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HUMAN RIGHTS COMMITTEE

Forty-fifth session

SUMMARY RECORD OF THE 1152nd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 14 July 1992, at 3 p.m.

Chairman: Mr. EL SHAFEI

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The meeting was called to order at 3.10 p.m.

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

Belarus (CCPR/C/52/Add.8) (continued)

1. The CHAIRMAN invited members of the Committee who so wished to put questions additional to those raised in section I of the list of issues to be taken up in connection with the third periodic report in document CCPR/C/52/Add.8.

2. Mr. MYULLERSON said that the calibre of the delegation of Belarus, headed as it was by the Minister of Justice of the Republic, showed the seriousness with which the issue of human rights was being addressed in that country. He commended the exemplary calm and gradual approach - not greatly acknowledged by the world's media - to the solution of a wide range of problems, against the background of extremely adverse economic circumstances.

3. A reading of the draft Constitution of the Republic of Belarus in its present form revealed that it contained many interesting and important provisions that were related to human rights and appeared generally to be in keeping with international standards. The articles defining the role and powers of the Constitutional Court, and more especially its watchdog function for ensuring the conformity of domestic laws with the Republic's international obligations, were most encouraging.

4. He understood that Belarus had ratified the Optional Protocol to the Covenant, but could find no detailed information on that matter in the documentation before the Committee. Had the relevant instrument been deposited with the Secretary-General of the United Nations?

5. After remarking that it was most useful for the Committee to be able to consider the future Constitution of Belarus in its draft form, since that permitted suggestions to be made which might be difficult to implement at a later stage, he asked a number of questions concerning the form and substance of various articles.

6. Firstly, article 8, stating that "The Republic of Belarus recognizes the priority of the universally acknowledged norms of international law", might perhaps be expanded to render that precedence more explicit: he presumed it to be over domestic laws. Further, he considered that a reference to the priority of international instruments ratified by the Republic would be preferable to the vaguer allusion to "norms".

7. Recalling that the Supreme Court of the Union of Soviet Socialist Republics had functioned as a court of higher instance in relation to the Supreme Courts of the Union Republics, deemed to be courts of first instance, he asked what effect the disappearance of the former had had on the status and functioning of the latter.

8. Section II, chapter 1 of the draft Constitution was entitled "Fundamental Rights, Freedoms and Duties of Citizens", and numerous articles also spoke of "citizens". But surely the concern should be more properly with the rights of all who found themselves under the jurisdiction of the Republic: by no means all such persons were citizens.

9. According to article 68 of the draft Constitution the right to vote in elections was denied to, inter alia, "people in custody under procedures established in criminal procedural law". Might not that provision have the effect of jeopardizing the rights of people in detention, who should be presumed innocent until proved guilty? He understood that certain States of the former Soviet Union had introduced legislation to remove that possible anomaly.

10. The provisions of the draft Constitution relating to the Procurator's Office were interesting. He was, however, concerned to note from article 141 that, as had been the case in the USSR, the Procurator's office was responsible, inter alia, for monitoring the application of laws and supervising the investigation of criminal cases. Would not that provision, if retained, jeopardize the independence of the courts?

11. Remarking that the printed report had been overtaken by events, and that the oral introduction by the Minister of Justice of Belarus had thus been of particular significance, he confessed to some misgivings over a number of somewhat inapposite allusions to violations of human rights in the former Soviet Union. As a former Soviet citizen himself, he could testify to the fact that the complete subservience to the State which characterized totalitarianism precluded the very existence of such rights and thus, in the strict sense of the term, their violation. In the former Soviet Union, rights enumerated under, for example, articles 12, 18, 19, 22 and 25 of the Covenant had simply not existed, having been, as it were, transformed into privileges to be accorded as the State saw fit. That state of affairs was now, he hoped, a thing of the past; and the report submitted to the Committee left him with a feeling of optimism over the transformations that were occurring not only in Belarus but also in other countries of the former Soviet Union and in Eastern Europe.

