

## POLAND

### CESCR E/1989/22

28. The second periodic report of Poland concerning articles 10 to 12 of the Covenant (E/1986/4/Add.12), was considered by the Committee at its 5<sup>th</sup> and 6<sup>th</sup> meetings, held on 8 and 9 February 1989 (E/C.12/1989/SR.5 and 6).

29. The representative of the State party introduced the report. He drew the attention of the Committee to the supplementary information, submitted by his Government in written form, covering the period from 1 April 1986 up to 31 December 1988. He also provided further information, including relevant statistical data related to the implementation in his country of the rights contained in articles 10 to 12 of the Covenant, outlining recent developments in the legal, social and political spheres and showing their impact on the realization by Polish citizens of the rights under consideration. In that connection, the representative of the reporting State provided detailed information on the measures which his Government had adopted and the progress made in achieving the observance of the rights recognized in these articles during the reporting period, and described the factors and difficulties affecting the degree of fulfilment of his Government's obligations under the Covenant. He pointed out that the rights embodied in articles 10 to 12 of the Covenant were fundamental to the Polish People's Republic and, with reference to articles 2 and 3 of the Covenant, indicated that Polish citizens enjoyed equal rights irrespective of sex, birth, education, profession, nationality, race, religion or social origin (art. 67, para. 2 of the country's Constitution) and that the equal rights of men and women were guaranteed by law (art. 78 of the Constitution) and ensured in practice.

30. In informing the Committee of the recent legislative measures taken in his country, the representative drew attention to the fact that those measures and his Government's social policy in general had been, to a considerable extent, determined by economic circumstances and that the dramatic declines in national income and consumption had been consequences of the economic crisis of the early 1980s. Furthermore, the constraints imposed by a number of countries on economic relations with Poland had caused additional difficulties in economic recovery. Market instability and inflation had made it necessary to raise the level of social benefits and to adopt protective measures aimed at adjusting benefits and pensions to compensate for cost-of-living increases.

31. The representative also emphasized that the major obstacle to implementation of social policy measures in Poland, and therefore to effective implementation of articles 10 to 12 of the Covenant, had been the demographic situation in the early 1980s and especially the relatively high level of births. In 1970, the total number of live births had been 546,000, rising to 693,000 in 1980 and 721,000 in 1983. The statistical data showed that in the period 1980-1985, Poland had accounted for approximately 20 per cent of the natural demographic increase in Europe as a whole, excluding the Soviet Union. In the years 1980 to 1987, the total population of pre-working and post-working age had increased by 1.5 million; however, the total population of working age had increased by

only 600,000. The changes in nationality trends and population structure had made it necessary to evolve new concepts in family-oriented policy which, along with other pertinent aspects of social policy, gave due regard to the situation of vulnerable and disadvantaged groups of the population.

32. Concluding his introduction, the representative of the reporting State stated that his government policy in implementing the rights contained in articles 10 to 12 of the Covenant was intended not only to establish the formal rights of the individual, but also to provide opportunities for the practical exercise of those rights.

#### General matters

33. With regard to the general framework within which the Covenant was implemented, members of the Committee, having noted that the report had been drafted in 1986, wished to have further background information on the latest developments in the legal, social and political spheres relevant to the realization of rights covered by articles 10 to 12. They also wished to know what types of difficulties had been encountered by the Government in respect to the implementation of the rights in question and how these difficulties had affected the realization of these rights. It was asked to what extent the Government had been aware of the existence of particularly vulnerable and disadvantaged groups and what measures it had taken to protect their rights under the Covenant. It was noted that all data concerning financing was given in the national currency (zlotys) and, for purposes of comparison, it would be helpful to have the United States dollar equivalents.

34. In addition, it was asked whether foreigners, adults and children, had the same rights as Poles in respect to social benefits, housing, etc. and how many foreigners there were in Poland. Further clarification was sought as to the meaning of the term "social democracy" which was used in the report.

35. In his reply, the representative of the reporting State drew attention to written supplementary information submitted by his Government, and stated that economic, political and social transformations of major importance had been and still were taking place in Poland. The State, as well as the entire society, had been making enormous efforts to overcome the painful effects of the economic and social crisis. The economic reform, which had been implemented for several years, the plan of consolidation of national economy, adopted recently, and considerable changes in the political and social system which had shaped the new and different functions of the State had had their significant reflections in the area of social policy. He also pointed out that actions taken by State authorities had been consistently aimed at providing the widest scope of social welfare to all social groups and at easing the consequences of the economic crisis. Within this general context, the representative provided further information on the latest developments both in the national legislation and in the practice of its application relevant to the realization of rights covered by articles 10 to 12 of the Covenant.

36. In particular, the representative of the reporting State indicated that since 1 January 1987, new principles had been introduced concerning the organization and financing of the social activities of enterprises, based on the Act of 24 October 1986 concerning the social and housing fund in the

socialized sector, which law had increased basic deductions for enterprises, social and housing funds and provided automatic annual indexation as well as made enterprises more flexible in an independent utilization of those funds. Within this context, the representative pointed out that the above-mentioned Act maintained priority in granting assistance to low-income families, old and disabled people, families with many children and to single persons bringing up children - all being the criteria of eligibility to State assistance within the scheme of its social policy.

37. With reference to the difficulties, the representative provided information in addition to that contained in the report and in the supplementary information, indicating in particular that the main cause of the difficulties encountered by the Polish Government in implementing rights recognized in articles 10 to 12 of the Covenant had been the economic crisis in Poland, accompanied by a large external debt, high inflation and the lack of raw materials needed for industry. The production of some basic foodstuffs had been insufficient. But in spite of all those difficulties, he pointed out, the Polish Government had been making considerable efforts to diminish the social consequences of the economic crises. The recently adopted Plan for the Consolidation of the National Economy had taken account of fundamental social goals, such as the provision of adequate living conditions, protection of the family, and improvement of basic health care services.

