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Sixty-sixth session

SUMMARY RECORD OF THE 1767th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 20 July 1999, at 3 p.m.

Chairperson: Ms. MEDINA QUIROGA

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GE.99-43080 (E)

The meeting was called to order at 3.05 p.m.

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

Fourth periodic report of Romania (continued) (CCPR/C/95/Add.7; CCPR/C/66/Q/ROM/1/Rev.1)

1. At the invitation of the Chairperson, Mr. Diaconescu, Mr. Maxim, Ms. Tarcea, Ms. Brau, Mr. Attila, Mr. Moldovan, Ms. Sandru, Mr. Farcas and Mr. Pacuretu (Romania) resumed their places at the Committee table.

2. The CHAIRPERSON invited the Romanian delegation to reply to the additional questions raised by Committee members at the previous meeting.

3. Mr. DIACONESCU (Romania) thanked Committee members for their interesting questions which addressed the main social, political and civil problems facing Romania in its transition towards democracy.

4. Mr. MOLDOVAN (Romania) welcomed the remark made by one Committee member to the effect that things had certainly changed in Romania and people were no longer afraid to tell the truth. He was allowed under Romanian law to reply to questions in his capacity as Assistant People's Advocate (Deputy to the Ombudsman). The views he would express would not be the Government's, but those of an independent body.

5. Providing clarification on the power to legislate, he recalled that the new Constitution adopted in 1991 was based on the principle of the separation of powers. However, although a bicameral approach (with a senate and chamber of deputies) provided certain guarantees, it also made the process of adopting legislation very slow. The situation was compounded when Parliament was in recess. The problem had been resolved by delegating the power to legislate to the Government on such occasions by means of “ordinances”. Also, sometimes even while Parliament was in session, situations arose which called for the swift adoption of legislation, and so “emergency ordinances” were issued. They were not connected in any way with a state of emergency, but were simply instruments having the force of law that were adopted by the Government and entered into force immediately.

6. The previous year the Government had felt that the pace of reform must be accelerated and had issued an excessive number of ordinances - more than 200, prompting grave concern among politicians. Recently a draft law had been submitted by the President of the Senate setting forth the basic principles underlying such ordinances and specifying the circumstances in which they could be issued. Ordinances related to matters usually dealt with by ordinary laws, in other words, not human rights and freedoms, which were the subject of organic laws. The Constitutional Court was currently debating the issue of whether the Government should be allowed to issue ordinances during the summer recess.

7. Mr. DIACONESCU (Romania), providing information on the relationship between the prosecution service and other parts of the judicial system, explained that prior to 1991 the prosecution service had supposedly been an

independent body which provided judges with criminal files referred to it by civil and military prosecutors. In 1991, the Government had decided to run down the institution since it had impeded the reform of criminal procedure owing to its wide-ranging competence in such matters. For a number of reasons, it had been difficult to achieve that goal within a short time-frame, but he estimated that the institution would be disbanded in about one and a half years' time. At present, there were still close links between the institution and other bodies within the Judiciary.

8. Ms. TARCEA (Romania), clarifying the different roles of the Judiciary and the police during criminal proceedings, stressed that it was the prosecutors who brought charges against suspects and instituted court proceedings, while the relevant preliminary inquiries were conducted by the police. Only judges were empowered to hand down judgements. The rather complex system clearly had some shortcomings, which the Government was striving to deal with.

9. Replying to a question on the status of judges, she confirmed that Romanian judges earned considerably less than their counterparts in other European countries. Nonetheless, their salaries were still three or more times higher than those of other Romanian officials. At present there was a shortage of judges because suitably qualified candidates were attracted by potentially higher earnings as solicitors and advocates. From time to time the Ministry of Justice held national competitions to fill vacancies.

10. Mr. MOLDOVAN (Romania), responding to queries regarding the secret services, said that such services were subject to civilian control in a number of different ways. First, their activities were monitored by Parliament, through joint parliamentary committees comprising representatives of all political parties. In addition, the secret services were obliged to present annual reports to Parliament during a public hearing, which was broadcast live on national television. Those reports were subsequently published in the national press. A further safeguard was the fact that the Chief of the secret services was a civilian appointed by Parliament. Lastly, the Ombudsman was legally bound to verify the activities of the secret services and to follow up any alleged violations. For that purpose, the secret services were obliged to submit all their files to the Ombudsman on the understanding that their contents would remain confidential.

