



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### 100th session

#### Summary record of the 2746th meeting

Held at the Palais Wilson, Geneva, on Tuesday, 12 October 2010, at 3 p.m.

*Chairperson:* Mr. Iwasawa

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*Sixth periodic report of Poland*

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

**Consideration of reports submitted by States parties under article 40 of the Covenant**  
(continued)

*Sixth periodic report of Poland (CCPR/C/POL/6; CCPR/C/POL/Q/6 and Add.1)*

1. *At the invitation of the Chairperson, the members of the delegation of Poland took places at the Committee table.*
2. **Mr. Dzialuk** (Poland), introducing his country's sixth periodic report (CCPR/C/POL/6), said that it covered the period from October 2003 to October 2008. He drew attention to a "non-paper" which had been distributed in the meeting room and elaborated on the information contained in his Government's written replies to the list of issues (CCPR/C/POL/Q/6/Add.1). The fact that the Polish delegation was accompanied by representatives of two independent institutions, namely the Offices of the Ombudsman and the Ombudsman for Children, demonstrated the effectiveness of the cooperation between the Government and institutions devoted to the protection of human rights.
3. There had been two significant developments relating to Poland's criminal policy since the submission of the sixth periodic report. The first concerned the separation of the functions of the Minister of Justice and the Prosecutor General. The second was the establishment within the Ministry of Justice of a department of human rights, one of whose most important tasks was the formulation and implementation of human rights standards and the monitoring of new legislation to ensure its compatibility with Poland's human rights obligations.
4. In 2008, the Government had established the Office of the Government Plenipotentiary for Equal Treatment, which was responsible for formulating the Government's anti-discrimination policy and combating all forms of discrimination. That institution had helped to raise public awareness about several categories of individuals not usually considered to be victims of discrimination, notably children and single fathers. It had also sought the participation of a wide variety of stakeholders, grouped into thematic teams, in its anti-discrimination projects. The institution had recently prepared a preliminary bill on the implementation of European Union (EU) provisions concerning equal treatment that was expected to ensure greater legal protection against discrimination in areas not previously regulated by domestic law. The bill was currently under consideration by parliament.
5. In that same vein, a training programme aimed at combating hate crimes had been introduced for the benefit of law enforcement officials. Poland was one of few States to have such a programme. It also included regular training sessions in combating racism and xenophobia for prosecutors, judges, prison officers and public officials.
6. With regard to the situation of national and ethnic minorities, in 2005 Poland had enacted a law on national and ethnic minorities and regional languages, which provided for the use of those languages in contact with local authorities. The law also provided for the establishment of a counselling body for the Prime Minister that included a task force on the Roma. The Government was committed to achieving the full integration of the Roma community through a variety of programmes, projects and initiatives.
7. Measures had also been taken with a view to ensuring the equal status of women and men in public and professional life. One such measure was a policy of merit-based recruitment — irrespective of gender — to government posts. A variety of other measures had been taken in order to give fuller effect to women's rights in the areas of health, employment and childcare. Poland had also greatly enhanced the protection of children's rights by assigning additional statutory powers to the Ombudsman for Children, powers

that served to strengthen and broaden the mandate of that official. The Office of the Ombudsman for Children had organized several public information campaigns on children's rights and had established an information centre on children's rights with a free telephone hotline for children in cases of emergency.

8. In order to combat domestic violence, legislation on the prevention of such violence had been enacted in 2005, and a 2010 amendment had explicitly prohibited the use of corporal punishment for children within the family. It had also laid the foundations for coordinated local systems to prevent domestic violence.

9. On the question of ensuring the rights of victims of crime, the Ministry of Justice, in cooperation with the Crime Victims Division, was carrying out a nationwide assistance programme that provided, *inter alia*, for the establishment of 16 provincial assistance centres for victims. Moreover, legislation had entered into effect in 2005 setting out procedures for the award of State-funded compensation to victims of prescribed offences.

