UNITED NATIONS

CCPR

International covenant on civil and political rights

Distr.
GENERAL

CCPR/C/SR.1632
24 March l998

ENGLISH
Original: FRENCH

HUMAN RIGHTS COMMITTEE

Sixty-first session

SUMMARY RECORD OF THE 1632nd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 30 October 1997, at 10 a.m.

Chairperson: Ms. CHANET
later: Ms. MEDINA QUIROGA
later: Ms. CHANET

CONTENTS

GE.97-18897 (E)

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 Belarus (HRI/CORE/1/Add.70, CCPR/C/84/Add.4, CCPR/C/84/Add.7, CCPR/C/61/Q/BEL/3)

At the invitation of the Chairperson, Ms. Mazai, Mr. Agurtsou, Mr. Andreev, Ms. Drozd, Mr. Kolas, Ms. Kupchyna and Mr. Scherbau (Belarus) took places at the Committee table.

1. Ms. MAZAI (Belarus), Deputy Minister for Foreign Affairs, introduced the fourth periodic report of Belarus (CCPR/C/84/Add.4), together with a supplementary report (CCPR/C/84/Add.7), the two reports corresponding to the years 1992 to 1997, which constituted the most recent history of Belarus as an independent State. During that period, the country had laid the foundations for the democratic structures of a youthful State by creating and developing new institutions unknown to it several years previously. Belorusian society had gone through a difficult process of becoming aware of its national and linguistic culture while endeavouring to maintain its stability. Belarus had no national or religious conflicts and enjoyed friendly relations with all neighbouring States. The complex problem of border delimitation common to nearly all the republics of the former Soviet Union had been settled in a spirit of good neighbourliness and respect for international standards.

2. The adoption of the Constitution in March 1994 had been a major step towards democracy, but the lack of experience and the absence of parliamentary traditions had created problems typical of the post-Soviet era, with clashes between the executive and the legislative branches. On the initiative of the President of the Republic, a national referendum on amendments and changes to the 1994 Constitution had taken place in November 1996. More than 70 per cent of the electors had endorsed the draft amendments submitted by the President, thus avoiding a crisis. It was to be noted that Belarus did not take its Constitution for granted as something to be kept unchanged, but as a text which could still be improved on the basis of recommendations from international missions and bodies.

3. The Constitution of Belarus reinforced the principle of the supremacy of law and guaranteed human rights and fundamental freedoms, which it regarded as essential values. In that spirit, Belarus had already adopted and continued to adopt legislation to guarantee the exercise of human rights in all spheres. During the five-year period following the submission of its third periodic report, laws had been adopted on nationality, aliens and stateless persons, entering or leaving the country, the militia, the constitutional courts, the status of judges, the press and other media, political parties, associations, trade unions, citizens, the procurator system, the rights of children, freedom of religion, national minorities, refugees and other matters. Belarus was also working on a bill providing for the possibility of conscientious objection. From now on, persons who refused to do their military service on the grounds that they could not participate in military activities could perform a service independent of such activities.

4. The members of the Committee were aware that such measures must have their roots in a society that was conscious of its rights. During the Soviet period, State and society had been based on completely different principles, a different political and legal culture and other traditions, and Belarus still had a long way to go before every citizen could regard himself as actively entitled to rights and freedoms. The Belorusian people's conception of the law had to change, as did the legal culture of society and the attitude of those who helped ensure respect for and the protection of human rights in the exercise of their responsibilities.

5. During the past five years, far-reaching changes had taken place in those areas. The population had become aware of human rights and people exercised their rights more actively. The population was beginning to understand that legal institutions were bodies set up to protect their rights and fundamental freedoms. Bodies that exercised authority were more and more widely regarded as operating on the basis of the law.

6. Attention should be drawn to the educational efforts that had been made: human rights were taught in secondary schools, in institutes of advanced studies and in two universities. In the context of the celebration of the fiftieth anniversary of the Universal Declaration of Human Rights, various demonstrations had been organized for educational purposes for various vocational groups and sectors of the population. The year 1998 would be declared Human Rights Year in the Republic of Belarus and parliamentary sessions would be devoted to the subject. A bill on human rights teaching had received the automatic support of the President and would be considered by Parliament.

7. Belarus was ready to discuss human rights issues in the context of an open and constructive dialogue. The Government wished to welcome all foreign missions and delegations and give them access to information. They could meet the official authorities and the representatives of the non-governmental sector and visit prisons, psychiatric hospitals and other establishments which might be of interest to them. It was true that it was never easy to make a simple transition from a totalitarian regime to democracy without conflict.

8. That transition was also affected by the repercussions of a difficult economic situation owing to the loss of the country's traditional economic links with the former Soviet Union and the establishment of new economic systems based on market mechanisms. Many economic difficulties were linked to the eradication of the consequences of the Chernobyl catastrophe, which, 10 years later, was still swallowing up 20 per cent of the country's budget. It was undeniable that Belarus was experiencing considerable difficulties in making human rights a reality, but it was doing its best to overcome them. The shortcomings typical of a young democracy were inevitable at its current stage of development, but the Republic of Belarus considered that with the democratic reforms which were the Government's central and essential priority, the difficulties could be eliminated.

9. The CHAIRPERSON invited the delegation to reply to the questions raised in the list of issues to be taken up in connection with the consideration of the fourth periodic report of Belarus (CCPR/C/61/Q/BEL/3).

10. Ms. MAZAI (Belarus), replying to the question in paragraph 1, said that, during the preparation of the fourth periodic report, the Government had held consultations with non-governmental organizations, to which the text of the report had subsequently been sent. A special pamphlet to present the report had been published and distributed in the national and university libraries, with an explanatory note. Before the Committee considered the report, the authorities had drawn the attention of the press to it and the Ministry of Foreign Affairs had organized a briefing in September 1997. As far as the possibility of taking part in the work of the Committee and submitting information in writing was concerned, it should be pointed out that the Government of Belarus had certainly not prevented the non-governmental organizations from doing so.