11. Mr. FARCAS (Romania) said that in its concluding observations on Romania's third periodic report, the Committee had expressed its concern about the status of the Covenant vis-à-vis Romanian legislation, in particular article 49 of the Constitution. As far as his Government was concerned, the hierarchy of the different legal norms in question was quite clear. The 1991 Constitution was the basic law of the nation and provided a general framework for the development of legislation in the field of human rights. According to article 20 of the Constitution, the provisions of international instruments took precedence over domestic legislation. Moreover, article 20 should be read in conjunction with article 11, whereby treaties ratified by Parliament became part of national law. So while the wording of some of the articles of the Constitution might be called into question, it was essential to focus on the implementation of legislation and how practice developed.

12. The Covenant had been cited in Romanian courts of law. The Legislative Council was responsible for reviewing national legislation to ensure its consistency with any modifications of international instruments, including the Covenant.

13. On the basis of articles 11 and 20 of the Constitution, a number of fundamental human rights and freedoms not explicitly referred to in the Romanian Constitution were guaranteed, having been effectively incorporated in domestic legislation through the ratification of the relevant international instruments. They included the Convention relating to the Status of Refugees (ratified in 1995) and the European Convention on the Protection of Human Rights (ratified in 1994). Since the European Convention provided for specific restrictions in the exercise of certain human rights and freedoms, its provisions could be invoked in the event of a challenge to Romanian legislation in that respect.

14. Mr. DIACONESCU (Romania), replying to a question by Mr. Lallah concerning military jurisdiction, said that military prosecutors and judges now had very limited jurisdiction in Romania, namely in cases involving offences committed by military personnel in connection with the discharge of their duty. They had no jurisdiction over civilians or in matters relating to State security and administration. It was likely that the military courts would eventually be disbanded, once the long, arduous process of the reform of the criminal justice system was complete. However, for the time being, their activities were very limited and closely monitored by the administrative staff of the Ministry of Justice, and controlled by means of appropriate amendments to the Code of Criminal Procedure. He would emphasize that prosecutors were not magistrates. Moreover, it was worth noting that the concept of “prisoners” did not exist under Romanian law, which recognized only two categories: persons held in detention pending or during court proceedings and offenders. The former category benefited from special protection from the time of their arrest, including proper legal representation.

15. Ms. SANDRU, responding to comments regarding the police, stressed first and foremost that although there were cases of abuse by Romanian police officers, they were not systematic. Where allegations of abuse were substantiated in a court of law, the police officers concerned were duly convicted. Moreover, even before sentencing, police found guilty of such violations were liable to appropriate disciplinary and administrative penalties.

16. In an effort to reduce the incidence of police abuse, the Ministry of the Interior was laying greater emphasis on human rights education. The subject now formed part of the regular curriculum at the police academy, and special courses were organized on a regular basis for working police officers. The Ministry also issued information brochures dealing with the type of problems often faced by police officers which made reference to the provisions of relevant international human rights instruments.

17. Ms. TARCEA (Romania) said that people could be detained in custody for a period of up to 24 hours if they were suspected of having committed an offence in connection with which the police had already begun inquiries. Where there was a risk that a detainee might try to escape, the initial period

of detention could be extended by a prosecutor, for a period of up to 30 days. Detainees were entitled to appeal against that decision. Any further extension must be ordered by a judge, in accordance with article 145 of the Code of Criminal Procedure.

18. Mr. DIACONESCU (Romania) said it was important to remember that by law any person held in detention must be informed immediately of the grounds of his arrest and be guaranteed adequate legal representation. The average period of pre-trial detention was between 24 and 30 days.

19. Ms. TARCEA (Romania), replying to a question by Ms. Evatt, said that the Higher Council of the Magistracy formed part of the Judiciary. Its members were not appointed solely by the Ministry of Justice but also, and in equal measure, by the Prosecutor-General and the Supreme Court. Their appointment was confirmed by Parliament. It was a body which was completely independent of the Executive and not influenced in any way by the Prosecutor-General or President of the Supreme Court.