10. With regard to the treatment of minors who had come into conflict with the law, Poland had developed a unique treatment procedure which was based on the notion that minors were not criminally responsible and which relied exclusively on educational — not punitive — measures. Cases involving minors who had come into conflict with the law were decided by family courts, which were functionally and organizationally separate from criminal courts. Only two other countries, namely Lithuania and Japan, had adopted a similar approach to juvenile justice.

11. He was gratified to point out that there had been a significant drop in the number of persons held in temporary detention and in the number of persons whose term of temporary detention exceeded two years. Likewise, the number of prisoners was decreasing steadily. Prisoners who believed that their right to serve their sentence in proper and humane conditions had been violated could file an action for appropriate redress with a court. Some prisoners had already taken advantage of that opportunity and other cases were pending. In 2009, the Polish Prison Service had won the European Commission and Council of Europe "Crystal Scales of Justice" prize for innovative practices contributing to the quality of justice. The prize was for Poland's voluntary work programme for convicted prisoners that involved helping those with disabilities or terminal illnesses.

12. Recent amendments to the Penal Code that had entered into effect in September 2010 related to the following: definition of the offence of trafficking in human beings; definitions of several new offences in the area of sexual exploitation, including "grooming" (contacting a child on the Internet for the purposes of sexual abuse or the public promotion of acts of paedophilia); and increased penalties for paedophilia.

13. **Mr. Dziurkowski** (Poland) said that the Covenant had been incorporated in Polish legislation and had primacy over domestic law. It was invoked by judges in judicial decisions, a non-exhaustive list of which had been included in the reply to question 1 of the list of issues (CCPR/C/POL/Q/6/Add.1). In November 2010, the Constitutional Tribunal had issued a ruling that declared the ban on the recruitment into the police of persons infected with the HIV virus to be in violation of article 25 of the Covenant. The significance of that judgement was that the Tribunal had the power to set standards for public service recruitment practices. Other actions taken by the Government to promote the Covenant included the publication of an information booklet on implementation of the Covenant.

14. **Ms. Glowacka-Mazur** (Poland), responding to question 2 of the list of issues, said that the Ministry of the Interior and Administration carried out activities relating to both preventing and combating terrorist acts in Poland. The measures adopted had included setting up two anti-terrorist bodies. The first was an inter-ministerial task force on terrorist threats, which submitted opinions and conclusions to the Council of Ministers, and

initiated, coordinated and monitored action by the relevant government authorities concerning the use of terrorism-related information. The second was the anti-terrorist centre, which was part of the Internal Security Agency, and which coordinated specific operations, operated on a 24-hour basis, and was in permanent contact with the main State institutions and with Poland's international partners.

15. In 2008, a definition of the term "terrorist act" had been incorporated into the Penal Code. The commission of a terrorist act entailed increased criminal liability and higher penalties. Moreover, legislation had been enacted in 2009 imposing penalties for the financing of terrorist crimes; however, no court decisions had yet been handed down pursuant to that legislation.

16. **Mr. Ozga** (Poland), responding to question 3, said that the wide scope and diversity of measures taken as part of the National Programme for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance had made the Programme a resounding success. It had provided for the inclusion of modules in school curricula and training courses for teachers aimed at preventing xenophobic and intolerant attitudes and for a review of textbooks to ensure that they conveyed the proper attitude of tolerance.

17. Human rights modules, including anti-discrimination issues, had been incorporated into training programmes for police officers, border guards, customs officials, prison staff and members of the armed forces. Law enforcement agencies in Poland now instituted proceedings for offences involving racially-motivated or xenophobic acts more often than before the introduction of the National Programme. There were also more court decisions invoking the provisions of the Penal Code relating to xenophobic or racist crimes. The Prime Minister had decided to continue the National Programme for the period 2010–2013.

18. **Ms. Glowacka-Mazur** (Poland), referring to question 4, said that the efforts of the task force on monitoring racism and xenophobia had resulted in increased awareness among the general public and law enforcement officials of the problem of anti-Semitism and its prevention.