11. Mr. SCHERBAU (Belarus), replying to the questions in paragraph 2 on the death penalty said that, when the national referendum had been held on 24 November 1996, the question of the abolition of the death penalty had been raised, but only 17 per cent of the electorate had been in favour. Any comment was therefore premature. However, the Government was taking specific steps to abolish the death penalty in the near future and, with that in mind, the number of crimes carrying the death penalty had been considerably reduced in the draft Penal Code under consideration by the Assembly. Although the current Penal Code contained 30 articles which provided for the death penalty, the draft contained 13 on: the preparation and launching of a war of aggression, acts of terrorism against the representative of another State, international terrorism, genocide, crimes against the security of mankind, the use of prohibited methods and means of war, the violation of the laws of war, homicide, overthrow of the Government, acts of terrorism, hijacking and murder of a police officer. In the new Penal Code, only crimes against life carried the death penalty, which could not be applied to persons aged under 18, to women or to men aged over 65. The death penalty was to be replaced by life imprisonment.

12. Statistics for the implementation of the death penalty were the following: between 1990 and the first half of 1997, 192 persons had been sentenced to death, 5 of whom had been pardoned; 17 persons sentenced to death during the first half of 1997 had submitted applications for clemency, which were being considered by the Presidential Pardon Committee, and 170 persons remained under sentence of death. During that period, 12 persons sentenced to death in 1989 had been executed. It should be noted that the Supreme Court had handed down three commutations of sentence in 1994 and a further three in 1995, four in 1996 and six in 1997. In all, only 7 per cent of the death sentences had been followed by executions.

13. Replying to the questions contained in paragraph 3 on the ill-treatment of the person, he said that the Penal Code did not consider torture or cruel and inhuman punishment as specific crimes. Those acts all came under article 167 of the Penal Code on the abuse of power. In all such cases, the Ministry of Internal Affairs carried out investigations and then transmitted the file to the Procurator. Under article 167 of the Penal Code, the courts had heard 42 cases involving 57 persons in 1995, 46 cases involving 68 persons in 1996 and 45 cases involving 61 persons in 1997. Approximately 90 per cent of the criminal complaints filed for abuse of power had led to inquiries concerning police officers and in 90 per cent of the cases a sentence had been

handed down. Every year, several dozen militia members or policemen had been sentenced for abuse of authority. The majority of the cases were the subject of a disciplinary inquiry only and involved the militia. Two or three thousand militia members or policemen were implicated for abuse of authority every year. For example, in one district of Belarus, 361 members of the police had been sentenced in 1996, including 241 officers.

14. Mr. KOLAS (Belarus), replying to the questions on the use of weapons by the police and security forces (para. 4), said that the use of weapons by the police was governed by articles 18 and 21 of the Militia Act. The militia used firearms if there was no alternative and only after giving a warning. Weapons could be used against pregnant women, minors and disabled persons only if they had committed armed aggression or other acts threatening the life and health of individuals. When it was impossible to avoid the use of firearms, members of the police had to try to keep injuries to a minimum and ensure that the victims received medical care.

15. According to the Act, firearms could be used in the following cases: to protect citizens and in self-defence in situations which could lead to death or threatened health, to free hostages, to prevent acts jeopardizing the life, health or property of persons, to restrain persons who had committed dangerous acts or to prevent their escape and to prevent an armed attack against protected structures or to prevent the destruction of other structures or sites, against persons who had put up resistance or had tried to escape or against any armed person who refused to hand over the weapon he was carrying.

16. Statistics on the use of firearms by the police were the following: in 1993, 685 cases of the use of firearms had been recorded, including two where the use of firearms had been declared unlawful; in 1994, 658 cases, which had all been declared lawful; in 1995, 630 cases, two of which had been declared unlawful; and in 1996, 476 cases, of which one had been unlawful. During the first nine months of 1997, 255 cases had been recorded, all declared lawful. In all, for all the years in question, the number of cases in which firearms had been used was 2,704, in five of which the use of firearms had been declared unlawful.

17. Facts relating to the use of firearms were being investigated by the Ministry of Internal Affairs and the Procurator's Office. Persons accused of the unlawful use of firearms were liable to penalties. The activities of the militia were monitored in accordance with the provisions of articles 45 and 46 of the Militia Act. According to article 3 of the Act, the activities of the militia had to be in keeping with the principle of legality. According to its article 41, members of the militia did not obey political party watchwords and could not engage in political activity during their service; they were prohibited from pursuing political objectives.

18. Mr. ANDREEV (Belarus), replying to the questions on police custody and pre-trial detention (para. 5), said that, according to article 119 of the Penal Code, the right to place in custody a person suspected of an offence and liable to imprisonment could be exercised only in the following cases: when the person was caught in flagrante or just after committing the offence; when the witnesses and the victims in particular directly identified the person as the one who had committed the offence; when the suspect had on him evidence of

the offence or when such evidence was found in his home. In the other cases, a person could be held in custody only if he had attempted to flee or had no permanent residence or when his identity was uncertain. Police custody was the subject of a report which was transmitted within 24 hours to the Procurator, who was required to give his authorization for the maintenance of custody or for the release of the person detained within 48 hours. When the Procurator authorized police custody, the detainee had the right to contest that decision in court. The judge in charge of the case must, within 72 hours, transmit the complaint to the court, which was in turn required to confirm the legality of the decision taken by the Procurator or to take a decision to release the person.