20. Ms. SANDRU (Romania), in response to a question raised by Ms. Evatt as to the discrepancy between the increased participation of women in social life and the low level of their representation in political life, said that even in the international arena the movement towards the greater empowerment of women and towards greater recognition of their rights was of comparatively recent date. In a country which was still in the process of transforming itself from a State controlled system into a democracy, the situation was particularly difficult. In times of economic constraint it was traditionally the woman, not the man, who assumed additional family responsibilities, and in the same way it was traditionally men rather than women who tended to become involved in politics. In traditional societies, political life was often characterized by toughness and aggressiveness, qualities which women sometimes lacked. A change in attitude on the part of both sides was therefore needed, and that would take time.

21. It was important to make women aware of their rights and to encourage them to achieve a higher level of political representation. Civil society in Romania was still in its infancy and needed to be further developed. However, she was glad to say that the number of NGOs active in the field of women's rights and human rights generally had increased considerably over the past nine years.

22. On the question of the quota mechanism, elections in Romania were conducted on the basis of lists of candidates put forward by the parties, and it was thus important that as many women candidates as possible should stand. While a greater number of women were now joining political parties, there were still very few in senior positions. Most parties had created their own women's organizations, but those organizations were still weak and tended to be cut off from the rest of society. It was noteworthy that in the elections of 1992 and 1996 women candidates had, in general, not been supported by women voters. Measures would therefore have to be taken to increase public awareness. In that connection, the role played by international organizations was of great importance: the United Nations Development Programme (UNDP), for instance, had organized a number of projects which had contributed significantly towards women's empowerment.

23. Although there was no specific law making domestic violence a punishable offence, provisions covering violence within the family were included in the Penal Code, and women could seek protection through court orders. The problem was that at present a complaint by the victim was required before a criminal investigation could be initiated. That situation would be remedied by a bill currently before Parliament providing that investigations could be initiated without a previous complaint.

24. Mr. DIACONESCU (Romania) said that there had been cases of abuse by individual police officers, all of which had been investigated. Such cases were infringements of the law and were treated as such, with all the usual consequences. It was not in fact "the practice" in Romania to hold persons in pre-trial detention in police stations: it was against the law to hold someone even for an hour without a formal charge. More training for the police in the proper use of their powers would help to overcome the problem, although fortunately individual cases of abuse were becoming less and less frequent.

25. Ms. TARCEA (Romania) said that in cases where police conduct involved human rights violations, the Penal Code was applied. Unlawful detention and abusive inquiries were punishable under article 266 of the Code. In addition, ill-treatment of an arrested or detained person and torture during an inquiry were punishable under article 267. Between 1 January 1996 and 30 June 1999, 664 police officers had been charged with offences, and 240 had been convicted. The sentences imposed had ranged from 2 to 15 years' imprisonment. Confessions made under torture were considered invalid and could not be used to incriminate anyone.

26. Mr. DIACONESCU (Romania), in reply to the question raised by Mr. Scheinin, said that the State did not have any kind of political attitude towards particular social groups. As he had said earlier, the authorities had set up a number of committees and working groups in order to involve as many people as possible from different sectors of society in the search for a solution to the problem of discrimination against minorities. The problem lay not only in the attitude of one social group towards another, or in the attitude of the police towards the Roma, but also in the lack of education, financial resources and employment in the country generally. However, the Government was grateful to the NGOs for bringing to their attention a number of issues which would need to be tackled.

27. On the subject of homosexuality, he said that the Ministry of Justice had just submitted to Parliament a bill which had reached the stage of second reading. It had not yet been adopted, simply because there had not been enough members present to permit a vote to be taken. Under the bill, homosexuality in itself would not be an offence: only such actions as forcible intercourse with minors would be punishable.