19. Cooperation in preventing manifestations of anti-Semitism had been enhanced, and involved the police, authorities responsible for cemeteries, religious institutions, provincial authorities responsible for the conservation of historical monuments, and organizations representing national and ethnic minorities, especially the Jewish minority.

20. A programme carried out by the prison service had involved teaching prisoners about various religions and employing them on community work in the cemeteries of national and ethnic minorities. As a result of such efforts, prisoners learned respect and tolerance for multicultural diversity. Similarly, a number of initiatives intended to combat racism and xenophobia in sports stadiums had been taken. Various campaigns and events had been organized to raise awareness of anti-Semitic issues and to promote the culture of Poland's national minorities. Details concerning funds earmarked for such activities could be found in the "non-paper", which her delegation had mentioned.

21. **Ms. Osiecka** (Poland) said that several steps had been taken to improve the prosecution rate for racially-motivated crimes. Since 2004, all prosecutors at appellate courts had monitored such cases in order to put a stop to premature refusals to institute preparatory proceedings and the discontinuance of such proceedings. In 2006, consultants on racially motivated crimes had been appointed within the appellate prosecutor's offices to assist public prosecutors who were supervising such cases, facilitate a uniform approach and eliminate mistakes. The prosecution rate for racially-motivated crimes had increased from 20 per cent between 2000 and 2003 to 28 per cent in 2009 and 2010. Under guidelines in the Penal Code, courts were obliged to take the racist motivation of an offence into account.

22. **Mr. Ozga** (Poland) said that his Government had adopted new legislation in August 2010 in order to implement the provisions of several EU equality directives prohibiting discrimination, including discrimination on the ground of sexual orientation. Reliable data on the number of offences involving such discrimination were not available because, under data protection legislation, unless victims volunteered information on their sexual orientation, it could not be sought or recorded. A diversity and anti-discrimination project co-financed by the European Commission in early 2010 had provided training sessions on sexual orientation issues for police officers, health-care staff, teachers and State officials. It had also included a public meeting, attended by members of the Government, on discrimination on the ground of sexual orientation; the meeting had drawn up a number of strategic recommendations.

23. **Ms. Maciejewska** (Poland) said that most immigrants in Poland were from other EU countries and came to work in Poland for a limited period. Owing to cultural similarities, there was no need for integration programmes in most cases. The same was true of immigrants from Belarus, the Russian Federation and Ukraine, most of whom were of Polish origin, and those from Armenia, Kazakhstan, the United States and Viet Nam. The children of immigrants had access to education free of charge and, if necessary, the services of a teaching assistant who spoke their language. Individual integration programmes were available for refugees and other persons in need of international protection, most of whom were from Chechnya. Throughout the country, NGOs provided government-funded courses on the Polish language and culture for refugees and others in need of international protection, and delivered training for local administration officials and teachers.

24. **Mr. Krych** (Poland) said that refugee status was regulated by the 1951 Convention and the relevant provisions of domestic legislation. In 2008, a legislative amendment had introduced a number of benefits for foreigners applying for refugee status, including implementation of European Council directive 2004/83/EC of 29 April 2004 on subsidiary protection. Several measures had significantly reduced the time taken to process refugee and asylum claims, including the launch of a database in 2007 on the current situation in applicants' countries of origin, and the establishment of an office for refugee authorities at the border crossing with Belarus. Improvements had been made to living conditions in centres for asylum-seekers, including renovations, playgrounds, sports equipment, pushchairs, wheelchairs, computer hardware and software, and school stationery and textbooks. UNHCR and the Polish Office of the Ombudsman regularly monitored conditions in the centres.

25. **Ms. Ksieniewicz** (Poland) said that domestic legislation provided for the equal access of men and women to employment and equal pay. In 2007, only about 50 per cent of women had been in work but more women had been going out to work in recent years as a result of media campaigns and legislative amendments. Measures such as flexible working arrangements, joint parental leave, paid paternity leave and more childcare places had been implemented. A number of projects had been devised for the period 2007 to 2013, co-financed by the European Social Fund. One project included training on gender equality for labour market institutions, a series of television programmes on gender equality in the labour market and on women who had successfully started their own businesses, and the organization of two congresses of Polish women in 2009 and 2010. The congresses had brought together women from a number of sectors, including business, politics, science, NGOs and government, and aimed to mobilize women in the professional, social and political spheres. They had made recommendations to several stakeholders, including the Government. A second project had aimed to reconcile work and family responsibilities for mothers who wanted to work.