38. Referring to the question relating to the national currency, the representative stated that the zloty could not easily be converted since the official rate of exchange was six times lower than the black market rate. For that reason, it had been proper to refer in the report to the national currency and not to the dollar equivalent which could have been, in some cases, misleading. The representative informed the Committee that foreign nationals were treated on equal terms with Polish nationals with respect to articles 10 to 12 of the Covenant. As for the meaning of the term, "socialist democracy", it was explained that there was no one definition for the term and that the matter was much discussed in Poland. Currently, in Poland, the term "socialist democracy" meant the process and goal of democratization of various institutions at various levels rather than a clearly defined pattern of government.

39. With respect to the existence and situation of particularly vulnerable and disadvantaged groups of the population in Poland, the representative provided additional information and statistical data, paying particular attention to the measures taken by his Government to protect their rights under the Covenant.

#### Article 10: Protection of the family, mothers and children

40. The Committee wished to have clarification of the following expressions appearing in paragraphs 9, 27 (b) and 36 respectively of the report: "right attitudes toward the family", "a request for granting childcare leave after the termination of the contract by the manager of the workplace"; and "adult orphans". The Government was asked to specify the main problems which had provoked changes in the policy toward abortion and the nature of those changes. The members wished also to know what the reasons were for amending the Ordinance of the Council of Ministers of 6 March 1986 concerning childcare leave.

41. In addition, the members requested more information on the Institute of Mother and Child

mentioned in paragraph 16 of the report; on the alimony fund mentioned in paragraph 21 of the report, and on what the respective contributions of the alimony fund and welfare benefits were; it was also asked, with reference to paragraph 26 of the report, under precisely what conditions were childcare benefits granted and whether the family benefits mentioned in paragraph 23 of the report, were payable in the private sector, and if so, whether the amount payable was the same in both public and private sectors. The members wondered if divorce was a big problem in Poland and how the State was coping with it. With reference to abortion, it was asked under which conditions it was practised; whether the large number of abortions had been caused by an inadequate sexual education or by economic circumstances; how many Catholics and non-Catholics had recourse to abortion; and what was the impact of the housing situation on the divorce rate and abortion rate.

42. Replying to the questions posed by the members of the Committee, the representative of the reporting State clarified the meaning of some paragraphs of the report where faulty translation from Polish had provoked questions. The Institute of Mother and Child was the central research medical centre under the Ministry of Health and Social Welfare whose purpose has been described in paragraphs 11 and 12 of the report. As for abortion, he provided further information and stated, in particular, that it was indicated that the 1956 Statute on abortion had defined the two conditions under which abortion might be performed: health reasons, or especially important social reasons. Some sample surveys had shown that abortions had been performed predominantly under the latter conditions which included, among others, difficult living and housing conditions. The Committee was also informed that the fertility rate in Poland was one of the highest in Europe. In such conditions, the aim was to spread use of effective family planning methods instead of abortion. However, the Government did not consider it appropriate to revoke the legislation permitting abortions since that would infringe on the fundamental rights and freedom of women. About 130,000 abortions per year were performed in hospitals. The Government estimated that perhaps two or three times that number were performed in the offices of private doctors. Moreover, the Catholic Church had estimated that the figure was between 800,000 and 1 million abortions per year. The Government believed that figure to be an over-estimate but was nevertheless seeking to reduce the number. Abortion was practised regardless of the religion of the women and its frequency depended on their standard of education, their profession and whether they lived in town or in the country.

43. In reply to the question concerning family benefits and inflation, the representative informed the Committee that the family benefit system guaranteed the real value of the benefits paid. There were four thresholds ranging from 2,000 to 7,500 zlotys; the highest level was about 15 per cent of the average monthly wage in the socialized sector and the lowest was about 4 per cent.

#### Article 11: Right to an adequate standard of living

44. The members wished to have more information on the methodology used to determine whether an adequate standard of living had been achieved and what criteria had been used for measurement; to what extent, if any, had the right to adequate food of the population not been fully realized; what were the major problems in the field of housing. Further details on new legislation in this field as well as statistical data on the extent of homelessness, if any, were requested. It was also asked how the right to housing protected divorced and unmarried couples and how was enjoyment of the right

to housing related to the right of liberty of movement and freedom to choose one's residence.

45. In addition the members wished to have more information on the extent to which the price rises due to the current crisis had affected social programmes, how far such programmes had been successful, and what criteria had been adopted to define disadvantaged population groups. It was also asked whether the whole population of Poland, and in particular, babies, children and adolescents, was receiving a sufficient amount of basic foodstuffs for normal development in accordance with WHO criteria. More specific information was requested about the current housing situation. Having noted that despite Poland's great economic difficulties, lower interest housing loans were granted, it was asked how that could be done in conditions of inflation and what the rate of interest was. The members also wished to know to what extent Poland was participating in the international co-operative effort to promote the right to an adequate standard of living and health.

46. In answer to the questions asked, the representative of the State party outlined the main aspects of the governmental policy aimed at the securing of an adequate standard of living for the population in general, for various age groups, rural and urban populations, and in particular for the most vulnerable and disadvantaged groups. Detailed information with relevant statistical data was provided with reference to the implementation of the right to food and right to housing. In particular it was emphasized that an improvement in the supply of foodstuffs was one of the main priority issues in the 1989-1990 Plan for Consolidation of the National Economy and that the Government was endeavouring to establish a permanent basis for agricultural development. In that connection, information was given on the Rural Development Fund, which would subsidize a number of social activities for farming families and on the Statutory Order of the Council of Ministers No. 47 of 1981, relating to the creation of adequate living conditions in rural areas.

47. The representative also indicated that in 1988, as a result of measures of protection against price rises, permanent and periodic allowances of welfare assistance had been doubled and since 1 October 1988 they had stood at 13,250 zlotys or 90 per cent of the minimum old-age pension. The questions concerning the right to housing were answered, with the emphasis placed on the difficulties encountered and decisions taken at the national level to overcome them. In this regard it was noted that an acute problem existed, that targets set earlier had not been met, and that efforts to reduce the excessive waiting time for apartments had so far not been successful.