19. The time limit for police custody was usually two months, which could be extended to three months by the Procurator of a town, a military garrison or a region if the investigation could not be conducted and if there were no grounds for ordering the restriction of liberty. Only the Procurator-General could extend the period of police custody to 18 months, following the preliminary consideration of the issue by the College of Procurators.

20. Ms. DROZD (Belarus), replying to the questions on freedom of movement in paragraph 6 of the list, said that, in view of the Committee's concluding observations on the maintenance of the “Propiska” system, the Government of Belarus had adopted a set of measures to abolish the system. In 1992, a bill had been prepared on the right to freedom of movement, the right of citizens to choose their place of residence and the right to reside in the territory of Belarus; it provided for the abolition of the “Propiska” system. However, the submission of the bill to Parliament had been deferred pending the adoption of a new housing code governing the allocation of housing.

21. Article 30 of the Constitution of March 1994 had given citizens the right to freedom of movement and the right to choose their place of residence in, and to leave and return to, the territory of the Republic of Belarus. A bill relating to those rights was before the Commission on Human Rights and National Relations of the House Representatives. It guaranteed every citizen the right to freedom of movement and the free choice of place of residence within the Republic; that right could not be arbitrarily derogated and restrictions were permitted only in the cases provided for by law. The bill's essential purpose was to abolish the “Propiska” system, which would be replaced by a system of registration of the place of residence; a person changing his place of residence was required to make a declaration within seven days of his arrival at his new place of residence. Although such registration was compulsory, it could not be used as a pretext to restrict the rights and freedoms guaranteed by the law.

22. Mr. AGURTSOU (Belarus), referring to the question of the independence and impartiality of the judiciary (para. 7), said that, under article 6 of the Constitution, judges were an independent judiciary. Their independence was guaranteed by article 110 of the Constitution, articles 9, 64 and 65 of the Act of the Organization of Justice and the status of magistrates, article 8 of the Code of Civil Procedure and article 11 of the Code of Criminal Procedure. According to article 110 of the Constitution, judges were independent in the administration of justice and answered only to the law. No interference in their activity was permitted. The President and judges of the supreme

economic courts and the supreme courts were appointed by the President of the Republic in agreement with the Upper House of Parliament and the Council of the Republic. The judges of local courts in the city of Minsk and of regional or military courts or local economic courts were appointed by the President alone.

23. Judges were appointed for a first term of office of five years once they had passed the required examinations and had to be licensed after five years. On the decision of the bodies appointing them, they could be removed from office if they had deliberately broken the law or, more generally, committed an act incompatible with their functions. Judges could themselves interrupt their service for health reasons. Being elected or appointed to another post, and the loss of Belarusian citizenship, terminated their duties judges.

24. The independence of the Constitutional Court was provided for in article 2 of the Supreme Court Act of the Republic of Belarus; it was guaranteed by a special procedure for the appointment and election of judges. The Constitutional Court took decisions, in accordance with the Constitution, on acts, decrees and orders of the president, international treaties ratified by the Republic, decisions of the Council of Ministers and the judgements of certain courts. Proposals to review the constitutionality of an act could come from the President, the House of Representatives, the Council of the Republic, the Supreme Court, the Supreme Economic Court or the Cabinet of Ministers. Other government bodies, public associations and citizens could submit initiatives to the bodies and persons entitled to submit proposals for the constitutional review of an act. Any act found unconstitutional by the Court lost all or part of its legal force on the basis of the Court's decisions. An order handed down by the Court was enforceable and must be implemented in the territory of the Republic by all State bodies, enterprises, institutions, organizations, officials and citizens.

25. Ms. DROZD (Belarus), replying to the question contained in paragraph 8 of the list (circumstances under which telephone tapping and house searches were authorized), said that the Constitution expressly prohibited entry into another person's house without legal justification. That provision was clarified by the Searches Act, article 9 of which provided that telephone tapping and house searches were authorized only for obtaining information concerning persons suspected of having committed or of preparing very serious crimes. House searches could be carried out only on the order of the procurator; the Procurator-General and the district Procurator were responsible for ensuring compliance with the law in accordance with article 209 of the Act. The Constitution guaranteed the protection of the individual against illegal interference.

26. Mr. AGURTSOU (Belarus), referring to the issue of freedom of opinion and expression, as dealt with in paragraph 9 of the list, said that the Act on the Press and Other Mass Media was essentially compatible with article 19 of the Covenant. No restrictions were placed on freedom of opinion and expression except with regard to the use of the media to commit criminally punishable acts to disclose State secrets, to call for a coup d'état, to incite to hatred and intolerance, to make propaganda for war or to distribute pornographic documents or material violating custom or the honour or dignity of the individual. In the event of such a violation, the Procurator could issue a

written warning. The activity of a media body could be suspended or halted only by a court decision and if despite several warnings the violation had not ceased. It should be noted that, since the adoption of the Act, the courts had never ordered a media body to cease its activities. The Act prohibited forcing any editor or journalist to agree to communicate or, conversely, to withhold any information. Some 1,000 registered publications existed in the Republic of Belarus, only 150 of which were State-owned. Editorial boards and publishers were completely free to determine the nature and content of their publications. The Government appointed the editors of four State newspapers only; it also subsidized 44 magazine publishers. There were approximately 300 radio and television channels, most of which were private. Until 1995, licences had been granted by the National Radio and Television Company; in order to break the monopoly, a government commission had been established on frequency allocation.

27. The main responsibility of the State Committee for the Press, the main body responsible for implementing the policy of the public authority with regard to the press, was to register the media and to ensure that they respected the law.