12. Mr. SADI remarked on the high calibre of the delegation of Belarus, and congratulated the Republic on the accomplishment, for what was perhaps the first time in its history, of the act of self-determination. Noting that the printed report before the Committee had been rendered obsolete by recent events, he submitted that the present situation might best be addressed by reference to the more up-to-date, albeit incomplete information provided orally by the Minister of Justice of the Republic.

13. The fact that Belarus was going through a period of transition and that its organic laws were still in the process of formulation was perhaps especially conducive to fruitful dialogue, and could enhance the impact of the Committee's views. He would first suggest that, although the draft Constitution obviously sought to address human rights issues in maximum detail and would no doubt be consonant with the provisions of the Covenant, there might be room for further consideration as to how the latter might be

incorporated in toto in the former and - more particularly - how the provisions of article 2, paragraph 2, of the Covenant might be fully complied with. Perhaps the new Constitution might even embody the language of the Covenant; in that connection, he wondered whether the assistance and facilities of the United Nations Centre for Human Rights might not be placed at the disposal of those responsible for finalizing the text.

14. Noting from page 3 of the printed report the large number of international instruments to which the former Byelorussian SSR had been a party, he sought reassurance that the commitments thus assumed would be respected by the new Republic.

15. Mrs. HIGGINS also commended the calibre of the delegation of Belarus and expressed appreciation of the information and personal sentiments conveyed to the Committee by the Minister of Justice of the Republic.

16. She realized that Belarus was in a transitional phase, and that its new legislation was yet to be finalized. For the moment, therefore, she would confine herself to three brief questions related to section I of the list of issues.

17. Firstly, she asked whether, pending new legislation, the criminal codes of the former Soviet Union were still in force. If such was indeed the case, certain matters might be of grave concern to the Committee; but it was her hope that the codes concerned were no longer being applied in all their former rigour.

18. Secondly, she noted the information that some new opposition parties in the Parliament of Belarus had come into being concomitantly with the actual process of elections to that body. Was any consideration being given to the holding of fresh elections before the review of the Republic's legislation was completed?

19. Lastly, in connection with the question on the status of minorities (I (f) in the list of issues), she welcomed the substance of the Minister's reply, but sought clarification of any possible consequences if Jewish people, perceived elsewhere in the world as a religious minority, continued to be qualified, as under earlier Soviet law, as a national minority.

20. Mr. ANDO joined in expressing satisfaction at the high level of representation of the delegation of Belarus. For the moment, he wished merely to inquire, against the background of the extremely severe economic difficulties confronting the country, largely as a result of the sudden change from a planned to a market economy, whether special measures were being taken by the State to provide economic assistance for needy women, children, elderly people and pensioners. The matter perhaps fell more strictly within the purview of the International Covenant on Economic, Social and Cultural Rights, but the provisions of article 6 (right to life) of the Covenant for which the Committee was responsible were also involved.

21. The CHAIRMAN, speaking in his personal capacity, observed that the presence of the Minister of Justice of Belarus as the head of his country's delegation augured well for the relationship between the Committee and the new State. Like other speakers, he noted that the printed report had been so overtaken by events as to be inadequate, but added that the shortcomings had been amply compensated by the detailed oral account of recent major developments, giving what he believed to be a true picture of the situation in Belarus with regard to respect for human rights, the implementation of the Covenant and its relation to the new legislation that was being drafted. He wished the Government of the Republic every success in the latter undertaking.

22. The dialogue would be enriched if members of the Committee were to comment on some of the provisions of the draft Constitution of Belarus, but there must be no infringement whatsoever of the sovereign right of the people of Belarus to decide on its contents. He noted with satisfaction that certain of the provisions, notably those of article 25, second paragraph, corresponded almost word for word with the text of the Covenant, and took that to be a sign of the drafters' careful attention to that instrument. On the other hand, the wording of - for example - article 21, which stated that "The establishing of fundamental rights and freedoms in the Constitution must not be interpreted as a dismissal or denigration of other rights and freedoms", seemed to open the way to difficulties of interpretation: would it not be preferable to enumerate such rights and freedoms, as they were described in the Covenant? Similarly, article 49, which stated that "The right of peoples to self-determination must not conflict with the rights and freedoms of citizens proclaimed in the present Constitution", was not altogether easy to understand: perhaps the authors' intention could be explained by the Minister? Lastly, he personally had some difficulty with the use of the word "duty" in the second paragraph of article 52, concerning the provision of assistance to others in danger.