26. **Mr. Lewoc** (Poland) said that the 2005 Law on Preventing Domestic Violence contained several provisions aimed at isolating the perpetrator from the victim, including the use of restraining orders. More recently, additional measures had been introduced, including the requirement that perpetrators of domestic violence should undergo therapy. In 2009, 732 restraining orders had been imposed on perpetrators of domestic violence. However, that was still a small number relative to the number of cases of domestic violence. More stringent measures had entered into force in August 2010, including police custody for some perpetrators. The new measures would effectively isolate the perpetrator from the victim before, during and after court proceedings.

27. **Mr. Szymocha** (Poland) said that the Office of the Commissioner for the Protection of the Rights of the Patient had been established in May 2009, and currently had 24 staff members. The Commissioner could be contacted by post, electronic mail or free telephone line. Between 1 May and 31 December 2009, over 3,000 complaints had been lodged by patients in general hospitals and over 4,300 by patients in psychiatric hospitals. Investigations had been conducted into conditions in psychiatric hospitals, the rules on admission and release in those hospitals, the use of coercive measures and patient safety. The Commissioner had successfully applied to the Ministry of Health to extend the period of treatment for children with developmental disorders to over 120 days. Draft legislation was due to be enforced in January 2012 concerning compensation in cases of medical malpractice.

28. **Ms. Korbasińska** (Poland) said that abortions could be performed by medical physicians only in the cases specified by the relevant legislation. Access to family planning services was widely available and free of charge; while the cost of contraceptives was not refunded by the State, they were inexpensive. In the light of the 2007 European Court of Human Rights ruling in the case of *Alicja Tysiąc v. Poland*, hospitals had amended their overly restrictive interpretation of the abortion legislation. Patients now had the right to appeal the decisions of doctors who refused them an abortion. While there were no data available on the number of illegal abortions, between 2000 and 2008 no women had died as a result of an abortion procedure.

29. **Ms. Głowacka-Mazur** (Poland) said that the cells in which persons in police custody were held were equipped with monitoring systems to increase safeguards against torture and ill-treatment. Any acts that contravened the regulations governing the treatment of detainees had to be explained fully. The treatment received and conditions of police detention were regularly monitored, and police officers were given specific training in order to prevent cases of torture or ill-treatment. Initial and continuing training was provided for prison officers on the treatment of detainees.

30. There was a significant discrepancy between the number of complaints lodged against the police for ill-treatment and the number of investigations and prosecutions because evidence had shown that not all the complaints had been admissible. Since 2005, the prosecution authorities had been found to have been negligent in nine cases. Nonetheless, on further investigation, all nine complaints had been found to be inadmissible. Foreigners who were detained by the police or border guards were informed of their rights through an interpreter and allowed to consult a representative of their country of origin if they asked to do so. Any official who did not comply with those requirements was subject to criminal liability. Allegations of torture and ill-treatment by the police were filed with an independent prosecution authority.

31. **Ms. Kosłowska** (Poland) said that, under action plans to prevent trafficking in persons, various governmental and non-governmental bodies were responsible for taking action in specific areas of prosecution, protection and prevention. Civil society was particularly active in providing victim support, conducting training for experts and raising public awareness. Since 2006, a programme for foreign victims had been implemented by

NGOs with full government funding. Since 2009, the protection available to foreign victims had been extended to Polish citizens and to those who had not been recognized as victims of trafficking by law enforcement agencies.

