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Summary record of the 3308th meeting (Chamber A)

Held at the Palais Wilson, Geneva, on Tuesday, 18 October 2016, at 10 a.m.

Chair: Sir Nigel Rodley

Contents

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

Seventh periodic report of Poland (continued)

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The meeting was called to order at 10 a.m.

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

Seventh periodic report of Poland (continued) (CCPR/C/POL/7 and CCPR/C/POL/QPR/7)

1. *At the invitation of the Chair, the delegation of Poland took places at the Committee table.*
2. **Mr. Masło** (Poland), replying to the question raised by Mr. Iwasawa at the previous meeting concerning funding for NGOs that provided assistance to victims of domestic violence, said that centres for victim support were financed by the Fund for Assistance to Victims and Post-Penitentiary Assistance. However, the Fund had limited resources to allocate to non-governmental organizations that provided services to victims of crime. In 2016, the Ministry of Justice had received funding applications from 42 such NGOs, 5 of which had been excluded at the outset because they had not met the relevant criteria. Of the remaining 37 NGOs, 26 had received funding totalling approximately 20 million zlotys. The criteria for selection included geographical distribution so that victims throughout the country had equal access to assistance and there was at least one NGO providing support in each province.
3. **Ms. Matysiak** (Poland) said that the State party had made great strides in developing a comprehensive system to combat domestic violence. The 2005 law on combating domestic violence had been amended, and the 2006 national action plan for the prevention of domestic violence had been updated and would run until 2020. In addition to providing shelter and assistance to victims, the Government had set a number of priorities, including prevention and awareness-raising. Interdisciplinary task forces had been set up in each municipality to develop tailor-made support programmes for victims of domestic violence. Some 8,000 persons annually participated in comprehensive educational programmes for perpetrators of domestic violence. Efforts were also made to enhance the professional capacity of the various services involved in dealing with domestic violence. In addition to crisis intervention centres and consultation points, there were some 40 specialized domestic violence centres, which provided free assistance, including counselling and social support, to victims of domestic violence, irrespective of age or gender. The centres had 591 residential places and provided accommodation for up to three months. Some 7,400 persons had used the specialized centres in 2015. There were plans to open two new centres in 2018 and 2019.
4. **Mr. Domagala** (Poland) said that, under the current law, police officers were authorized to detain a person suspected of domestic violence for up to 48 hours, during which time they must institute proceedings, which involved simply completing a one-page form, and apply to the public prosecutor for a restraining order. As parties to criminal proceedings, both victims and perpetrators had the right to lodge complaints, including the right to appeal against an order to vacate the marital home. There were currently no plans to allow the police to order the perpetrator to vacate the home immediately before criminal proceedings were instituted. Nevertheless, the Ministry of Family, Labour and Social Policy was monitoring the situation, and changes could be made if the current solutions proved inadequate.
5. **Mr. Jaros** (Poland) said that, given the importance of the family in Polish society, the prevention of domestic violence was a priority at all levels. The parliament had introduced a series of measures for dealing with perpetrators of domestic violence, such as arrest and police custody, a ban on employment in certain positions and professions, injunctions to undergo treatment, restraining orders, forfeiture of property, fines,

apologizing to and providing financially for the victim and abstaining from alcohol. Other measures could be imposed at the discretion of the court. Pursuant to the amendment of the Penal Code in 2013, the offence of rape was now prosecuted automatically, irrespective of the relationship between the perpetrator and the victim.

6. **Mr. Łaszkiewicz** (Poland) said that the police received training with a view to challenging stereotypes about domestic violence, and they were certainly not discouraged from notifying the prosecution authorities or the courts. There were some 320 units for the temporary pretrial detention of persons reasonably suspected of having committed a domestic violence offence, in accordance with article 244 of the Code of Criminal Procedure.