#### Article 12: Right to physical and mental health

48. Members of the Committee wished to receive more information on the availability and accessibility of the health services provided for the rural population as compared with those provided for the urban population as well as on the quality and the scope of health care facilities provided for the rural population in comparison with those available to the urban population.

49. In addition, they wished to have information on infant mortality rates subsequent to 1985; life expectancy; availability of modern equipment and medicines in hospitals; incidents of acquired immuno deficiency syndrome (AIDS), means of prevention which were being used and medical research carried out in that connection; and measures taken by the Government to combat

environmental pollution, especially in Upper Silesia.

50. In reply to the questions raised, the representative of the reporting State stated that the existing level of health care was not favourable compared to that of other countries at the same level of development. He noted that infant mortality rates remained almost three times as high as that of some other European countries and Japan and that, over the past 20 years Poland had been among the countries with the highest increase in rates of mortality among males in the 35-64 age group. It was suggested that the unsatisfactory state of health of the Polish population was due to numerous factors including alcohol abuse and low levels of health awareness and aspirations. Thus, in 1984, 13 per cent of per capita income had been spent on alcohol, 2 per cent on tobacco, 2 per cent on hygiene and personal care and 1 per cent on sports, tourism and recreation. The representative stated that as far as health care was concerned, many efforts had been made to develop specialized services in industry and in other branches of the economy, with priority being given to preventive measures and to improved health care for children, young people and the elderly. The provision of health care protection had also a tendency towards growing expenditures as a result of scientific and technological developments. Considerable social costs, he pointed out, were incurred when a high standard of health services was to be maintained free of charge and readily accessible to both rural and urban populations.

51. Detailed information, with some relevant statistical data, was provided in response to questions concerning the rate of mortality, life expectancy; the availability and accessibility of health care facilities to the rural population as compared with those provided to the urban population; the problem of narcotics and AIDS; environmental pollution and measures taken by the Government to combat it. He paid particular attention, when replying to the questions raised by the Committee's members, to the difficulties encountered by his Government in securing the right to physical and mental health for all in Poland.

#### Concluding observations

52. Members of the Committee expressed their appreciation to the Polish Government for its frank report and to the Polish representatives for their detailed replies. It was observed that the constructive dialogue that had been established between the Committee and the reporting State during the consideration of the second periodic report of Poland on articles 10 to 12 of the Covenant would set a good example for other State parties.

## **CESCR E/1993/22**

108. The Committee considered the second periodic report of Poland concerning articles 13 to 15 of the Covenant (E/1990/7/Add.9) at its 6th, 7th and 15th meetings, held on 26 November and 4 December 1992 (E/C.12/1992/SR.6, 7 and 15).

109. The report was introduced by the representative of the State party who explained that during the period under review Poland had undergone fundamental political, economic and social changes. The major part of the report referred to the period ending in 1991, during which Poland had operated under a constitutional order different from the present one. At the time of the preparation of the report, the economic system had been centrally planned and managed, whereas present-day Poland was a democratic State based on the rule of law and on the way to a market economy. A new Constitutional Act had been adopted by Parliament in August 1992 and signed by the President of the Republic. Furthermore, a draft constitutional charter of rights and freedoms had been submitted to Parliament which was founded on the concept of human dignity, proclaimed the protection of the rights enshrined in the international instruments and contained legal and institutional guarantees.

### General matters

110. With regard to the general framework within which the Covenant was being implemented, members of the Committee wished to receive information: on the new political structure of the country, in particular its changed economic, social and cultural characteristics; on the impact of the current political and economic transition on the realization of economic, social and cultural rights; on any steps taken by the authorities to fulfil international obligations arising from the Covenant under the present adverse conditions; on any step undertaken for the benefit of those groups within society whose economic, social and cultural rights were specifically being affected in the present situation; on the new legal framework within which human rights were protected; on the status of the rights enshrined in the Covenant in domestic law; on the extent to which non-nationals were guaranteed the rights dealt with in articles 13 to 15 of the Covenant; and on limitations, if any, imposed upon the exercise of the rights set forth in articles 13 to 15, the reasons therefore, and safeguards against abuses in that regard.

111. In addition, members wished to know: what the relationship was between the draft charter of rights and freedoms and the Constitution; whether individuals could invoke provisions of international human rights instruments, in particular the Covenant, before the courts; whether judges could refer to such provisions in their judgement; and whether Poland intended to accede to the European Social Charter. They also requested information on the new legislation on trade unions and employers' associations, especially with regard to educators and artists.

112. In his reply, the representative of the State party indicated that Poland was still governed by the 1952 Constitution, as amended in 1989. The new Constitution was to enter into force in a few weeks. It contained a set of rules on the separation of powers and reproduced, with changes, some chapters of the old Constitution, especially those on human rights. Since that arrangement was not

very satisfactory, the President of the Republic had submitted a draft charter of rights and freedoms to the Parliament; once adopted, the text would have the same value as the Constitution. The charter provided that all citizens had access to the courts, could contest the constitutionality of any law before a constitutional court and could, where appropriate, submit communications to relevant human rights bodies established under treaties to which Poland was a party.

113. In June 1992, the Supreme Court had declared that all international instruments ratified by the Polish Parliament were now directly applicable by the courts. The new Constitution would extend that rule to all instruments of that kind, including those ratified under the previous system, such as the Covenant. Economic, social and cultural rights were usually subjective rights guaranteed as such by the Constitution. It was only when the nature of the right in question so required that they became obligations of the State.

#### Articles 13 and 14: Right to education

114. Members of the Committee requested information on the changes which had been introduced or were being envisaged in the field of education. They inquired: whether these changes had affected equality of access to secondary and higher education; what percentage of the budget was being spent on education; whether the Government had identified any particularly vulnerable or disadvantaged groups or regions with regard to the practical enjoyment of the right to education; whether secondary and higher education suffered from the new economic developments; whether access to such education in rural areas had been negatively affected; whether the material conditions of teaching staff had changed in the last years and, if so, whether steps had been taken to improve these conditions and ensure that a teaching career remained attractive; what the present status of religious (Catholic) education was; whether the present state of law in that respect ensured the rights of parents to the religious and moral education of their children in conformity with their own convictions; and whether there had been any changes in the field of education to guarantee the respective rights of the German as well as other minorities.