32. In order to increase the number of traffickers who were prosecuted, special trafficking units had been set up, both nationally and locally, within the police, border authorities and prosecutors' offices. The number of victims who had been identified and traffickers charged had risen, especially since 2009. Under a 2010 amendment to the Penal Code, people who helped to instigate human trafficking could also be prosecuted. In order to tackle trafficking for forced labour, in addition to the police and border guards, trade unions, consular staff and labour inspectors had been involved in relevant actions. To that end, a cooperation framework between labour inspectors and border guards had been established. A group of experts had also run a pilot project to test its programme for child victims of trafficking.

33. **Sir Nigel Rodley** asked whether the Committee's case law was considered when the Covenant was invoked in domestic courts and, if so, to what extent. In particular, it would appear that the ruling of the Chief Administrative Court of 23 May 2005 (File No. I OPS 3/05) might not be compatible with the Committee's decision in *Perterer v. Austria* (communication No. 1015/2001). If that apparently analogous case had been taken into consideration, it would be interesting to learn what attitude the Court had taken to the views of the Committee.

34. He would welcome an indication of the extent to which the legislation on terrorism to which the delegation had referred had been applied in practice. That legislation was reportedly resulting in people suspected of involvement in terrorist acts not enjoying the same rights to legal counsel and access to the information being invoked against them if they applied for residence and in deportation cases. He asked whether those concerns were well-founded and whether the State party was considering introducing any measures to improve the rights of foreigners seeking residence or to avoid deportation when it possessed information concerning alleged contacts with terrorism.

35. **Mr. Thelin** expressed his condolences to the Polish Government for the loss of several members of the country's political and military elite in a plane crash in the Russian Federation in April 2010.

36. Poland's human rights obligations had been strengthened since its accession to the EU in 2004, as a result of which its human rights situation had improved. Considerable changes had occurred both nationally and regionally in Poland's recent history, and he wished to note that Poland had been instrumental in the fall of the Berlin Wall.

37. Turning to the State party's sixth periodic report (CCPR/C/POL/6), he said that since the National Programme for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance (2004–2009) had been extended to 2013, he wished to know how the impact of the Programme would be measured. He asked whether the increase in the number of prosecutions of crimes of a racial or xenophobic nature since 2004 was an indication of the Programme's success. He noted with regret NGO reports that, despite the establishment of the Office of Government Plenipotentiary for Equal Treatment, sufficient attention was not being paid to overcoming the problem of homophobia, and asked for the delegation's opinions on that problem.

38. The written replies to the Committee's list of issues (CCPR/C/POL/Q/6/Add.1) made no mention of the Roma, despite detailing various programmes and legislative provisions regarding the rights of minorities. He asked whether Poland experienced the same problems as other countries with itinerant Roma communities. He would appreciate further information on the content of the legislative amendments to address trafficking in persons. The Committee's attention had been drawn to legislative shortcomings regarding

the definition of persons involved in trafficking, particularly in relation to illegal adoptions. He asked whether the purchase of children was included in laws on trafficking. He also wished to know whether victims of trafficking were exempt from prosecution rules under the Aliens Act. On the question of training programmes for judicial officers, he expressed concern that prosecutors and judges were trained together; that method was liable to instil a prosecutorial approach in judges.

39. **Mr. El-Haiba** requested further information on how the National Programme for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance was used to prevent discrimination against the Roma population, since Roma communities were often stigmatized and faced expulsion from a number of countries in the region. In its previous dialogue with the Committee, the State party had recognized that the Roma were a threatened community and had said that a pilot programme was under way for the prevention of discrimination against them. He asked how effective that programme had been, particularly in reducing xenophobic acts against that community, and whether, in its revision of the Penal Code, the State party had included specific definitions of the offences of xenophobia and racism. He also requested information on trials of xenophobic crimes, disaggregated by gender and age of offenders, and on the methods of identifying the offenders. He wondered what measures had been taken since the State party's previous dialogue with the Committee to conclude investigations into the desecration of Jewish and Christian cemeteries.