23. Miss CHANET thanked the delegation of Belarus for its explanations regarding new draft Constitution and other developments in the country. The delegation had provided valuable information about the reform of the Constitution, the Criminal Code and the Law on the Status of Judges, but she would like to know more about the actual content of the new laws. The delegation had said that the Ministry of Justice had checked the drafts for compatibility with the Covenant, but the Committee could not be content with such general assurances. From example, the delegation had stated that the system of recruitment of judges had been changed, but she would like to know how judges were selected now - by competition or by some other means? What changes would be made to the way judges were trained, their career structure and the disciplinary measures to which they were subject?

24. She would also like more information about the role of the Procurator's Office. The articles of the draft Constitution dealing with that body (arts. 141-144) did not seem to change the privileged position enjoyed by the Office, which had allowed it to exert undue influence on judges in the past. Admittedly, procurators were not now allowed to engage in political activity, but they were still responsible for monitoring the exact and uniform application of the law. She would like to know exactly how the procurators' functions had changed and what guarantees existed to ensure that procurators could not act as they had done in the past.

25. Section VI of the draft Constitution provided that the Bar was to be privatized, but gave no details of the process, referring the reader instead to the Law on Advocacy (art. 146 of the draft Constitution). How was the independence of the Bar to be guaranteed, and what professional code of ethics would barristers have?

26. She would welcome more information about the role of the police. Was there a judicial police force, or were there any plans to establish one?

27. Like Mrs. Higgins, she would like to know whether the old Soviet laws would remain in force until their replacements had been adopted.

28. Mr. WENNERGREN asked for more information about the procedure for appeal against decisions and actions of State bodies or officials and private citizens (art. 60 of the draft Constitution). Were Belarus citizens aware that they could have recourse to the courts? How could citizens lodge an appeal? Did they need a lawyer and were any fees payable? What was the court procedure for dealing with such appeals?

29. Mr. AGUILAR URBINA inquired about the procedure for appeals against sentences passed by the Supreme Court of Belarus. The Supreme Court could impose death sentences for particularly heinous crimes, and in such a case it would be the court of first instance. In the past, it had been possible to appeal to the Supreme Court of the USSR, but that had now been abolished. Did any appeals procedure now exist?

30. His next question concerned the concepts of "nationality" and "citizenship". The draft Constitution referred to "citizenship" in a context where most international instruments would use "nationality", implying that a person had to be a citizen of Belarus in order to exercise political rights. It also referred to "national groups". How did the delegation of Belarus understand the concepts of "nationality", "citizenship" and "exercise of political rights"? How could members of national minorities acquire the citizenship or nationality of Belarus? The concept was an important one because, although Belarus had fortunately not suffered any ethnic conflicts, many of its neighbours had.

31. The draft Constitution stated that Belarus recognized the priority of the universally acknowledged norms of international law (art. 8) and recognized the international obligations undertaken by the former Byelorussian SSR (art. 20). Did that mean that the Covenant would be directly applicable in the legislation of Belarus when the Constitution was adopted? Would domestic legislation which contravened the Covenant be declared null and void, and would the Covenant be applied directly in the courts?

32. Mr. OGURTSOV (Belarus), replying to Mr. Myullerson's question about the accession of Belarus to the Optional Protocol, said that the instrument of ratification had either already been lodged with the Secretary-General of the United Nations, or would be lodged very soon.

33. Mr. DASHUK (Belarus) thanked the Committee for its warm welcome. It was true that the report under consideration was very much out of date, which was why he and his colleagues had come before the Committee to explain the current situation and the difficulties which the Republic faced in drafting its new Constitution and other major instruments.