115. In addition, members wished to know: whether there was any programme for revising school textbooks and for training teachers in the new conditions prevailing in the country; how conflicts between parents and children as to attendance at religious education classes were being resolved; how teachers' salaries compared with those of other civil servants or skilled workers; what percentage of the total school population attended private schools; what the situation was of persons who had not completed primary school at the appropriate age; and whether, in view of budgetary difficulties, it was planned to use the services of retired teachers. Information was also requested on sexual education in Poland, particularly with regard to acquired immunodeficiency syndrome (AIDS), and on measures taken to promote human rights education.

116. In the reply, the representative of the State party gave a brief description of the Polish educational system and stated that an act on higher education had been adopted on 12 September 1990 and another on the education system on 7 September 1991. The latter had authorized private persons and institutions to establish non-State schools. Such schools were obliged to provide education free of charge with equal access for all children and received a State subsidy. The State curriculum had to be followed and the system of pupil assessment established by the Minister of



National Education adhered to. In 1991-1992, there had been a total of 370 non-State schools in Poland, comprising 155 primary schools, 158 general secondary schools and 57 vocational schools. Such schools represented between 8 and 10 per cent of all educational institutions. Though few in number, such schools were nevertheless important in the Polish educational system, since they frequently served as a vehicle for change and reform. Despite the problems involved, the Polish State had no intention of shirking its responsibilities by completely privatizing education. Although it was possible to open private schools, the principle of free education remained valid.

117. Although 10.3 per cent of the national budget was allocated to education, as compared with 9.5 per cent in 1991 and 11.7 per cent in 1989, those figures did not in fact indicate an increase in the amount spent on education, but rather that cuts made in the course of financial adjustment had fallen less heavily on the education budget than on others. The number of teaching hours had, indeed, been reduced and most extracurricular activities had been abolished. Such activities were still being offered in many schools but for a fee, which would appear to contravene students' constitutional right to free education. Furthermore, over 2,000 kindergartens had been closed down, principally in rural areas. Regarding the average teacher's salary, the Government's objective had been to bring it up to the average wage paid in the production sector. Progress had recently been made in that areas and the wage parity objective now appeared to have been achieved. Although Poland was facing major difficulties, it did not plan to use the services of retired teachers. Many young graduates were already unemployed and such a solution would only make their problems worse. There might, however, be a possibility of having the youngest teachers benefit from retired teachers' experience. Following the recent reform in the structure of the country, the balance between vocational training and secondary schooling had shifted to a heavier emphasis on the latter, so that young people had greater flexibility when entering the labour market.

118. An act had been adopted on 14 April 1992 providing for religious education within the teaching programme of State primary and post-primary schools. In primary schools religious education would be available for students at their parents' request and in post-primary schools at the request of either parent or student. In cases of conflict between parents and students, the students' wishes would prevail. Students were not obliged to attend classes in religious education or ethics and attendance or otherwise at religious education classes was not to cause discrimination. Students' achievements in religious or ethics education were marked on their yearly certificate of achievement without identification of the type of instruction concerned and was not to affect their further career. Another act had been adopted in September 1990 on the operation and internal organization of universities.

119. An act on educational measures to promote the national, ethnic and linguistic identity of a minority had also been adopted on 24 March 1992. All pre-school institutions and schools were to provide suitable conditions for their pupils to preserve and develop their national, ethnic and linguistic identity as well as to become acquainted with their nation's history and culture. Under the act, ethnic minority education covered all forms of pre-school, primary and secondary education. During the 1991/92 school year, ethnic minority education had been provided in 127 primary schools and in 7 general secondary schools. Only 10 schools provided additional teaching of German. Foreigners residing in Poland had the same educational rights as Poles.

120. The objective of the planned reform of general education programmes was to promote a healthy lifestyle and, accordingly, to deal with questions relating to sexuality and AIDS. Regarding human rights teaching, a programme had been launched to produce handbooks and train teachers. It was true that teachers who had been trained for decades in Marxist-Leninist ideology were poorly prepared to teach the principles of democracy. Textbooks, especially history books, had been updated. Continuing education classes for adults also had to be adapted to the country's new situation, especially its economic situation, and had to aim at instilling some basic ideas of economics and developing a spirit of enterprise and initiative.

Article 15: Right to take part in cultural life and to enjoy the benefits of scientific progress and to benefit from the protection of the interests of authors

121. Members of the Committee wished to know: what percentage of the national budget was allocated to culture; whether censorship had been totally abolished in Poland; whether regional disparities in the availability or accessibility of culture and cultural facilities had been sharpened in the last years; what steps were taken or contemplated to control or limit the "brain drain" created by the emigration of academics, scientists and artists; what the situation of ethnic and linguistic minorities was with regard to article 15; and how the situation of the German minority in that regard had developed.

122. In addition, members wished to receive further information on the economic situation of artists and wondered how copyright and other forms of intellectual property would be protected in future.

123. In the reply, the representative of the State party said that a new act adopted on 11 April 1990 had done away with censorship. The State's monopoly on publishing, printing and recording activities had been abolished and licences were no longer needed for art galleries. Another new law, adopted on 7 April 1989, had been adopted on cultural institutions, which could be created either by individuals or by legal entities. Since that law had been enacted, 200 cultural associations had been established. The only area in which a special licence was required was for the cinema, for copyright purposes. In that connection, a copyrights bill provided for the establishment of a body to protect authors' interests and collectively administer their royalties.

124. In 1992, 0.76 per cent of the State budget had been devoted to cultural and artistic activities. Admission to museums and cultural centres was free. Furthermore, theatres and operas opened their doors to school children and retirees once a month. The social situation of artists was better than that of other professionals. For example, they enjoyed considerable tax advantages. Even before 1989, artists had been able to travel and their only problems were in transferring back to Poland the money they earned abroad. Thus, there had been no "brain drain" of artists, since the only ones to have emigrated had done so for political reasons.