40. Referring to the State party's avowed intention to integrate human rights into school curricula and training programmes for security and State officials, he asked whether an integrated national strategy for human rights teaching would be developed, and whether NGOs would participate in formulating human rights education programmes. He also asked whether public discussions on human rights issues were held with NGOs working on human rights protection. He wondered whether racial motivation was defined in criminal law as an aggravating circumstance, and requested clarification on what types of discriminatory behaviour were identified as racially motivated. He would be particularly interested to know whether legal entities as well as individuals could be considered victims of discrimination under criminal law, in the event that they were discriminated against on grounds of the nationality of their members. He asked what the legal definitions of hatred and intolerance were.

41. The Committee would appreciate further information on measures to overcome discrimination motivated by sexual orientation, since information provided by non-governmental sources during treaty body examinations and the universal periodic review process had stated that threats against gay, lesbian, bisexual and transgender persons had been increasing in recent years. He noted with concern that legislation on equal treatment was not exhaustive and did not include discrimination on grounds of sexual orientation. He asked whether the State party intended to rectify that situation.

42. He wished to know what measures the State party had taken to promote the integration of immigrants. The Committee would appreciate statistics on asylum-seekers disaggregated by gender, age group and country of origin, as well as specific information on child immigrants and unaccompanied minors. He asked what role was played by the Ombudsman for Children. He wished to know on what grounds asylum applications were rejected and whether the principle of non-refoulement was complied with.

43. **Ms. Keller** said she wished to know why the State party had signed in 2000, but not yet ratified, the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty. The Committee had been informed that the asylum process could undermine the right to family reunification in the event that an asylum-seeker arrived in Poland and then travelled to another State member of the EU that applied the Dublin II Regulation, and the latter State requested the individual's

return to Poland. If Poland accepted that request and the applicant in question was returned, he or she would be unable to apply for family reunification in a second country since Poland would be considered to have taken responsibility for granting the applicant refugee status under the Dublin II Regulation. She asked what measures were being taken to ensure that the right to family reunification could be fully protected. She asked how accessible refugee centres were and whether they had the capacity for meeting current and expected demands. She also wished to know the outcome of the audits of those centres.

44. Turning to question 9 of the list of issues, she asked whether the Government was aiming to establish a comprehensive national policy to promote the employment of members of all disadvantaged groups through a systematic and long-term strategic approach. She asked whether it was likely that the draft National Action Plan for Employment (2009–2011) would be approved by the Council of Ministers, and why approval had been delayed.

45. Assessment of the worldwide gender gap had shown Poland to be behind countries such as Ecuador, Kazakhstan, Panama and Slovenia with regard to gender parity. Measures taken to redress the gender balance in the labour market seemed to be predominantly launched by civil society. She asked whether the State intended to provide support for those initiatives. Given that the Government Plenipotentiary for Equal Treatment had opposed the bill on gender parity, she wished to know what stage that bill had reached and what the Government's position on it would be when it was debated in parliament. She asked why broad disparity remained between male and female participation in politics and in high-ranking public and private office, and requested information on departments that employed more women than men and what positions they held. She also asked whether any measures were being taken to remedy opposition to legislative amendments to bring the age of retirement for women into line with that for men. The Committee would appreciate disaggregated data on the impact of measures to ensure gender parity in rural areas. Lastly, she asked why there was continued unequal remuneration of women and men in senior management positions.

46. On question 11 of the list of issues regarding domestic violence, she asked for the delegation's comments on the lack of strict time frames for the issuing of restraining orders, and on why the police could not issue restraining orders immediately at the scene. The delegation should also comment on allegations that the frequent dismissal of domestic violence cases at the prosecution stage, as well as lengthy prosecution procedures, deterred victims from filing complaints. She wished to know why the police were obliged to detain a person who perpetrated domestic violence only when a dangerous weapon had been used, since extremely violent individuals were capable of domestic violence without such a weapon. She also wished to know why the criminal law on domestic violence did not empower the police to evict perpetrators from the home and issue a protection order. She asked why the civil remedy for domestic violence was limited to evicting the perpetrator, and therefore did not include the issuance of no-contact or no-harassment orders. And she wondered why judges could take over a month to decide whether to issue an eviction order.

