for example, disability of group I, entitled persons who reach the age of 75) also those benefits which were granted during 1983. The increase will depend on the year of granting a pension and on the age, as well as the state of health of an entitled person. The increase will amount to from 6 to 20 per cent of the basis of calculation;

(c) The above described changes were introduced by the following legal acts (to be added at the end of para. 80):

- (a) Ordinance of the Council of Ministers of 6 March 1986 amending the Ordinance respecting the leaves for bringing up children (Journal of Laws, No. 9, p. 48);
- (b) Ordinance of the Minister of Labour, Wages and Social Affairs of 6 March 1986 amending the Ordinance on family and nursing allowances (Journal of Laws, No. 9, p. 59);

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- (c) Ordinance of the Minister of Labour, Wages and Social Affairs of 6 March 1986 determining the level of income entitling a person to the benefits from the alimony fund;
- (d) Ordinance of the Minister of Labour, Wages and Social Affairs and the Minister of Justice of 5 March 1986 amending the Ordinance on the benefits from the alimony fund (Journal of Laws, No. 9, p. 52);
- (e) Ordinance of the Council of Ministers of 23 April 1985 amending the Ordinance on leaves for bringing up children (Journal of Laws, No. 18, p. 80);
- (f) Ordinance of the Minister of Labour, Wages and Social Affairs of 25 March 1985 amending the Ordinance on family and nursing allowances (Journal of Laws, No. 15, p. 65);
- (g) Resolution No. 27 of the Council of Ministers of 4 March 1985 on increasing some pensions Official Gazette, No. 4, p. 29);
- (h) Ordinance of the Council of Ministers of 5 April 1985 amending the Ordinance on remuneration or other incomes of persons entitled to a pension (Journal of Laws, No. 21, p. 95);
- (i) Act of 30 January 1986 increasing pensions in 1986 (Journal of Laws, No. 1, p. 1);
- (j) Ordinance of the Council of Ministers of 30 January 1986 on detailed principles of adjustment of the pension benefits (Journal of Laws, No. 2, p. 14);
- (k) Ordinance of the Council of Ministers of 20 January 1986 on adjustment of the pension benefits paid to independent farmers and members of their families and on the amount of contributions for the Social Insurance Fund of Farmers (Journal of Laws, No. 2, p. 13).