125. The phenomenon of the "brain drain" posed a difficult problem. It seemed that approximately 10 to 20 per cent of scientists and researchers who went abroad decided to stay there. The best solution would be to increase salaries and improve the general financial situation of those

concerned so that they would have no reason to leave Poland, but unfortunately no money was available to do so.

126. A State foundation provided assistance to minorities, covering expenses for newspapers, periodicals and books published in the relevant languages, and the Ministry of Culture and Art had enlarged its sphere of activities to include minorities in Poland and Poles living abroad.

#### Concluding observations

127. The Committee noted that the second periodic report submitted by Poland in respect of articles 13 to 15 of the Covenant had originally been submitted in March 1990. In the intervening period, however, fundamental economic and social changes were occurring in the country which rendered obsolete much of the information contained in the written report. It was, therefore, necessary to assess the rights enshrined in articles 13 to 15 in a contemporary setting and in that regard, the Committee found the supplementary information contained in the oral presentation extremely useful.

128. The Committee wished to express its appreciation for the comprehensive nature and frankness of the oral presentation and the accurate supporting data which was provided.

129. The Committee noted that a new constitutional order based on the rule of law and a charter of rights was being introduced as the legal basis for guaranteeing subjective rights and that certain human rights contained in international covenants to which Poland was a party would be automatically received into domestic law and could be directly enforceable in the country. It remained unclear whether economic, social and cultural rights could be directly enforceable. The Committee requested the Polish Government to provide clarification, by means of the third periodic report to be submitted by 30 June 1992, as to which of the rights covered by article 13 to 15 of the Covenant were subjective rights which would be directly enforceable in the courts in Poland.

130. The Committee noted the liberalization of the educational system and the new emphasis being placed on secondary vocational education. Whilst appreciating the fundamental reforms which had been introduced, the Committee was concerned that the new thrust towards a market-oriented economy was accompanied by a decrease in the budget for education and that the general decline in the economy constituted a threat to the enjoyment of the economic, social and cultural rights of the Polish people. In that regard, the Committee re-emphasized its concern that the difficulties being experienced during the period of transition did not diminish the State's obligation to protect the more vulnerable members of the society.

131. The Committee was informed by the Polish delegation that it was not the intention of the Government to privatize education and that the provision of education would remain the primary responsibility of the State.

132. The Committee noted with satisfaction that censorship had been abolished in Poland and that new legislation for the protection of literary and artistic works had been introduced. The

Committee, however, expressed its concern that the reduction of the budget for culture could lessen the opportunity for the expression and enjoyment of the rich cultural heritage of Poland. In that regard, the Committee wished to be assured that special provisions would be made to ensure that the elderly would be able to continue to enjoy and participate in the cultural life of the country in full measure.

## **CESCR E/1999/22**

139. The Committee considered the third periodic report of Poland on the rights covered by articles 1 to 15 of the Covenant (E/1994/104/Add.13), along with the written replies to the list of questions, at its 10th to 12th meetings, held on 4 and 5 May 1998 and, at its 26th meeting on 14 May 1998, adopted the following concluding observations.

### Introduction

140. The Committee welcomes the submission of the third periodic report of Poland, which it found to be comprehensive and to conform to its guidelines on the preparation of reports. The Committee also expresses appreciation for the additional information presented prior to and during the dialogue by a well-informed delegation, which enabled it to engage in a frank and constructive dialogue.

### Positive aspects

141. The Committee notes with satisfaction the prominence accorded to economic, social and cultural rights in the new 1997 Constitution, which contains provisions protecting, *inter alia*, the rights freely to pursue an occupation, to safe conditions of work, to social security, to education and of housing. It welcomes the State party's expressed intention to abide by international human rights standards, including the European Social Charter. The Committee also notes with interest that Poland has no substantive objections to ratifying International Labour Organization Convention No. 97 (1949) on migration for employment (revised), No. 102 (1952) on minimum standards for social security, No. 159 (1983) on vocational rehabilitation and employment (disabled persons), and No. 176 (1995) on safety and health in mines. It further welcomes Poland's expressed intention to ratify Convention Nos. 102 and 176 and to examine the possibility of ratifying the other conventions in the near future.

142. The Committee further welcomes the status accorded to international legal instruments, including the Covenant, in Polish national law. Under the new Constitution, international treaties may be directly invoked in the courts, except for those considered not to be self-executing in nature. The Committee was assured that any provisions of the Covenant not considered to be self-executing will be adopted into domestic law and given effect in that way. It expresses satisfaction that in cases of conflict with national law, international treaties will prevail over national law.

143. The Committee welcomes the establishment and functioning of the office of the

Commissioner for Citizens' Rights, who may be addressed by all persons and who appears to exercise sufficiently broad powers of investigation and application for redress from the relevant authorities. The Committee also notes that the new Constitution foresees the establishment of a Commissioner for Children's Rights. It looks forward to receiving information in the next report of the State party on the specific functions and authority entrusted to these posts, as well as on any follow-up to the decisions or recommendations of the Commissioners.

144. The Committee welcomes the success achieved during the last five years in terms of economic performance, particularly in controlling inflation, raising production and doubling the level of per capita income since 1994. It also expresses satisfaction that the State party has sought international assistance in implementing many social programmes and modernizing government facilities.

145. The Committee welcomes the recent Action Programme for Women, which includes among its objectives the elimination of violence against women, and notes with interest the assurances offered that domestic violence will be fully addressed in the next periodic report.

146. The Committee commends the efforts of the Government to upgrade its labour market services designed to improve access to employment opportunities, to retrain workers for jobs in demand, and to provide assistance to people wishing to move from overpopulated areas to underpopulated rural areas.

#### Factors and difficulties impeding the implementation of the Covenant

147. The Committee recognizes that there are, inevitably, difficulties arising from the process of political transition to a democratic form of government, as well as problems arising from transition to a market-oriented economy.

#### Principal subjects of concern

148. With respect to the question of minorities, the Committee notes with interest the treaty concluded with Germany on the subject of the German ethnic minority in Poland by which various rights of this group were given effect, including a fixed number of seats in Parliament and the right to operate a large number of schools. The Committee notes that similar treaties were not concluded with respect to other minority groups and is concerned that such a situation may lead to perceived or actual inequalities between minorities.