28. Mr. KOLAS (Belarus), referring to the question of freedom of assembly and association (para. 10), said that the applicable texts were the Political Parties Act of 5 October 1994, the Community Associations Act of 4 October 1994, amended in 1995, and the Trade Unions Act of 22 April 1994. The registration of an association took place within a month after the deposit of a statement signed by at least three members of the governing board of the future association, a document giving its composition, the report of the meeting establishing the association, the constituent instrument and a document certifying that registration fees had been paid. Registration could be refused if the goals and methods were contrary to the Constitution and the law or if the conditions for registration were not met within three months. An appeal against the refusal could be lodged with the judicial or administrative authorities, within a month as from the notification of the decision. Any association could terminate its activities by dissolution. Termination of activity could also be the result of a decision by a court following two warnings by the Ministry of Justice for a violation of the same provision in one year. It was to be noted that, in 1997, the Ministry of Justice had not transferred any cases to the courts, although two associations - opposition political parties - had received several warnings. The great majority of associations which disappeared terminated their activities themselves. As of 1 October 1997, 2,009 associations had been registered: 36 political parties, 40 trade unions, 860 national non-governmental organizations, 119 international non-governmental organizations and 954 local associations. There had been no instances of refusal to register a trade union.

29. In order to ensure order and security at public meetings, the police authorities applied the provisions of the Constitution, the Police Act, the Penal Code, the Code of Criminal Procedure and the Administrative Code and a decree issued by the President of the Republic on 5 March 1997. Any person wishing to organize a peaceful meeting must announce it in writing at least 15 days before the set date and the decision of the executive was given at least five days before that date. An appeal could be lodged in the courts in

the event of a refusal. In order to ensure the security of transport and traffic, the executive could change the date and place of the meeting. It was forbidden to obstruct vehicle and pedestrian traffic, to obstruct the operation of institutions or to hinder the police in the exercise of their functions.

30. At all meetings, it was prohibited to carry weapons or display banners bearing slogans calling for a change in the State constitutional structure, advocating war or inciting racial, national or social hatred. Meetings or assemblies or preparations for meetings or assemblies had to be halted at the request of the authorities if the Ministry of Internal Affairs considered that the required conditions had not been met or that public order and or the life and health of citizens were threatened. If the participants refused to obey, the authorities could take steps to prevent the demonstration. Action by the police was based on two criteria: lawfulness and respect for order. Generally speaking, if the parties respected the rules of law, there were no incidents.

31. Mr. ANDREEV (Belarus), referring to the right to take part in the conduct of public affairs (para. 11), said that the people exercised that right through periodically organized legislative and presidential elections with universal suffrage. Referendums were also organized on the initiative of the President of the House of Representatives. In order for voters to submit an initiative for a bill, 484 names were required. The members of the Supreme Council of the Republic were elected by indirect suffrage by the elected representatives of citizens and candidates were put forward by local councils. In article 102 of the Constitution provided that deputies were free to express themselves, but they were naturally forbidden to make libellous statements. Deputies and members of the Council of the Republic had immunity from prosecution. All deputies had the right to submit petitions to the Prime Minister, for which purpose the question must appear on the agenda of the session of Parliament. The members of the House of Representatives and the Supreme Council of the Republic were at liberty to seek all necessary information from any person in order to perform their functions and they were always ready to meet the inhabitants of their district.

32. The CHAIRPERSON thanked the delegation of Belarus and invited the members of the Committee to make comments on part I of the list of issues.

33. Mr. KLEIN thanked the delegation for its introduction to the report, although he regretted that it had not followed the Committee's guidelines. The information was not given in the order of the articles of the Covenant, and that made consultation difficult. Since the delegation had expressed a wish for frankness in its dialogue with the Committee, he said that he was very concerned about what he considered to be a deterioration in various aspects of the human rights situation. For example, the facts seemed to contradict the statement in paragraph 7 of the report that the principle of the separation of powers into legislative, executive and judicial authority lay at the basis of the State. That principle was essential to respect for fundamental rights. It was therefore hardly surprising to learn that, following a constitutional conflict between Parliament and the President, which had been settled by the Constitutional Court, the President had taken little account of the Court's decision.

34. The reply on freedom of movement was not very satisfactory. Paragraph 76 of the report stated that the right to leave the Republic and return to it could be suspended if a citizen possessed information constituting a State secret or if he refused to discharge certain obligations or if a civil suit had been brought against him, in which case the suspension remained in force until completion of the proceedings. All those restrictions required further details: who was empowered to determine what constituted a State secret, what was the exact nature of the "obligations" and what kind of civil suit was referred to? He also did not understand the provisions referred to in paragraph 78 of the report.

35. With reference to the media, the delegation had said that the Press Act was fully compatible with article 19 of the Covenant, but it was necessary to determine whether practice was compatible. According to certain sources, the President of the Republic had issued decrees dismissing editors-in-chief of newspapers and replacing them with others. He would also like to know whether the mass media were required by law or custom to be registered and according to what procedure. Furthermore, the Libel Act could have an impact on the freedom of the press. He wished to know whether it was true, as he had been informed by certain sources, that printing contracts had been breached, so that newspapers had had to be printed abroad. Still on the subject of freedom of information, he had learned that proceedings had been instituted in April 1997 against political opponents who had protested against the signing of the treaty of union between the Republic of Belarus and the Russian Federation; he wished to know what the charges and the outcome of the trial had been.

36. The situation of human rights activists was also a matter of concern, whereas a State which said that its concern was to promote respect for fundamental rights should get human rights activists to help it, since they usually obeyed the law and their dedication commanded respect. In the Republic of Belarus, they were the target of threats and intimidation measures and some had even been charged for merely asking why their homes had been searched. Quite recently, the observer of the Belarusian Committee monitoring the implementation of the Helsinki Agreements had been arrested. He wondered why human rights activists were the target of a certain form of repression and he had the impression that the vice was tightening more and more. He hoped that the Government's intention of declaring 1998 Human Rights Year would mark a turning-point in that situation.