47. Turning to question 12, she asked how frequently patients or their duly appointed attorneys took advantage of the new mechanism permitting patients to file a "dissenting opinion" complaint against a doctor with a view to obtaining a medical procedure that had been denied.

48. She enquired about the State party's position on the draft amendment to the Patients' Rights and Patients' Advocate Act submitted in September 2010 aimed at providing an alternative non-judicial mechanism for enforcing patients' rights in cases of medical malpractice.

49. As complainants wishing to take advantage of the dissenting opinion mechanism would require legal assistance in order to specify the provision on patients' rights that had been violated, and as the decision taken on the matter by the Medical Commission of the Office of the Commissioner for the Protection of the Rights of the Patient was final, she asked how the State party proposed to make the mechanism accessible to needy patients. Would it be willing to provide the necessary legal aid?

50. Noting that action on a dissenting opinion complaint could take up to six weeks and that some medical procedures denied to patients, such as abortion, were time-sensitive, she asked what action was being taken to ensure that such complaints were dealt with expeditiously.

51. With regard to question 13, the Committee had been informed that pregnant women who obtained clandestine abortions were not subject to prosecution under domestic law but that persons who helped the pregnant woman to obtain an abortion were prosecuted. She invited the delegation to comment on that information.

52. The European Court of Human Rights had confirmed in the case of *Tysiāc v. Poland* that the State party had still not ensured that abortions were performed in all medically justified cases. Two similar cases (*R.R. v. Poland* and *Z. v. Poland*) were pending before the Court and the domestic courts had heard two landmark cases on liability for wrongful birth. In the light of that jurisprudence, how could the existing legislation and patient complaint mechanisms be improved to ensure that medically justified abortions could be performed in all cases?

53. The Committee had been informed that, in practice, many women were denied access to reproductive health services, including contraception counselling, prenatal testing and lawful interruption of pregnancy, and that the procedural safeguards provided for in article 39 of the Act of 5 December 1996 were often inappropriately applied. As a result, illegal abortions were reportedly very common and had been estimated at some 150,000 a year. She invited the delegation to comment on that information.

54. Turning to question 14, she asked how many cases of ill-treatment and torture had been investigated by the Ombudsman since 2007 and what remedies, if any, had been provided for victims. Could individuals initiate an investigation by the Ombudsman in the absence of a decision by the European Court of Human Rights and prior to any contact between the Ombudsman and the police?

55. The Committee had been informed that young offenders were particularly vulnerable to physical ill-treatment and threats aimed at obtaining confessions. What was the State party doing to address that concern?

56. Noting from the State party's reply that police premises enjoyed round-the-clock monitoring to enhance the security of detainees, she asked whether similar precautions were taken in prisons.

57. She also wished to know whether training courses for prison officers covered permissible and non-permissible interrogation procedures, ways of detecting cases of ill-treatment and the procedures to be followed to notify cases of ill-treatment to the competent authorities.

58. With regard to question 15, she enquired about the grounds that could be invoked to discontinue an investigation into a complaint of detainee ill-treatment. What evidentiary standard had to be met at each stage by the individual alleging ill-treatment at the hands of the police? She also wished to know whether a prisoner or border detainee who wished to document alleged ill-treatment could obtain an immediate and independent medical examination. She asked whether detainees were informed of the remedies available to them

in cases of torture or ill-treatment, apart from the right to lodge a complaint with the appropriate authority.

59. The European Court of Human Rights had found in *Rachwalski and Ferenc v. Poland* that the applicants had suffered degrading and inhuman treatment at the hands of the Polish police. In the light of the Public Prosecutor's prior decision to discontinue the investigation in that case, was the State party contemplating a review of the standards or guidelines that prosecutors applied when deciding whether to discontinue investigations of alleged ill-treatment?

60. The Committee had been informed that, in practice, detained foreigners were unaware of their rights because they were given only a brief glimpse of the relevant documents and were in any case unable to understand the content. It had also been informed that interpreters sometimes failed to communicate some or all of the information provided by the authorities either because they were not fluent in the detainee's language or because their knowledge of Polish was inadequate. What action was the State party taking in response to those concerns?