34. Further to the remarks made by Mr. Myullerson, he said that he personally had never experienced undue pressure in 25 years' work in the courts, although he was sure that such pressure had existed. It was true that the full enjoyment of human rights could not be achieved under a totalitarian regime, but he felt that the criminal justice system had made considerable efforts to right the people's wrongs, even if the laws it had obeyed were flawed.

35. The draft of the new Constitution on which the Committee had based its comments was already out of date - it had been revised several times since then. The authorities had consulted many other Governments and a number of non-governmental organizations when preparing the draft, and had attended seminars in France and Germany. The latest draft was designed to reflect as much of the experience of other countries as possible, in order to produce a workable Constitution, and the Ministry of Justice had already issued 50 pages of comments on it. The new Constitution was being drawn up in a great hurry, which was not a good thing, but the country needed a Constitution in order to function.

36. Pending the adoption of new legislation, the laws of the former Soviet Union were still in force, provided that they did not flagrantly contradict the direction being taken by the new Republic. In other cases, Belarus had applied the provisions of international standards such as the Covenant. For instance, until 1991, directors of State enterprises and ministers had had no right to defend themselves before the courts; when that state of affairs had been declared unconstitutional, the courts in Belarus had begun to apply the provisions of the Covenant directly. There were other examples of the direct application of international treaties. The courts and legislators were in a difficult situation. Cases were coming up before them which had to be settled straight away, but the existing statutes could not always be applied, and they were not allowed to use case law.

37. Mr. Myullerson had asked whether Belarus had acknowledged that international treaties took precedence over domestic law. The Republic had, indeed, recognized that principle, and the Ministry of Justice had endeavoured to ensure that it was made quite clear in the new legislation.

38. Mr. Myullerson had also inquired about the status of the Supreme Court of Belarus. In the past, there had been no provision for cassation proceedings to reverse decisions of the Belarus Supreme Court, although judicial review had been possible. In 1990, a seven-member presidium of the Supreme Court had been established, to which appeals could be addressed if the Supreme Court had been the court of first instance in a civil or criminal case. If the presidium rejected the appeal, the case could be taken to the plenum of the Supreme Court, which was the final court of appeal now that the Soviet Union had been disbanded. Those principles were enshrined in the draft law on the administration of justice and the draft code of criminal procedure, which were

due to be debated by the Parliament of Belarus soon. Only a small number of cases were involved - between 3 and 5 criminal cases and some 10 civil cases per year - but it was obviously necessary to have some procedure for appeals against decisions of the Supreme Court.

39. In response to Mr. Myullerson, he said that the title of section II, chapter 1 of the draft Constitution, which referred to the fundamental rights, freedoms and duties of "citizens", was meant to be declaratory in nature. The authors of the draft Constitution had carefully considered the significance of every word. They had little experience of such work because, in the past, the text of such an important instrument would have been decided in Moscow rather than at the republic level. They had received much valuable help from legal experts in other countries, including the United States of America.

40. There were still a number of obstacles to overcome: some parliamentary deputies still clung to the old ideology, and it would take time to train legal experts in the new way of thinking. It was a very different situation from that in Germany, for example, where it had been possible to replace the judges of the former German Democratic Republic by judges trained in the West.

41. Mr. Myullerson had commented on the withdrawal of voting rights from people in detention. The practice did, indeed, prejudice the presumption of innocence, and the Ministry of Justice would endeavour to ensure that the anomaly was removed in the new legislation.

42. In reply to Mr. Myullerson's question about the possible threat to the independence of the judiciary posed by the activities of the Procurator's Office, he said that the legislation affecting procurators' activities had not been changed. In practice, however, procurators merely offered their opinion, in their capacity as the prosecuting counsel acting on behalf of the State, and would only raise an objection if they felt that a trial was not being lawfully conducted. There were plans to place the Procurator's Office under the authority of the Ministry of Justice in order to remove its influence over the courts altogether.