37. Ms. Medina Quiroga took the Chair.

38. Mr. BUERGENTHAL noted that neither the periodic report nor its addendum (CCPR/C/84/Add.4 and Add.7) made it clear how the Covenant was implemented in Belarus. The report was also not in keeping with the Committee's guidelines. Why had the Government of Belarus not followed those guidelines? The addendum to the report (CCPR/C/84/Add.7) provided some information on the changes which had taken place in Belarus following the entry into force of the 1996 constitutional amendments. That information, however, contained nothing that persons concerned with the promotion of democracy, a constitutional State and the protection of the human rights guaranteed in the Covenant would welcome. For example, paragraph 20 of the addendum stated that the contents of paragraph 38 of the periodic report (CCPR/C/84/Add.4) were no longer

applicable. Paragraph 38 stated that the Constitution made it obligatory for the State to ensure the protection of the rights of any person requiring such protection and that article 60 of the Constitution provided that State organs and officials whose failure to discharge their obligations resulted in infringement of an individual's rights or freedoms would be held accountable for their actions. He asked whether the Belarusian delegation could explain what considerations had justified the amendment of the relevant provisions of the Constitution and for what reasons the powers of the Constitutional Court, particularly its capacity to act on its own initiative, had been restricted, if not to ensure that the President of the Republic had a free hand in running the country unencumbered by any judicial control.

39. He wondered what the aim of the 1996 constitutional amendments could be but to establish a presidential dictatorship. In his opinion, that was the case of the amendments relating to the restructuring of the judiciary, the Constitutional Court, in particular, and the serious restrictions on the right of peaceful assembly. The anti-terrorist legislation which had just been adopted a few days previously made the prospect of a democracy, which had been the goal of the 1994 Constitution, even more remote. According to an OSCE mission, there was every indication that the authorities were setting up a system of totalitarian government. It was not an NGO which said so, but an intergovernmental organization, and the Council of Europe had described the Belarusian regime in comparable terms. All of that was a matter of concern and he would like to hear what the Belarusian delegation had to say on the various points.

40. There was apparently a secret police under the exclusive authority of the President of the Republic and directly run by him. There seemed to be no specific legislation governing its operation and activities and it seemed to have access to detailed files on the opposition leaders and thus was able to practise intimidation. Was that information true?

41. Referring to the presidential decree on terrorism adopted only a few days previously, he would like to know what justification there had been for the adoption of that text, which was a new attempt to intimate the regime's opponents. Moreover, under that decree, would a Belarusian defender of human rights who applied to the Human Rights Committee to ask it to ensure that his country's authorities fulfilled the obligations they had assumed under the Covenant be committing a violation? What about persons who circulated allegations abroad concerning the failure of Belarus to comply with its international human right obligations or who might be seeking to make the international community aware of that shortcoming? What guarantees protected human rights defenders against harassment by the police? It was very important for the Committee to have a clear answer to all those questions.

42. The Belarusian delegation had not answered the last question in paragraph 4 of the list (CCPR/C/61/Q/BEL/3) in its oral presentation and he therefore repeated it.

43. With regard to the implementation of article 25 of the Covenant, he asked whether it was true that a member of Parliament could be tried without being deprived of his parliamentary immunity.

44. Mr. EL SHAFEI associated himself with the criticisms of the reports of the State party, which took no account of the Committee's guidelines. He nevertheless noted that a large number of laws had been adopted during the period covered by the periodic report (CCPR/C/84/Add.4), showing that the authorities had taken the first step on the road to change. The most striking fact was perhaps the crossover from the domination of a single party and ideology to a variety of ideologies and opinions. If the Belarusian population was to benefit fully from that change, it must have access to all legal possibilities of expression, particularly in the State-run media. Unfortunately, many sources revealed that that was not the case, that attempts to make opinions heard other than those of the authorities had never came to anything and that opponents were refused access to the State-run media during elections and referendums. He asked whether the Belarusian delegation could indicate which texts governed the rights protected by article 19 of the Covenant and specify how the conditions of media fairness and impartiality, which were so important during election or referendum periods, were guaranteed. For example, it seemed that, under an amendment to the Press Act, decisions to withdraw media licences or to suspend a publication could not be contested in the courts.

45. He had been informed that, in at least one case, the executive had been instructed to ignore a decision handed down by the Constitutional Court. He could make the details of the case available to the Belarusian delegation and would like to hear what it had to say in that regard.

46. With reference to the implementation of article 12 of the Covenant, he recalled that, when its third periodic report (CCPR/C/52/Add.8) had been considered, Belarus had stated that it intended to amend or even delete the provisions on residence permits. They were, however, still required throughout the territory. Private individuals had to be registered in their place of residence, which they could not change without authorization. It seemed that police road blocks were set up on the outskirts of all large towns and that the security forces searched vehicles at those check points. Was that true? It also seemed that any person wishing to go abroad had to obtain an exit visa, which was valid from one to three years. It was said that trade unionists were refused the necessary authorizations to go to international meetings in foreign countries. Could all that information be confirmed and could it be specified, where relevant, which authority issued or refused the necessary authorizations?

47. With regard to the status of the Covenant, he noted that, according to the 1996 amended text, article 8 of the Constitution recognized the supremacy of the universally recognized principles of international law and provided that Belarusian laws must be in keeping with them. In those circumstances, it was important to know how the Covenant was implemented, whether it had force of law, whether it could be invoked in the courts and whether there were cases where a court had referred to it in a decision. He asked the Belarusian delegation kindly to reply to all those points.