28. Mr. MOLDOVAN (Romania), in reply to a question raised by Mr. Bhagwati, said that, under article 14 of the Ombudsman Act, the Ombudsman was empowered to take action ex officio. Article 14 also provided that complaints could be filed by legal persons, for instance human rights NGOs, as well as by individuals. The Ombudsman was not empowered to appear in court on behalf of a complainant, although he could in certain instances refer complaints to the

Public Prosecutor or to the Higher Council of the Magistracy. That situation was due to the fact that in Romania great emphasis was laid on the principle of separation of powers. The Judiciary had to be seen to be completely independent, and not even the Ombudsman was permitted to interfere in the judicial process.

29. Mr. DIACONESCU (Romania), in reply to a question on the role of the Ministry of Justice inspectors, said that they were ex-judges whose role was to monitor court proceedings and to see, for instance, whether the training of judges in certain courts needed to be improved. Although they could make suggestions, and were sometimes able to speed up proceedings, they had no powers as far as court rulings were concerned. Judges now received better salaries than in the past, to take into account the fact that young lawyers were often reluctant to enter public service because of the greater attractions of the free market. In answer to a further question, he said that legal aid was provided by the Ministry of Justice to persons unable to afford a lawyer.

30. Mr. FARCAS (Romania) said that so far there had been no decision by the Constitutional Court restricting the implementation of any international human rights instrument in Romania. With reference to Mr. Kretzmer's question on paragraphs 15 and 16 of the report, he pointed out that paragraph 58 (g) stated that the use of torture or inhuman or degrading treatment or punishment was formally prohibited under the Constitution and the Code of Criminal Procedure. Paragraph 59 stated, though perhaps not very clearly, that any confession extracted by torture or by other illegal means was null and void, and that even a normal confession was not considered conclusive unless corroborated by other evidence.

31. Concerning the reference to defamation of the country in article 3 of the Constitution, he said that no bill had yet been introduced limiting freedom of expression. Several bills concerning press freedom had been drafted, but they had not acquired the status of law.

32. On the question of the prohibition of secret associations, the intent of the relevant article of the Constitution was to ensure that all associations were registered as such. While political parties were regulated by a law enacted in 1996, associations which were not of a political nature were regulated by a law of 1924, which was in fact very permissive.

33. Ms. CHANET thanked the Romanian delegation for its replies. However, in view of the fact that the delegation included a representative of the Ministry of Justice and that Romania had acceded to the European Convention on Human Rights, she would have hoped to obtain early replies in writing to her questions on technical points. She had been somewhat surprised to hear that “persons who had committed an offence” would be arrested: it would be better to use the formula “persons under suspicion”, so that the individual concerned could benefit from presumption of innocence.

34. Neither the European Convention nor the Covenant prohibited the arrest of a suspect for a period of 24 hours. However, she would still appreciate information on the status of arrested persons. Were they detained incommunicado for the entire 24 hours? At what time during that period was

contact with a lawyer permitted? And was provision made for a medical examination? She would also like to know whether the 30-day detention order was issued by the prosecutor, and whether detention for such a period was renewable.

35. Mr. BHAGWATI, on the question of the Ministry of Justice inspectors, said that in his view it was not desirable for representatives of a ministry to be empowered to monitor court proceedings, since that would impinge on the independence of the Judiciary. He would appreciate clarification as to how the members of the Higher Council of the Magistracy were appointed. Was there a time limit within which Parliament had to give its approval to emergency ordinances? Lastly, were decisions of the Human Rights Committee routinely distributed to judges?

36. Mr. DIACONESCU (Romania) apologized for any confusion that might have arisen as a result of his delegation's use of the terms “detention” and “arrest”. A suspect detained for a short period became an “accused person” after a detention order was issued by the judge or prosecutor. As already explained, any person detained or arrested was immediately entitled to consult a lawyer and contact his/her family. Every person taken into custody had to undergo a medical examination. The arresting police officer or the prosecutor had to complete a document stating the reasons for arrest, the precise time and, where appropriate, the time of release. The document had to be signed by the detained person or his/her lawyer.

37. Mr. MOLDOVAN (Romania), replying to a question asked by Mr. Bhagwati, said that if the enabling law so required, Parliament had to approve the ordinance before the expiry of the enabling law. In the absence of a specific provision, the parliamentary approval procedure was not subject to any time limit.