43. There had certainly been flagrant violations of human rights throughout the Soviet Union in the past, but courageous individuals in the Republics had done their best to lessen their impact. For example, his own Republic had adopted a law on rehabilitation to try and redress the wrongs done to two dissidents. It had been a very difficult task in a corrupt system in which human rights violations had been commonplace since the widespread repression of the 1930s, and hundreds of claims for rehabilitation were now being submitted to the Belarus Supreme Court.

44. In response to Mr. Sadi's question about the incorporation of the Covenant in the new Constitution, he said that Belarus was committed to respecting its international obligations under the treaties to which it was a party. There was therefore no need to incorporate the Covenant in the Constitution. A declaration that Belarus undertook to fulfil its obligations under international law was sufficient. As far as the agreements signed by the former regime were concerned, Belarus would, as a successor State, implement all agreements which involved commitments to the international community.

45. In response to Mrs. Higgins' question about the amendment of the Criminal Code, he said that the original text, which, though much amended, was still in force, was in many respects completely contrary to the direction currently being taken in regard to capital, foreign investment, property rights and so on. For example, private enterprise was currently permitted by law. According to the Criminal Code, however, such enterprise could give rise to prosecution. That provision had, in a sense, been deleted through being ignored. The commercial activities of middlemen had already been decriminalized in order to promote trade relations. People were no longer penalized for not being gainfully employed. By means of those and other measures, Belarus was trying to establish a democratic foundation on which to develop its economy. The Republic had been criticized, however, for protecting its own consumers. The law on trade was admittedly anti-market. Prices had been lower in Belarus than in neighbouring States and people from the Baltic Republics and Moldova, for example, had tended to move in to take advantage of those lower prices. Transitional measures had, therefore, been taken to protect the economy. Once food prices became stable, those measures would probably be repealed.

46. In answer to a question about the number of political parties, he said that, to date, eight parties had been registered. The Belarus National Front was currently waging a campaign to prepare for new elections under a multi-party system. The Front felt that Parliament was not in a position to push through the reforms needed to create a proper state of law and was therefore demanding that the Supreme Soviet should stand down. Parliament would have to consider any petition for the holding of a referendum. It was difficult to predict the outcome of such a consultation since political activity had recently subsided somewhat, because of economic difficulties. People were less confident about the prospects for reform, but there was no obstacle to a referendum being held if the people demanded one.

47. In response to Mrs. Higgins' question about the Jewish minority, he said there were about 700,000 Jews in the territory of Belarus, which made them one of the Republic's largest groupings. They tended to live close together, and there was a large Jewish presence in the big cities expecially. They possessed their own religious institutions and schools, though perhaps not as many as they would like. The State put no obstacles in the way of such institutions. Many Jews had gone abroad, some of whom wished to retain their citizenship. Jews who returned to Belarus would automatically be regranted citizenship.

48. Mr. Ando had referred to economic difficulties in Belarus, including shortages of supplies, and had asked whether there were any special assistance programmes for the elderly and the disabled. Parliament rather than the administration was responsible for such measures, and the situation of vulnerable groups, such as students, pensioners and those unable to work, was kept under constant review by Parliament and the local councils, and measures adopted to assist them. There was no lack of supplies, but prices were high and money to buy goods was scarce.

49. In response to questions by the Chairman, he agreed that article 52 of the draft Constitution was not sufficiently specific in its reference to the obligations of citizens. As far as the right to self-determination was

concerned, it was important that its exercise should not violate the rights of other citizens and other rights enshrined in the Constitution and the Covenant. The Declaration of Sovereignty of the Republic of Belarus devoted 12 articles to the right to self-determination.