48. Mr. BHAGWATI said that he endorsed all the questions which had been asked by the members of the Committee who had spoken before him. He recalled that, when the Committee had considered the third periodic report of Belarus (CCPR/C/52/Add.8), the country had been undergoing major structural upheavals,

and the changes had affected not only the legislation, but also society as a whole. The Committee, which had been aware of the difficulties the Belarusian authorities had faced, had nevertheless expressed the hope that the process of change could be speeded up. All the information currently available to it showed that, unfortunately, that had not been the case and that, on the contrary, the human rights situation was far from satisfactory. The predominant impression was that the authorities wished to establish an authoritarian regime and that democracy was in danger.

49. The fourth periodic report (CCPR/C/84/Add.4) did not meet the Committee's expectations and did not give enough information. The Belarusian delegation had expanded on it orally to some extent, but a number of questions remained.

50. He was extremely concerned about guarantees of the independence of the judiciary. Furthermore, the President of the Republic apparently did not respect the decisions of the Constitutional Court. For example, it seemed that he had issued a decree in April 1995 on unauthorized rallies and propaganda. According to the information gathered, a rally had nevertheless been organized to protest against the President's use of the referendum and more than 200 persons had been arrested on that occasion. They had allegedly been tried in their cells, in camera, and given light prison sentences. If that information was true, it would indicate that there had been a violation of the rights provided for in article 14 of the Covenant. It was also alleged that the Constitutional Court, which had apparently been informed by Parliament at the time when the President had announced the holding of the referendum, had declared 11 Presidential decrees unconstitutional and had confirmed the legitimacy of Parliament pending new elections. The President of the Republic, it was said, had requested the dissolution of the Constitutional Court and asked its President to stand down from office, specifying that, if he did not stand down voluntarily, he would be forced to do so. According to the information obtained, the President of the Republic had adopted a decree in December 1995 instructing the Government and the local authorities to ignore the decisions of the Constitutional Court. He would like to hear what the Belarusian delegation had to say on the subject and to know how such measures could be compatible with articles 2 and 14 of the Covenant. With regard to the referendum, the Constitutional Court had apparently stated that the proposed amendments to the Constitution were such as to change the text radically and that a new constitution could not be adopted by referendum. It had thus apparently been of the opinion that the referendum was only consultative. In defiance of its conclusions, the new Constitution had been adopted by referendum.

51. With regard to the procedure for the appointment of judges, he had noted that, of the 12 judges in the Constitutional Court, 6 could be directly appointed by the President of the Republic and the other 6 by the Senate. One third of the members of the Senate could apparently be appointed by the Head of State. Was that true? It also seemed that the Head of State had jurisdiction to appoint all ordinary court judges and - more serious still - to dismiss the President of the Supreme Court and other judges. The Constitution provided that the Head of State could dismiss magistrates on any grounds established by law. It seemed that he was also empowered to make laws, since he issued decrees. In the circumstances, what texts governed the

procedure for the dismissal of judges? It also seemed that the law gave the local authorities power to ask court qualifications commissioners to look into complaints concerning judges. Who were those commissioners and how were they appointed? Was the President of the Republic the only person empowered to dismiss judges or was that procedure accompanied by parliamentary guarantees?

52. He referred to a memorandum, dated June 1997, addressed to the President of the Republic by the Secretary of the State Security Council, who had apparently proposed that several judges in Minsk should be dismissed on the grounds that they had not ensured the full enforcement of the fines which they had imposed. He would like clarifications on that point. It also seemed that a number of criminal files, including cases involving the death penalty, were being handled by a panel of three judges, two of whom were not professional magistrates and usually sat only for four weeks every two years. He asked whether that was true.

53. Lastly, he wished to know what status the Covenant had under the new Constitution. Was it part of domestic law? Could it be directly implemented by the courts? In what court could it be invoked? What remedy was available to persons who considered that they were the victims of a violation of their rights under the Constitution and was legal aid granted for constitutional motions? Did persons whose human rights had been violated have the right to compensation?

54. Ms. Chanet resumed the Chair.

55. Mr. SCHEININ pointed out that the text of the Belarusian Constitution, amended in 1996, was a singular combination of different and even contradictory trends. Some provisions reflected the commitment of the authorities to democracy and human rights, while others were characteristic of an authoritarian or even a totalitarian regime. He also noted that the Constitution expressly provided for the interaction of international and domestic law, which he welcomed. In particular he noted that article 61 related to the right of private individuals to apply to a body such as the Human Rights Committee.

56. He went on to refer to the question of the death penalty. It would seem that some 170 persons had been executed in recent years, a high figure which he found alarming. The Committee had, however, not received any communication under the Optional Protocol relating to a case of capital punishment. He saw three possible reasons that might give rise to problems with regard to the implementation of the Covenant. Firstly, persons held on death row, contrary to articles 10 and 17 of the Covenant, might not be physically able to apply to the Committee (they might be denied the right of correspondence or they might not have writing materials, etc.). Secondly, they might not have the possibility of being assisted by counsel, and that would raise questions under article 14 of the Covenant. The third and most likely theory was that those persons did not even know of the existence of the Human Rights Committee and did not know that Belarus had acceded to the Optional Protocol. In any case, he would like to know the position of the Belarusian Government on that point and on the question of the death penalty. Moreover, any person sentenced to death should be informed of his rights under the Covenant and the Optional

Protocol, particularly his rights to submit a communication to the Human Rights Committee, a procedure which would lead to a stay of execution.

57. Although article 6 of the Covenant did not require the abolition of the death penalty, it placed important restrictions on its implementation. The Committee considered that States parties should adhere strictly to those restrictions while also fully complying with the provisions of articles 9 and 14 of the Covenant. It further considered that a violation of articles 9 and 14, in a case involving the death penalty, was also a violation of article 6. It also regularly drew the attention of States parties to the need to comply with the provisions of article 10.