149. The Committee notes that under the new Constitution, Poland is a secular State with no formal role attributed to any religious denomination. The Committee is nevertheless concerned that policies and decisions of a social nature seem to be excessively influenced by particular religious considerations and do not take adequate account of the existence of minority religious groups.

150. The Committee notes that restrictions have recently been imposed on abortions that exclude economic and social grounds for performing legal abortions. The Committee expresses its concern

that because of this restriction, women in Poland are resorting to unscrupulous abortionists and risking their health in doing so. The Committee is also concerned that family planning services are not provided in the public health-care system so that women have no access to affordable contraception.

151. The Committee also expresses concern at the rising incidence of domestic violence and of trafficking of young women, as acknowledged by the Government. It notes the absence of specific regulations on sexual harassment of women, the lack of shelters for the women and children who are victims of family violence in 33 per cent of voivodships, and the apparent lack of counselling facilities for such victims.

152. The Committee expresses deep concern that the right to work is not fully enjoyed by women. It notes that the principle of equal pay for equal work is not being respected. The Committee deplors, in particular, the fact that women earn on average only 70 per cent of the wages earned by men, despite their generally higher levels of education. It also notes the existence of discriminatory practices such as job advertisements specifying the preferred gender of the employees sought and women candidates for jobs being asked to take pregnancy tests, despite the existence of legislation prohibiting such practices.

153. The Committee notes that despite the efforts of the Government referred to in paragraph 146 above, there is a high unemployment rate in the State party. The Committee is concerned over the large numbers of unemployed and underemployed persons, particularly youth in rural areas. The Committee suggests that the high unemployment figures may be partly attributable to the "grey" and "black" markets, where people work with no formal contract and pay little or no taxes and which is encouraged in large part by high employment taxes. The Committee notes that measures to deal with these situations are new and awaits information on their results in the next periodic report.

154. The Committee draws the attention of the Government to article 11, paragraph 1, of the Covenant and to its General Comment No. 7 (1997) on the right to adequate housing (art. 11, para. 1, of the Covenant): forced evictions. /E/1998/22, annex IV./ The Committee is concerned about existing legal provisions under which forced evictions may be carried out without provision for alternative lodging. The Committee also views with concern the problem of homeless people in Poland caused by the acute shortage of housing, the relatively high number of families living below the poverty line, the recent flooding and forced evictions.

155. The Committee expresses concern over the deteriorating health indicators that have been recorded during the last five years. It also draws attention to several areas of particular concern identified during the dialogue, namely, declining levels of nutrition, rising alcoholism, and increasing cardiovascular disease and cancers.

156. The Committee is concerned about the inadequate enforcement of occupational safety laws in Poland resulting in a relatively high number of accidents in the workplace, both in the private and the public sectors.

#### Suggestions and recommendations

157. The Committee recommends that special care be taken to ensure full respect for the rights of all religious groups, particularly concerning issues of national policy such as education, gender equality and health care. The Committee further recommends that the rights of all minority groups with regard to their right to participate in national political and economic life and the right to practice and teach their culture be fully respected.

158. The Committee recommends that every effort be made to ensure women's right to health, in particular reproductive health. It recommends that family planning services be made available to all persons, including counselling on safe alternatives to contraception and reliable and informative sex education for school-age children.

159. The Committee recommends that sexual harassment against women be prohibited by law. It recommends that shelters for women and children who are victims of family violence, with all necessary support facilities, including counselling and other assistance, be provided in all voivodships. It looks forward to receiving in the next periodic report detailed information on the problem of domestic violence and the results of the recently adopted Action Programme for Women.

160. The Committee recommends that the 1962 citizenship law, which discriminates against women by not granting them the same right as men to transmit citizenship to their foreign-born spouses, be abolished.

161. The Committee recommends that the right to work be fully protected for women as well as for men on the basis of equal pay for equal work. It suggests that a study be undertaken on the subject and requests that information on measures taken in this regard be contained in the next periodic report submitted by the State party.

162. The Committee urges the State party to take appropriate measures, especially increasing the number of State labour inspectors and strengthening their powers, in order to ensure that occupational safety legislation is properly implemented.

163. The Committee recommends that the conditions for permissible forced evictions be specified in law, with provisions that address the need for alternative lodging for those evicted. The Committee urges the State party to take all appropriate measures in addressing the problems of the acute housing shortage and homelessness. It further recommends that the basis for setting rental rates be determined in a way that protects the rights of both property owners and tenants, especially those among the most vulnerable groups of society. The Committee suggests that information on one's rights and responsibilities and the public and private avenues of assistance available in a market economy be provided to all consumers, in particular tenants. The Committee emphasizes that respect for the right to housing should include, when appropriate, measures to assist those whose homes are put in jeopardy or who are rendered homeless by dramatic rent increases due to the elimination of rental subsidies.

164. The Committee recommends that the State party engage in a large-scale public information campaign to promote healthy lifestyles among the Polish people in order to improve the quality of

their nutrition, combat alcoholism and smoking, and reduce the risks of cardiovascular diseases and cancers. The campaign should extend to schools, where such information should be incorporated into the regular curricula.

165. The Committee urges the State party to accelerate the process of ratification of ILO Conventions Nos. 102, 176, 97 and 159. It requests that information on that process, as well as on all points contained in these concluding observations on which information has been requested, be contained in the next periodic report submitted by the State party.

166. The Committee urges the State party to disseminate the present concluding observations widely.



## **CESCR E/2003/22**

342. The Committee considered the fourth periodic report of Poland on the implementation of the Covenant (E/C.12/4/Add.9) at its 33rd and 34th meetings, held on 13 and 14 November 2002, and made public, at its 56th meeting, held on 29 November 2002, the following concluding observations.

### Introduction

343. The Committee welcomes the submission of the fourth periodic report of Poland, which was prepared in conformity with the Committee's guidelines. The Committee notes with appreciation the comprehensive written replies to its list of issues (E/C.12/Q/POL/2) and the additional information provided during and after the constructive dialogue with the delegation of the State party.