50. In response to the question by Miss Chanet about the renewal of the judiciary, he said that the best course would be to replace all judges, but that was impossible for the time being. The current term of office of a judge was one to three years. One solution would be to take judges individually and retrain them for future work. The new legislation on the judiciary envisaged the nomination of an unspecified number of candidates by the President. The candidates would then take an examination and, if successful, would be presented by the Minister of Justice and the President of the Supreme Court for confirmation by the President of the Republic. Various steps were being taken to guarantee the independence of the newly appointed judges. The legislation stressed their high status and, even in the current difficult times, they were to receive generous emoluments. They were not to be held accountable for any incorrect evaluation of evidence or rejection of their findings by a higher court. The only grounds for disciplinary proceedings against them, which would be entrusted to a special collegiate body, would be conduct unworthy of their office. He noted in passing that there were no measures to limit a citizen's choice of profession. Everybody was free to choose a career. In response to Miss Chanet's question about the new Criminal Code, he said that it was still at the drafting stage. One proposed reform was the establishment of a judicial police force to protect judges and enforce order in the courts. Under the new Code the machinery of the Ministry of the Interior would be much curtailed. It would not deal with secondary issues but concentrate on ensuring the safety of citizens and property.

51. There was, as yet, no Administrative Court. Legislation to create such a body had been contemplated in 1990 but various objections had been raised. He believed that such a Court would be established eventually. The law currently in force in regard to violations of citizens' rights was that of the former Soviet Union. One possibility being considered was action by a collegiate body which could be appealed against.

52. Another question that had been asked was whether a person could be sentenced to death by a court of first instance. In former times, the Supreme Court of the Soviet Union had acted as the court of final instance. That arrangement had subsequently been challenged by the Baltic States. In Belarus, cases were currently dealt with first by the regional courts. The court of final instance was the plenum of the Supreme Court of the Republic.

53. A question had been asked about citizenship of Belarus and the way in which various groups could be admitted to citizenship. In his opinion, the law on citizenship was one of the best that Parliament had adopted. It established as a firm right that those living in Belarus at the time the law was adopted were citizens. No preconditions were set and the 10.3 million people living in the territory of Belarus on the date the law was adopted were all now citizens. As far as later admission to citizenship was concerned, there were four fairly simple conditions to be fulfilled: acceptance of the obligation to respect the laws and Constitution of the Republic; sufficient

mastery of the language of the State for purposes of daily living; possession of an independent source of income; and at least seven years' residence in the territory of the Republic. The adoption of the law had not led to any complaints. Citizens of Belarus living in other Republics of the former Soviet Union of which they were not citizens kept their Belarus citizenship if they expressed a wish to do so. The adoption of the law had not resulted in the departure of other nationalities from Belarus but rather in an influx from other Republics, in particular Lithuania and Ukraine. Consideration was currently being given to the question of dual citizenship. There was no provision in the law for deprivation of citizenship, arbitrarily or otherwise. In cases where their parents were of different nationalities, children might need to choose their citizenship. The law perhaps needed further refinement, but the fact that it had given rise to no complaints indicated that it was a good law.

54. Referring to article 20 of the draft Constitution, he said that the text would be worked on to ensure that the citizens of Belarus would not have an interpretation of the Covenant which differed from that of the Human Rights Committee.

55. The CHAIRMAN noted that the question-and-answer procedure had been completed in respect of the issues in section I of the list. He invited the delegation of Belarus to respond to the points raised in section II, which read:

"II. Right to life, treatment of prisoners and other detainees and liberty and security of the person (articles 6, 7, 8, 9 and 10)

(a) What is the current status of planned criminal legislation designed to significantly reduce the number of crimes for which capital punishment can be ordered? (para. 31 of the report). Please also indicate how often and for what crimes the death penalty has been imposed and carried out since the consideration of the second periodic report of Belarus?

(b) Has any consideration been given in Belarus to the abolition of the death penalty and accession to the Second Optional Protocol to the Covenant?

(c) Please provide information on safeguards against torture and other impermissible methods of investigation (para. 37 of the report).

(d) Please elaborate on the changes made to the Code of Criminal Procedure and the Corrective Labour Code relating to the implementation of article 10 of the Covenant (paras. 44 and 45 of the report).

(e) Please describe the conditions of detention in colony-settlements and corrective-labour colonies. Are the United Nations Standard Minimum Rules for the Treatment of Prisoners complied with in these colonies?