61. **Ms. Motoc**, recalling the tragic events that had afflicted the Polish people during the fascist and communist eras of the twentieth century, complimented the State party on the tremendous progress it had made in recent decades.

62. Referring to the statement by the Government Plenipotentiary for Equal Treatment that private Roman Catholic schools were entitled to refuse to hire homosexual teachers, she noted that the Penal Code contained no provision prohibiting hate speech directed against persons on the ground of their sexual orientation. Moreover, homosexual couples were not recognized in Poland and were denied a certificate of their single status if they wished to marry in another country.

63. Another problem area was that of equality of religion and belief. Although the law required the public school system to offer alternatives to religious instruction such as ethics classes, the process of introducing ethics programmes was unduly slow. The Committee had been informed by NGOs that the Constitutional Tribunal had failed to counter the lack of access to such programmes. She requested further information on the Tribunal's position.

64. NGOs had also claimed that the Government was reluctant to take firm action in support of equality between men and women. Moreover, Poland had signed but not yet ratified the Convention on the Rights of Persons with Disabilities.

65. Although Poland had an Ombudsman who dealt with questions of equality and discrimination, it had not yet complied with the EU directive providing for the establishment of an equality commission independent of the Executive. The State party's plan to establish a commission under the authority of the Ombudsman had been found in other countries to be less effective.

66. She asked whether the State party's large population of practising Roman Catholics tended to oppose measures aimed at achieving equal rights for homosexuals or whether such attitudes were confined to the religious elite.

67. The issue of equality between men and women in terms of the retirement age was a highly topical one in many European countries. She was interested in hearing about the current legislative and practical situation in that regard in Poland.

68. With regard to the rights of patients, she asked whether the families of a deceased person required that person's prior consent in order to obtain access to the relevant medical file. She also wished to know whether the legislation on patients' rights dealt with questions relating to biotechnology, particularly genetics.

69. **Mr. Amor** noted from the report that women accounted for 20.43 per cent of the membership of the lower house of parliament (the *Sejm*) and only 8 per cent of the membership of the Senate. Women were not particularly well represented at the local level either. He asked whether the authorities had considered introducing a quota for the representation of women in the country's political institutions.

70. There were many rigorous restrictions on abortion in Poland and family planning policies also gave rise to a number of questions. Noting that methods of artificial contraception were quite expensive, he asked whether they could be acquired without a doctor's prescription. For instance, could a woman obtain a morning-after pill without involving a doctor? Could a doctor refuse to prescribe contraceptives on non-medical grounds?

71. **The Chairperson** invited the delegation to reply to the questions raised by the Committee.

72. **Mr. Dziurkowski** (Poland) said that there was nothing to prevent Polish courts from invoking the Covenant and the Committee's jurisprudence. Although they had not done so to date as frequently as they might, there were some signs of an improvement. He had already mentioned, for instance, the Constitutional Tribunal ruling of November 2009, which had referred to article 25 of the Covenant and the Optional Protocol provision for the filing of individual complaints. The Tribunal had relied on a Ministry of Justice publication concerning implementation of the Covenant and, in particular, on a chapter describing how complaints should be filed. The publication had been circulated among all courts and judges. In addition, training courses for judges and prosecutors contained a special module on the Covenant and the procedure for filing complaints. Action was also being taken by the Ministry of Justice and members of the judiciary to promote wider reliance on international jurisprudence in legal proceedings.

73. **Mr. Dzialuk** (Poland) said that if a party to legal proceedings referred to the Covenant, the court would certainly take the relevant provisions or the Committee's opinion into account in its ruling. It would be preferable, of course, if the court identified such instruments or jurisprudence on its own initiative. That could only be achieved through special training courses and publications. Relevant modules had been introduced into training courses for prosecutors and judges, and human rights training sessions were conducted by representatives of the Helsinki Foundation for Human Rights and other NGOs. The web page of the Ministry of Justice also provided information on international human rights instruments.

*The meeting rose at 6 p.m.*