### Positive aspects

344. The Committee notes with appreciation the range of concrete measures that have been undertaken by the State party during the reporting period, in accordance with the Committee's previous recommendations.<sup>27</sup>

345. The Committee commends the State party for its ongoing process to bring its legislation into harmony with the provisions of the Covenant and for the specific measures it has taken in order to ensure the enjoyment of economic, social and cultural rights within its jurisdiction.

346. The Committee welcomes the establishment in November 2001 of the Government Plenipotentiary for Equal Status of Women and Men with the responsibility of promoting the principle of equality between men and women in government legislation and policies. The Committee also notes the recent expansion of the responsibilities of the Plenipotentiary to include combating discrimination based on race, ethnic origin, religion and belief, age and sexual orientation.

347. The Committee welcomes the programmes and measures undertaken by the State party to address the alarming rise in unemployment, including the National Strategy for Employment Growth and Human Resources Development for the Period 2000-2006.

348. The Committee also welcomes the recent amendments to the Labour Code, which ban discrimination on the grounds of sex, age, disability, nationality or belief, and guarantee equal remuneration for work of equal value. The Committee notes with appreciation that under the new Labour Code the burden of proof is incumbent on the employer if an employee complains about discriminatory practices.

349. The Committee welcomes the recent redefinition of juvenile work, according to which the minimum working age has been raised from 15 to 16 years.

350. The Committee welcomes the establishment in 2000 of the Ombudsman for Children responsible for monitoring children's rights in Poland.

351. The Committee also welcomes the adoption in 1997 of the Charter of Disabled Persons' Rights, as well as the entry into force in 1998 of the Act on Vocational and Social Rehabilitation and Employment of Persons with Disabilities of 27 August 1997.

352. The Committee notes with appreciation the initiatives undertaken by the State party to reduce alcohol consumption and tobacco smoking in the country, including the recent ban on the selling of alcohol to minors and on the promotion and advertising of tobacco products.

#### Factors and difficulties impeding the implementation of the Covenant

353. The Committee notes the difficulties encountered by the State party in implementing the rights provided for in the Covenant, which arose from the process of transition to a market-oriented economy.

#### Principal subjects of concern

354. The Committee is deeply concerned about the recent increase in xenophobic manifestations and acts of violence against certain minorities, in particular Jews and Roma.

355. The Committee regrets that the State party has not provided data about the Roma population living in Poland and that it has not yet adopted and implemented a comprehensive programme to address the problems faced by Roma communities, in particular unemployment and inadequate living standards. The Committee also expresses its concern at the high dropout rates among Roma students.

356. The Committee notes with regret that it did not receive a satisfactory answer from the State party as to whether migrant workers and members of their families have the right to appeal in courts. The Committee is concerned that the rights enshrined in the Covenant are insufficiently protected for a large number of migrant workers residing in Poland.

357. The Committee is concerned about the high level of unemployment in the State party, which has steadily increased since the consideration of its last periodic report and which currently affects over 17 per cent of the active population. The Committee notes with concern that rural areas are particularly affected in this regard as a result of the restructuring of the public sector in the field of agriculture.

358. The Committee is also concerned that, despite the measures taken by the State party to combat discrimination against women in employment, the discrepancy persists between the law and actual practice with respect to equal remuneration for work of equal value and to promotion in employment, as acknowledged by the State party's delegation.

359. The Committee is further concerned that there are no specific regulations against sexual harassment in the State party. It notes with regret that the State party was not able to provide information on this subject in its report and written replies to the list of issues, as requested by the Committee.

360. The Committee notes with concern the different retirement ages for men (65) and women (60), which in practice result in lower pensions for women.

361. The Committee is concerned that the minimum wage in Poland is insufficient to provide a worker and his/her family with a decent standard of living.

362. The Committee is also concerned about the inadequacies in enforcing occupational safety laws and regulations in the State party, resulting in a relatively high number of accidents in the workplace.

363. The Committee notes with concern that the legislation of the State party still contains restrictions on civil servants' right to join trade unions and to strike.

364. The Committee expresses its concern that the relatively high incidence of child labour in rural areas, as acknowledged by the State party's delegation, has a negative impact on children's health and on their right to education.

365. The Committee is concerned about the rising incidence of trafficking in women for the purpose of sexual exploitation.

366. The Committee is also concerned about the high number of reported cases of domestic violence and notes with regret that insufficient information was provided on this issue by the State party.

367. The Committee is further concerned that, under existing legislation, forced evictions may be carried out in the State party without the provision of alternative lodging, as stipulated in the Committee's general comment no. 7 (1997) on the right to adequate housing (art. 11, para. 1, of the Covenant): forced evictions.

368. The Committee regrets that it did not receive adequate information from the State party on the number of people who live below the poverty line.

369. The Committee is concerned that family planning services are not provided in the public health-care system and that women have no access to affordable contraception. It also expresses concern that education in sexual and reproductive health is not adequately covered in the national school curricula.

370. The Committee is concerned about the restrictive abortion laws, which have resulted in a large number of women risking their health by resorting to clandestine abortionists.

371. The Committee expresses its concern at the high level of cardiovascular diseases, as acknowledged by the State party.

372. The Committee expresses deep concern at the high number of people who suffer from mental illness and the equally high number of children and young adults who required psychological care during the reporting period.

373. The Committee notes with regret that the State party did not provide sufficient information on its programmes to combat HIV/AIDS.

#### Suggestions and recommendations

374. The Committee requests the State party to clarify, in its fifth periodic report, whether individuals within its territory may invoke the rights enshrined in the Covenant before the domestic courts, as well as relevant case law, if available, on the application of the Covenant. In this respect, the Committee draws the attention of the State party to its general comment no. 9 (1998) on domestic application of the Covenant. The Committee urges the State party to take measures to increase public awareness of the Covenant and of the possibility of invoking its provisions before the courts.