38. The CHAIRPERSON invited the Romanian delegation to reply to questions in the second part of the list of issues.

39. Ms. TARCEA (Romania), replying to questions 11 and 12, said that article 27 of the Romanian Constitution had three paragraphs, the first establishing the principle of the inviolability of the home, the second listing possible exceptions and the third setting out the conditions for the application of the second paragraph. Since the search of a residence without a warrant was prohibited subject only to some clearly defined exceptions, the provision was considered to be in conformity with article 17 of the Covenant.

40. With regard to the treatment of homosexuals, she said that, as was well known, the old regime in Romania had been extremely intolerant of unorthodox sexual conduct of any kind. As a first step, the Constitutional Court had, in July 1994, decided to declare unconstitutional paragraph (1) of article 200 of the Penal Code applicable to homosexual acts committed between consenting adults in private. Only acts committed in public and likely to cause a public outcry were now punishable. No precise definition of the concept of “public outcry” had, however, been arrived at to date because attitudes in such matters were resistant to change. A bill for the repeal of article 200 (1) of the Penal Code had been placed before Parliament in 1998 but had been rejected after extensive debate. The 99 persons convicted for homosexual acts in

June 1999 had been charged not under article 200 (1), but with homosexual relations between an adult and a child (art. 200 (2)) or with homosexual relations between non-consenting adults (art. 200 (3)).

41. Mr. MOLDOVAN (Romania), replying to question 13 relating to freedom of religion, said that the recognition or non-recognition of a religious denomination did not affect the individual's freedom of worship, which was clearly and unambiguously proclaimed by the Constitution. The purpose of registration was to provide Churches or religious associations with a legal personality enabling them to have official premises of their own, hold meetings, issue publications, operate private broadcasting stations, etc. A number of religions which had been considered illegal and whose members had been persecuted under the old regime had now been formally recognized by the State Secretariat for Religious Affairs; they included, for example, the Old-Style Orthodox Church (25,000 members) and the Jehovah's Witnesses (22,000). The breakdown of the population as a whole according to religious persuasion was as follows: Romanian Orthodox Church, 86.8 per cent; Roman Catholic Church, 5 per cent; Reformed Church, 3.5 per cent; Greek Catholic Church, 1 per cent; Pentecostal Church, 1 per cent; Muslims, 0.2 per cent, plus smaller numbers of Christian and Mosaic Believers. The criteria for recognition included having a statute in accordance with the Constitution and consistency with general morality and public order. The only two religious associations denied recognition to date were “The Family” and the “Church of Love”, whose applications had been rejected because their statutes contained provisions entailing a potential danger to public morals. If those provisions were modified, the decision would no doubt be reversed.

42. It should be noted that more than 700 religious groups had by now been recognized by the State Secretariat for Religious Affairs. They included a number of interdenominational groups, such as the Romanian Bible Society and the Evangelical Alliance, as well as a number of religions new to Romania, such as the Baha'i, the Methodists, the Presbyterians and the Mormons.

43. Lastly, replying to the question concerning new legislation, he said that although Decree No. 177 of 1948 and some other legislation dating back to the Communist era still remained in force, their provisions were no longer applicable. No new legislation had been adopted as yet, but the State Secretariat had drafted the basic text of a new law which had been submitted to the country's major religious associations and to NGOs active in the field of religious freedom, such as Human Rights Watch. An enormous number of amendments had been submitted and certain differences still remained unresolved, so that it had not yet been possible to place the draft before Parliament. It was hoped, however, that the new bill would be presented to Parliament for adoption in the not too distant future.

44. Mr. DIACONESCU (Romania) said that a list of officially recognized denominations would be provided in writing. Turning to question 14, he said that charges arising from the defamation provisions of the Penal Code represent a typical reflection of a society in transition. A detailed discussion of the problem would take too long, and he would confine himself to saying that a law amending the existing provisions was already before

Parliament. Question 15 concerning political parties had already been answered. The text of the new law adopted by Parliament could be provided on request.