(f) Please provide information on the conditions of persons held in punishment or disciplinary isolation units or in solitary confinement (para. 45 of the report).

(g) Are there penal sanctions which consist only of forced labour and, if so, how is this reconciled with article 8 of the Covenant?

(h) Please provide information on measures taken to restructure the work of the militia and other police organs, with a view to better protecting the interests of the State and rights of the citizens (paras. 40 and 41 of the report).

(i) Please elaborate on the experience to date with the actual implementation of Decrees adopted in July 1987 and January 1988 regulating conditions and procedures for providing psychiatric care (paras. 42 and 43 of the report)."

56. Mr. DASHUK (Belarus) said that under the proposed new criminal law of Belarus the number of crimes for which capital punishment could be ordered had been reduced from 38 to 4: deliberate murder with aggravating circumstances, for example multiple murders; rape with serious consequences, for example, death of the victim; the kidnapping of a child; and acts of terrorism with aggravating circumstances. The abolition of the death penalty was an aspiration widely shared. He had attended the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and had voted in favour of a resolution calling for a moratorium on capital punishment. Unfortunately, the resolution had not received sufficient support. In the Republic of Belarus the majority favoured the maintenance of the penalty and, although opinions were divided in Parliament, a majority of deputies also favoured its retention for grave offences. In practice, however, comparatively few persons had been sentenced to death. The number had fluctuated from year to year but since 1985 it had been in the region of 17 to 21 cases a year, and in 25 to 30 per cent of those the sentence had been commuted to deprivation of liberty. The number of persons actually executed had been from 8 to 10 a year. Until 1987, the death sentence had also been applied to persons discovered to have participated in grave crimes, such as mass murder, during the Second World War. As far as other crimes were concerned, for example economic crimes, the penalty had not been applied for the past 20 years, and he saw no prospect of its being applied in the future. As to the consideration given to abolishing the death penalty, meetings of specialists had been held, and a parliamentary commission had examined the question but, as he had indicated, had favoured the retention of capital punishment for the present.

57. Torture was strictly prohibited under the Code of Criminal Procedure, and its actual or threatened use was a punishable offence. Prosecutions for such offences had in fact been rare, but some two years previously a number of officials belonging to the Procurator's Office and the Ministry of the Interior had been sentenced to deprivation of liberty.

58. With regard to conditions of detention in Belarus, in addition to prison proper, there were various types of colony-settlements, varying in degree of severity of regime - general, hard, strict and special - according to the

seriousness of the offence committed. The colony-settlements were places of deprivation of freedom but where educational activities were conducted in conjunction with corrective labour. Under the milder regimes, inmates could go outside the colonies without permission from the administration, and no restriction was imposed upon the amount of money they could spend on supplementary food or on the number of visits they could receive. The latter colonies were reserved for persons who had only committed offences of negligence without serious consequences, such as certain types of traffic offences. Other regimes varied in the amount of food provided, the extent of educational activities, the number of visits that could be received, etc. It could not be said that in all cases standards satisfying the Minimum Rules had been attained, but his Government was determined to do all in its power to achieve full compliance with those Rules.

59. Solitary confinement was applied only in cases of persistent disobedience and only when all other means had been tried and failed. It was of very restricted use, and maximum periods of confinement were laid down - for example, 15 days in disciplinary isolation units (a punishment not applied to women) in colonies and six months in most prisons.

60. No penal sanctions consisting only of forced labour were imposed - in other words, courts never imposed sentences of full-time forced labour. There was, therefore, no contravention of article 8 of the Covenant.

61. There had been much discussion in Belarus on the restructuring of the militia with a view to making it more democratic, but work on new laws and regulations was not yet completed.

62. As to the implementation of the decrees of July 1987 and January 1988 on psychiatric care, the institutions concerned had been notified by the Ministry of the Interior that they would henceforth operate under the authority of the Ministry of Health. Under article 124-2 of the Criminal Code, it was a criminal offence for a person known to be of sound mind to be placed in a psychiatric institution. That provision had been in force for the past three years and no case had arisen in which such action had allegedly been taken.