58. With regard to the number of offences carrying the death penalty, he recalled the provisions of article 6, paragraph 2, of the Covenant. He had taken note of the statement by the Belarusian delegation that the authorities were intending to reduce that number, but it seemed to him that the situation as it stood was not in keeping with the Covenant. The text of the Constitution did, however, follow the same lines as the provisions of article 6, paragraph 6, of the Covenant. In the circumstances, how could new legislation have been adopted providing for the death penalty for new offences? The recent legislation on terrorism to which Mr. Buergenthal had referred apparently provided for the death penalty and would therefore not be compatible with the provisions of article 6, paragraph 6. It was also important to know whether conditions of detention on death row were in keeping with the provisions of article 10 of the Covenant. If not, the implementation of article 6 would also be called in question.

59. He wished to know whether the provisions of article 14 of the Covenant were met to the full. He was not clear what possibilities were available to detainees to have the lawfulness of their detention reviewed. He understood that a court could take a decision on such an issue, but only as from the ninth day of detention and only at the request of the detainee. The procedure was thus apparently not automatic. Was that actually the case? If, however, the lawfulness of the detention was reviewed automatically, how soon was the suspect brought before a judge? That matter was of cardinal importance in the case of a person suspected of a crime carrying the death penalty. Sentencing a person to capital punishment if he had not been brought before a judge during his time in police custody and if he had been subjected to ill-treatment by the police might be incompatible with the Covenant.

60. The information available to the Committee referred to major restrictions which affected the independence of the judiciary. It also seemed that defendants could not always be assisted by counsel of their own choosing. He also asked whether it was true that the President of the Republic could apparently dismiss judges on grounds of which the law gave only a vague definition. He shared Mr. Bhagwati's concerns about the memorandum prepared by the Secretary of the State Security Council. Lastly, according to information obtained, a number of lawyers in cases of human rights violations had had their right to practise withdrawn, sometimes in the midst of proceedings. Could that information be confirmed?

61. With regard to the question of NGOs and the harassment to which they were said to be subjected, he agreed that the human rights situation in some

countries was rather worse than in Belarus. What was particularly alarming, however, was that the Belarusian authorities invoked none of the circumstances which States parties generally alleged to justify their difficulties in implementing the Covenant (extreme poverty, international sanctions, etc.) and even seemed to be displaying a kind of bad faith on the question of NGOs. He referred to the case of an official of the Belarusian Helsinki Committee who had come to Geneva to attend the meeting to consider the fourth periodic report of Belarus, but who had apparently previously been detained for several days in Belarus. She had allegedly been sentenced by a court, in fact, for reasons other than those for which she had been arrested; the court had apparently stated in its judgement that she had been preparing a report intended for the Human Rights Committee. That information was a matter of concern and he would like to hear what the Belarusian delegation had to say about it.

62. The Belarusian delegation had stated that the text of the fourth periodic report (CCPR/C/84/Add.4) was available in bookshops in Belarus, but it seemed that NGO members had been unable to buy it. He wished to know how many copies of the report had been made public and in which bookshops.

63. Lastly, he referred to an incident involving the Belarusian League for Human Rights. According to information given, that organization had been working on the translation into Belarusian and Russian of a report on freedom of expression when a group of persons had entered and occupied its premises. On the day of the occupation, the Ministry of Justice was said to have registered another association under the same name, the person in charge of which had taken part in the occupation. The coincidence was disturbing and he would like to know whether the authorities had been involved to a major or minor extent in the occupation of the premises of the Belarusian League for Human Rights.

64. Mr. YALDEN said he also regretted that the fourth periodic report of Belarus had not been prepared in accordance with the Committee's guidelines and thus did not take full account of the factors and difficulties which hindered the implementation of the Covenant in that country. He also noted, like other members of the Committee, that the situation of human rights in Belarus seemed, rather, to have deteriorated since the submission of the third periodic report in 1991. He pointed out that non-governmental organizations had a very important role to play in the observation and follow-up of the human rights situation and regretted that they were systematically obstructed in their activities in Belarus despite what the delegation of the State party had claimed in that regard.

65. After hearing the statements by the Belarusian delegation on freedom of the press and freedom of association and the independence of the judiciary in Belarus, he was still not convinced that all measures had been taken in the legislation and in practice to ensure respect for the principles embodied in the Covenant. He therefore wondered how lawyers could exercise their functions independently if they had to be approved by the Ministry of Justice, and to what extent the written press was free, in accordance with article 19 of the Covenant, if the information it published was monitored by a press committee established by the State. He would like clarification on those points.

66. Ms. EVATT noted, like other members of the Committee, that not only were there serious disparities between the law and practice in Belarus, but also a blatant failure to respect the rights provided for in articles 19 and 25 of the Covenant. With regard to freedom of the press, she would like to know what authority was responsible for the issue of authorizations for publications under the Press Act, to what extent censorship was applied to ensure that there was no criticism or impairment of the honour and dignity of high-level State officials and in general what sanctions were imposed in the event of a presumed violation of the Press Act. She also asked whether it was true that editors-in-chief of State-owned publications were public officials who were required to follow specific guidelines and who could be dismissed from their posts if they were in breach of the rules imposed on them. She also asked which authority took the decision to prohibit the import and distribution of publications and material which the authorities considered damaging to the country's political and economic interests and to what extent provisions in that area were compatible with those of the Belarusian Constitution itself. She would also like details of why a new Belarusian human rights organization had been established when a league for the protection of human rights legally registered in the register of approved organizations in Belarus had already existed.