45. Mr. MOLDOVAN (Romania) said that question 16 raised one of Romania's most sensitive issues. Although the great majority of Romanian children were living in a normal family environment, the proportion of minors in need was still far too high. Thus, there had been 84,000 children in institutions in 1993, 104,000 in 1994 and 98,000 in 1997, when a new policy of promoting foster care had been adopted, with the result that the number of children placed in foster families had risen from about 11,000 in 1996 to 44,000 in 1998.

46. The number of street children countrywide was estimated at 4,300, including 2,000 living in the streets all the time; 6 per cent of all street children had never lived anywhere else. Children from normal families accounted for 42 per cent of street children, while 35 per cent came from single-parent or otherwise dysfunctional families. In terms of education, 45 per cent of street children had had less than 4 years of schooling, 35 per cent between 5 and 8 years, and 20 per cent had received no schooling whatsoever. The breakdown by age was: 38 per cent between 14 and 18, 35 per cent between 11 and 13, 15 per cent between 7 and 10, and 5 per cent under 10. Half of the street children had never had contact with their families and 67 per cent of the other half described the relationship with their families as “very bad”. Children abandoned by their parents in hospitals, often under a false name, represented another serious problem, especially from the point of view of schooling. As to children in conflict with the law, the figures provided earlier covered those placed in reform schools as well as those in prison, the great majority of the children concerned coming from rural areas.

47. Although the number of government agencies and NGOs working on problems involving children, especially street children, was steadily growing, no significant improvement had as yet been achieved. Possible solutions included improving social services and child protection agencies at the district level, helping poor families to keep their children at home, enhancing the responsibility of teachers, developing social services at the NGO level, providing shelters and day centres for street children, imposing penalties for violence within the family, and providing special social services for street children aged over 16 in an effort to forestall the emergence of a second generation of street children born in the streets.

48. Mr. DIACONESCU (Romania) said that figures relating to question 16 would be supplied in writing.

49. Mr. ATTILA (Romania), replying to question 17, said that the Council for National Minorities set up as a consultative body in 1993 had seen its name changed to “Council of National Minorities” after the 1996 elections to reflect the fact that its membership was now composed of representatives of national minority organizations. A Department for the Protection of National Minorities had been set up within the Government in 1997 and included a National Office for Roma, in addition to five offices in the regions where

most of the minorities were living. The Department and the Council were in permanent collaboration with each other and most problems were discussed at joint meetings.

50. So far as the legislative framework was concerned, the new Education Act included provisions designed to promote learning in the mother tongue at high-school and university level, as well as other provisions designed to enhance the rights of national minorities in the field of education. Legislation had also been enacted in relation to the restitution of property to national minorities (Jewish, Hungarian, German and other), and a start had already been made on returning buildings and other property to those communities. The Department for the Protection of National Minorities had also prepared draft laws on the use of the mother tongue in dealings with local authorities and had embarked on the drafting of a law on the elimination of all forms of discrimination, whose provisions would extend not only to minorities but also to sectors of society such as children, women, persons with an unorthodox sexual orientation, etc. Work was in progress on the procedure for the ratification of the European Charter for Regional and Minority Languages, and a multidisciplinary research institute on minorities was to be established shortly.

51. In response to paragraph 18 of the list of issues, he said that the Department for the Protection of National Minorities took the view that the problems of the Roma minority were multidimensional. The ethnic aspect was compounded by problems relating, for example, to health, social safeguards and education. A Sub-Committee for the Roma had therefore been set up within the Inter-ministerial Committee for National Minorities to develop a national strategy for Roma communities. A special funding programme for pilot projects in the areas of health care, social integration and education had been launched in June 1999. In addition, most projects financed by the budgetary fund and inspired by the European campaign against racism and intolerance focused on Roma issues.

52. There were no legal restrictions on Roma participation in civil society, for example in politics and education. Over 50 Roma NGOs and other bodies dealing with Roma issues were active in Romania. In addition to holding a seat in the Chamber of Deputies, the Roma Party had 137 local councillors, 21 county councillors and 1 mayor. Roma students were admitted on a preferential basis to such branches of higher education as social assistance and teacher training. The private sector was the main culprit in cases of discrimination in employment. That problem would be addressed in the bill on the elimination of all forms of discrimination, which would make such conduct a punishable offence.