375. The Committee recommends that the State party formulate and implement a comprehensive national plan of action for the promotion and protection of human rights, as recommended in paragraph 71 of the Vienna Declaration and Programme of Action.<sup>8</sup> The Committee requests the State party to include a copy of the national plan of action and information on its implementation in its next periodic report.

376. The Committee urges the State party to take legislative and other measures to ban and prosecute organizations which incite or promote racial discrimination.

377. The Committee also urges the State party to provide updated information on the Roma population and to adopt a comprehensive programme to address the obstacles to the advancement of the Roma population, including measures to ensure effective remedy for cases of discrimination against Roma in employment, housing and health care. The Committee further urges the State party to adopt effective measures to combat the low school attendance and high dropout rates among Roma students and to provide for their integration into regular classes on an equal footing with other Polish children.

378. In view of the large number of migrant workers in Poland, the Committee urges the State party to ensure the effective protection of the rights of migrant workers and their families, provided for under the Covenant.

379. In order to tackle unemployment, the Committee urges the State party to intensify its efforts to implement the relevant national plans of action with a view to adapting the workforce to a changing labour market and providing alternative sources of income for workers affected by restructuring programmes, particularly in the heavy industry and agricultural sectors.

380. The Committee reiterates its previous recommendation to the State party to ensure the implementation of the legal provisions and administrative regulations guaranteeing equal remuneration for men and women and the equal opportunity for promotion in employment, subject to no considerations other than those of seniority and competence. The Committee encourages the adoption of the draft legislation on the equal status of men and women, currently being considered by the Senate of the State party.

381. The Committee also reiterates its previous recommendation to the State party that sexual harassment be prohibited by law, and urges the State party in its next periodic report to provide information on sexual harassment.

382. The Committee recommends the adoption of the same age of retirement for men and women.

383. The Committee also recommends that the State party regularly evaluate and adjust the minimum wage on the basis of the cost of living so as to ensure that the worker and his/her family are able to have a decent standard of living.

384. The Committee reiterates its previous recommendation to the State party to intensify its efforts at ensuring that occupational safety legislation is properly implemented, especially by allocating sufficient resources to the State Labour Inspectorate and imposing effective sanctions with respect to violations of safety regulations.

385. The Committee recommends to the State party that its legislation on the civil service be amended with a view to lifting the restrictions imposed on civil servants' right to join trade unions and on their right to strike, in conformity with the comments made in 2000 by the ILO Committee of Experts on the Application of Conventions and Recommendations on Convention No. 87 (1948) concerning freedom of association and protection of the right to organize, which is published in the thirtieth report of ILO.

386. The Committee also recommends the adoption of legislation in order to regulate child labour in rural areas in such a way that the right to health and right to education of working children are fully protected.

387. The Committee further recommends that the State party take effective measures to combat trafficking in women, inter alia, by ensuring that those responsible for trafficking are prosecuted, and to ratify the international instruments aimed at intensifying cooperation in this field among States, including the additional Protocol to the United Nations Convention against Transnational Organized Crime to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The Committee requests the State party in its next periodic report to report on the progress made in this regard.

388. The Committee recommends that the State party strengthen programmes and increase budget allocations for combating domestic violence, ensuring, among other things, the availability and accessibility of crisis centres where victims of domestic violence can find safe accommodation and

counselling.

389. The Committee reiterates its previous recommendation that the conditions for permissible forced evictions be specified in law, with provisions that address the need for alternative lodging for those evicted, as provided for in the Committee's general comment no. 7 (1997) on forced evictions.

390. The Committee recommends that the State party closely monitor the level of poverty and provide in its next periodic report disaggregated and comparative data on the number of people living under the poverty line. The Committee furthermore urges the State party to fully integrate human rights, including economic, social and cultural rights, in the formulation of a national strategy for poverty reduction. In this respect, the Committee refers the State party to the Committee's Statement on poverty and the International Covenant on Economic, Social and Cultural Rights.<sup>16</sup>

391. The Committee also recommends that family planning services be provided by the public health-care system, that contraceptives be available at affordable prices and that sexual and reproductive health education be included in the national school curricula.

392. The Committee requests that the State party provide in its next periodic report detailed information, including comparative data, about the problem of abortion in Poland and the measures, legislative or otherwise, including the review of its present legislation, it has undertaken to protect women from clandestine and unsafe abortions.

393. In view of the high level of deaths caused by cardiovascular diseases, the Committee recommends that the State party monitor the situation closely and include in its next periodic report disaggregated and comparative data documenting the effects of measures taken in this respect.

394. The Committee requests the State party, in its next periodic report, to provide detailed information on the conditions in psychiatric inpatient health-care facilities and to include data documenting the results of the Mental Health Programme.

395. The Committee also requests the State party to include in its next periodic report information on concrete results of the implementation of the Charter of Disabled Persons' Rights as well as of the Act on Vocational and Social Rehabilitation and Employment of Disabled Persons of 27 August 1997.

396. The Committee further requests the State party to provide information on legislation and programmes concerning persons with HIV/AIDS, as requested in the list of issues to be taken up in connection with the present periodic report.

397. The Committee encourages the State party to provide human rights education in schools at all levels and to raise awareness about human rights, in particular economic, social and cultural rights, among State officials and the judiciary.

398. The Committee requests the State party to disseminate the present concluding observations

widely at all levels of society, and in particular among State officials and the judiciary, and to inform the Committee in the next periodic report, of all steps taken to implement them.

399. Finally, the Committee requests the State party to submit its fifth periodic report by 30 June 2007, and encourages the State party to consult with non-governmental organizations and other members of civil society in the preparation of the report.

---

8/ Adopted by the World Conference on Human Rights, held in Vienna from 14 to 25 June 1993 (A/CONF.157/24 (Part I), chap. III).

...

16/ [*Official Records of the Economic and Social Council*], 2002, *Supplement No. 2* (E/2002/22-E/C.12/2001/17), annex VII.

...

27/ [*Official Records of the Economic and Social Council*], 1999, *Supplement No. 2* (E/1999/22-E/C.12/1998/26), chap. IV, paras. 157-166.