67. Ms. MEDINA QUIROGA said that she shared the opinions expressed by Mr. Buergenthal on the conformity of the Belarusian Constitution with the Covenant. In particular, she wondered whether Decree-Law No. 21 on terrorism, promulgated by the President of the Republic of Belarus, had legal force because, if it did, it would be contrary not only to the State party's very Constitution, but also to the Covenant, under which no restriction could be placed on any recognized right of the citizens of the State party other than by a law adopted by that State party.

68. She also expressed concern at the apparent absence of compliance with article 9 of the Covenant in legislation and in practice in Belarus. Where administrative detention was concerned, she asked precisely which authorities were empowered to place a person in detention and for what length of time. She also asked what powers in that respect had been given to the police, officials of State security and presidential services and officials of the Ministry of Internal Affairs and the Customs services and what role the Procurator-General played in decisions taken in that area.

69. With reference to the implementation of article 14 of the Covenant, she shared Mr. Bhagwati's and Mr. Scheinin's concerns. She asked the Belarusian delegation for clarification of how lawyers were appointed and dismissed - since apparently they were appointed and could be dismissed - and of how ordinary citizens could obtain legal aid when they had to answer even for minor offences. As to freedom of expression, assembly and association, she noted from the information given by the Belarusian delegation that the restrictions imposed in practice on the organization of public demonstrations were extremely stringent and wished to know on what legal basis they were founded.

70. Mr. KRETZMER said that he associated himself with the questions asked by the members of the Committee, in particular concerning the attitude of the State party to non-governmental organizations and human rights organizations.

He also wondered to what extent the independence of the judiciary was ensured in Belarus, in view of the fact that, in accordance with Presidential Decree No. 16 issued in September 1997, judges were apparently paid by the executive. He asked what procedures and criteria were applied to grant lawyers the authorization to practise and what remedies were available to the person concerned if the authorization was refused.

71. Referring to the implementation of article 9 of the Covenant, he said that he shared the concerns already expressed by Mr. Scheinin and Mrs. Medina Quiroga and noted that not only did the State party's legislation did not conform to article 9, paragraphs 3 and 4, but that the situation in terms of justice was also particularly alarming, in that individuals could be detained, sometimes for up to three months, before being charged or brought to court.

72. He also had questions about the fact that, according to the replies given by the delegation on paragraph 3 of the list of issues, a relatively large number of law enforcement officials had been punished or even tried for the ill-treatment of individuals and that, in its reply on paragraph 4, the delegation had stated that the use of force had been declared illegal in fewer than 1 per cent of cases. He asked the delegation for clarification of those two points, which seemed contradictory. He also wished to know whether complaints filed against the alleged perpetrators of the ill-treatment had been considered by an independent body and what disciplinary or criminal sanctions had been imposed on persons who might have been found guilty.

73. Mr. PRADO VALLEJO said that the fourth periodic report of Belarus did not allow the Committee to obtain an accurate picture of how the Covenant had been implemented in the country because the Government had not followed the Committee's guidelines for the preparation of periodic reports of States parties and had not set out clearly the factors and difficulties involved in implementing the Covenant. There was nothing in the report to show what remedies were available to individuals who considered that they had been the victims of violations of the rights recognized under the Covenant.

74. With regard to the application of the death penalty, he noted that, in paragraph 84 of the report (CCPR/C/84/Add.4), the Government gave a long list of crimes which could give rise to the death penalty, but did not go on to say how many times it had been applied and for what reasons. Similarly, the report gave no indication of inquiries into allegations of acts of torture and ill-treatment committed in Belarus or of the penalties imposed on those guilty of them.

75. He regretted that the basic principles of democracy were still not observed in Belarus, as could be seen from the violent repression of peaceful demonstrations, the practically systematic and constant persecution of anti-government journalists and the constraints on freedom of the press and information. He asked whether the Belarusian authorities intended to take steps to remedy those violations of the fundamental rights provided for in the Covenant. He nevertheless noted a positive point in the role entrusted to the Constitutional Court, which was at least a guarantee of a check on the constitutionality of laws. He still had doubts, however, as to the real

impartiality of the judiciary, since it seemed that, in some cases, the leaders of the armed forces had the right to investigate criminal cases and to take penal sanctions against individuals they found guilty.

76. Mr. POCAR said that he shared all the concerns expressed by the members of the Committee, particularly with regard to the role of non-governmental organizations in Belarus. It was particularly regrettable that the fourth periodic report of the State party had not been prepared according to the Committee's guidelines; that was contrary to Belarus' commitment to fulfil its obligations under the Covenant.

77. Referring to the general situation of human rights in the State party, he regretted that the hoped-for changes in terms of the restoration of the rule of law were far from having been achieved and that, on the contrary, respect for the rights of the citizens of Belarus was constantly diminishing. He noted that paragraph 77 of the report (CCPR/C/84/Add.4) stated that the right to leave the Republic of Belarus could be subject to restrictions introduced by the Government "in the event of the occurrence in any country of a state of emergency making it too dangerous for Belarusian citizens to be there", which was in his opinion, an extreme restriction on the right of citizens to freedom of movement. He wondered whether the legislation referred to in paragraph 78 of the report, whereby "citizens leaving Belarus to take up permanent residence abroad ... may take with them or conserve for themselves property of which they are the legal owners, except land", was not contrary to article 26 of the Covenant. He found the number of reasons for which the death penalty could be applied under the Penal Code and which were as set out in paragraph 84 of the report to be alarming; some of them were in any case extremely vague and unrelated to "the most serious crimes" referred to in article 6, paragraph 2, of the Covenant. Lastly, he requested clarifications on paragraph 87 of the report, which stated that articles providing for prosecution for particularly dangerous crimes against the State had been "improved", and asked whether it meant that the scope of those provisions had been extended.

78. The CHAIRPERSON said that the Belarusian delegation would be invited to reply to the additional questions by the members of the Committee at the next meeting.

The meeting rose at 1.05 p.m.