53. Most international treaties, including the Covenant, had been translated into the major minority languages - Hungarian, German, Ukrainian, etc., a project that had been supported by the Department for the Protection of National Minorities and NGOs. Although it had been impossible to solve all minority problems within the short period since the establishment of the Department, he hoped the Committee would agree that the progress achieved in recent years augured well for the future.

54. Mr. FARCAS (Romania), responding to paragraph 19 of the list of issues, said that the third periodic report and the Committee's conclusions and recommendations thereon had received extensive media coverage and prompted the public authorities to initiate changes in existing institutions and public practice. As a rule, the periodic reports were prepared jointly by a number of different departments and ministries, including the Ministry of Justice, the Ministry of the Interior, the State Secretariat for Religious Worship, the Department for the Protection of Children and the Department for the Protection of National Minorities, all of which later discussed the Committee's conclusions and recommendations. The media and interested NGOs would be directly involved in informing Romanian public opinion of the results of the present exercise. The Committee's general comments were also greatly appreciated. In particular, the Department for the Protection of National Minorities had drawn heavily on the principles laid down in general comment 23 relating to article 27.

55. Mr. YALDEN said the Committee was pleased to discuss the Covenant with such a well-informed delegation. The report by the Assistant People's Advocate had been particularly interesting. He hoped that when the new bill on homosexual rights was presented in Parliament in the autumn, there would be a quorum of members present. He asked for more detailed information, in writing if necessary, about the return of property to religious groups, particularly the Greek Catholic Church.

56. With regard to conscientious objectors, the 24-month period of alternative service, compared with a 12-month period of military service, must be regarded as punitive. Were there any plans to change the existing legislation? The long list of recognized religious groups did not seem to include the Jehovah's Witnesses, who had allegedly suffered discrimination in Romania.

57. The Committee's previous conclusions and recommendations had underlined the serious situation of the Roma. According to recent reports by the Special Rapporteur of the Commission on Human Rights on contemporary forms of racism, racial discrimination and xenophobia, the Council of Europe, the European Union, Human Rights Watch and Amnesty International, the situation had not changed. The figures for participation by the Roma in education, and particularly schooling in the Roma language, were very low. He asked what specific practical steps were being taken to address the problem. Was it true that no action had been taken on complaints brought to the attention of the prosecution service by the Department for the Protection of National Minorities? He wished to know how many complaints of discrimination the Ombudsman had received from members of minority groups, particularly the Roma, and what steps had been taken to address the issues they raised.

58. Mr. KLEIN said he was grateful to the delegation for its comprehensive replies to the Committee's questions. Although the provisions of the Penal Code concerning defamation were to be amended, they were still lex lata and incompatible with the provisions of the Covenant. He was concerned that the provision of article 31 (4) of the Constitution requiring the media to provide correct information to the public could be used to suppress criticism of the Government. Freedom of the press and the media in general was an essential means of safeguarding democracy in an open society.

59. He had doubts about the composition of the National Broadcasting Council, which supervised broadcasting in Romania. Members were apparently designated by the President, Parliament and the Government. There should be some provision for representation of opposition parties and minority groups to ensure the independence of the mass media.

60. He noted that the brochure on the Romanian education system that the delegation had circulated made no mention of language education for the Roma and Sinti minorities.

61. He inquired about the status of persons who had returned to Romania after the change of regime, many of whom had belonged to ethnic minorities. Had the returnees recovered confiscated property? Had those who had been forced to pay official fees and bribes to leave the country been granted compensation? Were minorities authorized to accept foreign financial aid, for example from Hungary or Germany?

62. Mr. KRETZMER said that, although article 31 of the Constitution guaranteed free access to information, NGO sources claimed that there were no legal mechanisms to enforce that right. He asked whether citizens had an enforceable right to obtain information. Was there provision for access to information regarding the files of the security services under the former totalitarian regime and, if so, under what conditions?