63. The CHAIRMAN invited any members of the Committee who so wished to ask supplementary questions.

64. Mr. AGUILAR URBINA said he had understood the Belarus representative to refer to the existence of a provisional sentence imposed on a person who might subsequently be discharged by the court. Such a procedure would appear to be in contradiction with the principle of presumption of innocence.

65. Mrs. HIGGINS said it was gratifying to know that the large number of crimes for which capital punishment could be imposed was to be reduced to four. It had also been indicated that the number of persons actually sentenced to death had been comparatively small - some 17 to 21 a year. She wondered, however, whether those figures might not conceal an upward trend: her information was that the number for 1989 had been 5, for 1990, 20 and for 1991, 21. That increase might well be the result of a combination of the

previously existing broad category of offences and significantly rising crime figures. It was to be hoped that with the reduction in the number of capital offences, those figures would once again decline.

66. Mr. DASHUK (Belarus), replying to the supplementary question, said that there were restrictions on the number of visits and other privileges applied to convicted persons, i.e. persons who had already been sentenced to deprivation of freedom.

67. He acknowledged that there had been an increase in the crime rate, which might be connected with the current economic situation. There had not, however, been any proportional increase in the number of persons sentenced to capital punishment. In 1991, for example, there had been 600 murders in Belarus, which was an increase of 200 over the previous year, whereas only 20 persons had been sentenced to death. Multiple murders, occasionally involving large numbers of victims, did unfortunately occur, and it was understandable that public opinion should ask for exceptionally strong measures to deal with such a situation.

68. The CHAIRMAN invited the delegation of Belarus to respond to the points raised in section III of the list of issues:

"III. Right to a fair trial (article 14)

(a) Please provide additional information on the right to defence introduced by article 7 of the Foundations of Legislation on the Judicial System of 17 November 1989. In particular, how soon after arrest can a person contact a lawyer and inform his family? (para. 56 of the report).

(b) What measures have been taken to ensure that trials are genuinely public, allowing access to the interested public, including representatives of the local and foreign press?

(c) Please provide further information on the free legal aid system in Belarus."

69. Mr. DASHUK (Belarus) said that the Foundations of Legislation on the Judicial System, which had been in force for over a year and a half, provided valuable guarantees to detainees. The power of the defence had been strengthened, and the measures ensuring the attendance of a defence lawyer from the moment of detention, arrest or charge had been of particular importance. A detainee could request the services of any lawyer he wished and, if that did not prove feasible, the services of another lawyer were provided. The legislation also provided for the rejection of a lawyer by a detainee, but in the case of minors or where severe sentences might be imposed the presence of a lawyer was compulsory.

70. Trials were genuinely public. Hearings were held in public, and the press, including foreign journalists, could attend, except in certain types of cases where confidentiality was essential, or where the accused requested the exclusion of the press on grounds that it might improperly influence the

judges. Even when cases were heard in camera, however, the verdict had to be delivered in open court. There had been cases where the defendant had asked for the withdrawal of television teams.

71. In Belarus, the fees chargeable by lawyers were subject to regulation, and in the case of certain categories of defendant, for example invalids, the unemployed or persons in poor health, legal services were provided without charge.

72. Mr. ANDO requested more detailed information on the procedures for the appointment of judges to supplement the information contained in paragraphs 50 and 51 of the report.

73. Mr. DASHUK (Belarus) said that the initial qualification was legal education of the highest standard. Such education, including court training, was, however, insufficient in itself. Not every lawyer was suited to becoming a judge; special qualities of character and personal qualities were also required. Candidates were selected by a board composed of officials from the Ministry of Justice and members of the judiciary and subjected to a searching interview, which often resulted in rejection. Successful candidates were then further interviewed by members of the Supreme Court before final approval and appointment. Judges had security of tenure and enjoyed good salaries, both of which measures helped to ensure their independence. The normal period of initial appointment for a judge was 10 years.

The meeting rose at 6 p.m.