63. In its replies to questions from the Committee concerning the third periodic report, the Romanian delegation had stated that the activities of certain anti-Semitic and xenophobic groups represented a danger to the country's stability. Had there been any cases of prosecution for racial incitement?

64. The organizers of public assemblies or demonstrations in Romania were required to inform the local authorities who, according to paragraph 204 of the report, could prohibit the event under certain circumstances. Could that decision be challenged in the courts with sufficient dispatch to enable the ban to be lifted in time?

65. Mr. SCHEININ said that article 24 of the Covenant imposed a clear obligation on States parties to take affirmative action to promote children's rights. Moreover, article 24, paragraph 1, stipulated that every child must be registered immediately after birth and given a name.

66. To what extent was education for minorities still based on the notion of assimilation? Were minority languages recognized as having intrinsic value? He stressed that the State had a duty to protect the linguistic identity of minority groups.

67. Following considerable discussion, the tide of opinion among the Romanian public authorities had recently turned against the idea of a Hungarian-language university. Could the delegation account for the sudden change in policy on that issue and when was a final decision expected?

68. Mr. AMOR said he was pleased with the delegation's comprehensive and precise responses to the Committee's questions. Romania was still in a transitional period but it was clearly determined to press ahead with the requisite reforms.

69. With reference to the bill on religious freedom that had been drafted in 1993 at a time when many Eastern and Central European countries had been opening up to new religions, he wondered whether the waning of enthusiasm for more liberal legislation was related to experiences in countries such as the Russian Federation. The latest version of the Romanian bill had been compared unfavourably by independent observers with the earlier draft. He urged the authorities to speed up the enactment of appropriate legislation, especially since Decree No. 77 of 1948 was still on the statute book and could be used for improper purposes.

70. He asked whether reports that children received religious education against the wishes of their parents were well-founded. The return of property to the Orthodox Church had initially proceeded apace but had then slowed dramatically. Was the property in question being used for public purposes or were there other reasons for holding up the restitution process? Could political parties be founded on religious principles? Was there a clear separation between religious and political activity?

71. Article 20 (2) of the Constitution stated clearly that international treaties took precedence over internal legislation, while article 20 (1) stipulated that the Constitution was to be interpreted in the light of such treaties. He wondered in that case whether article 4, paragraph 2, of the Covenant, which prohibited restrictions on certain rights, even in times of public emergency, could be considered to have constitutional force in Romania.

72. Mr. POCAR said he appreciated the enormous progress that had been made in the realization of human rights in Romania in recent years, particularly since the State party's submission of its second periodic report.

73. The fact that a number of bills submitted by the Government had been rejected indicated that in some cases the Government's reforming zeal was not matched by parliamentary or public opinion. The Committee had encouraged the Government, in its conclusions and recommendations on the third periodic report, to adopt a more vigorous approach in opposing such attitudes. The fact that bills were not adopted did not absolve the State party from its obligations under the Covenant, for example in the area of freedom of expression. He sincerely hoped that the new bill dealing with that subject would be adopted in the autumn and that it would abolish the jurisdiction of military courts in cases pertaining to freedom of expression. He feared that the restrictions on freedom of expression allowed under the Constitution, especially articles 30, 31 and 49, were wider than those permissible under the Covenant. If the new bill incorporated those restrictions, it might not fully comply with the Covenant.

74. He was not convinced that the practice of registering religious groups was compatible with the provisions of the Covenant. Article 18, paragraph 3, allowed States parties to impose certain restrictions on the way religions or beliefs were manifested but the exercise of preventive control through

non-registration of a new religious group was an unacceptable restriction on freedom of opinion. Presumably the former Romanian regime had viewed freedom of conscience as a potential danger to the State but its methods should now be abandoned.

75. Ms. EVATT thanked the delegation for its extensive replies. She asked whether the repeal of the legislation restricting freedom of expression would lead to the immediate release of imprisoned journalists. According to paragraph 241 of the report, religious education was a compulsory subject in primary education under the Education Act and was organized on the basis of different religions. Was there any provision for students to be exempted from religious education?

76. The CHAIRPERSON invited the delegation to respond to the Committee's questions at the following meeting.

The meeting rose at 5.55 p.m.