7. **Mr. Czerepiński** (Poland) said that the “first past the post” policy applied to elections to the Senate, which meant that the candidate with the largest number of valid votes in a given constituency was elected senator. Given that each electoral committee could only submit one candidate for the Senate, a gender quota system could not be applied. However, a quota system had been introduced for elections to the Sejm, the lower house of the parliament, under which female candidates must make up at least 35 per cent of the total candidates on an electoral list, failing which the list would not be registered. The Government Plenipotentiary for Equal Treatment was still in charge of developing and presenting the National Programme of Action for Equal Treatment to the Council of Ministers. A monitoring team had been set up at the end of 2015 to evaluate the Programme and was tasked with making specific recommendations to be implemented as of 2017. The Programme reflected the same grounds for protection as those set out in anti-discrimination legislation, including race, sex, ethnic background, religion and sexual orientation. The budget of the Plenipotentiary came under the Office of the Prime Minister.

8. **Ms. Grędzińska** (Poland) said that, under the Constitution and the Penal Code, employees had the right to equal pay for equal work. The gender pay gap in Poland stood at 7.7 per cent, which was well below the European Union average of 16 per cent. Nonetheless, efforts were being made to close the gap further, for instance through public awareness-raising campaigns and the organization of international and national conferences involving government representatives, academics, NGOs and social partners to exchange best practices. The Ministry of Family, Labour and Social Policy was promoting an online “pay calculator”. The Government was also taking action to promote the professional activity of women, including women over the age of 50 and from rural areas. Awareness-raising activities were being conducted among employers and relevant institutions. Work was under way to develop a comprehensive tool for employers and employees to promote gender equality mechanisms in the labour market. In that regard, one of the top priorities was to increase support infrastructure for children under the age of 3. Legislation had been amended to allow for the introduction of new forms of childcare, and there was a programme to fund the construction of new childcare facilities.

9. **Ms. Seibert-Fohr** said that she would welcome information on the mechanisms in place to identify victims of trafficking. She wondered whether it was true that the Penal Code did not explicitly guarantee that identified victims of trafficking would not be prosecuted for acts committed as a direct result of having been trafficked. She wished to know whether there was an adequate definition of forced labour under Polish law. With regard to the European refugee crisis, the Committee had noted with great concern statements by politicians refusing to take in Muslim refugees — how could such a position be reconciled with the obligation not to discriminate on the basis of religion under the Covenant? She asked what system was in place to ensure that persons arriving at the Polish borders were not returned to their country of origin if their lives would be at risk. To what extent did asylum seekers have access to legal assistance, and were alternatives to detention

that existed under the law used in practice? Was it true that, in 2015, some 150 asylum-seeking children had been detained and had thus not been able to attend school?

10. The Committee was concerned at undue delays in court proceedings and reports that, in practice, access to a defence counsel was not effectively guaranteed in the initial stage of pretrial detention. It was also worried by recent legislative changes and pending reforms which raised considerable concerns regarding the independence of the judiciary. For example, she wished to know why the President was seeking a stronger role in judicial appointments by requiring the National Judiciary Council to recommend at least two candidates and why it would be necessary to dismiss all current Council members five months after the entry into force of the amended law on the National Judiciary Council. She would appreciate it if the Government could comment on reports that, in June 2016, the President had refused to appoint 10 candidates to the position of judges without giving any reasons. She wondered whether, following the adoption of a new law on prosecution, under which the functions of the Minister of Justice and the Prosecutor General were merged, the Prosecutor General, as part of the Ministry of Justice, had the power to intervene at any stage of proceedings. She would also like to know what safeguards were in place against the abuse of political power by the Prosecutor General. She asked whether there were transparent recruitment and disciplinary procedures for prosecutors. The delegation should indicate what measures were in place to prevent the Government and the parliament from influencing the composition of the Constitutional Court unilaterally and what measures would be taken to ensure security of tenure of judges.

11. **Mr. Vardzelashvili** said that he would appreciate up-to-date statistics that confirmed the reported decline in the number of pretrial detainees in Polish prisons and provided a profile of the pretrial prison population and the circumstances in which pretrial detention was ordered. He welcomed the progress made but was less encouraged by reports that the average length of pretrial detention was unchanged, that a significant percentage of remand prisoners had been detained for more than two years, that detention continued to be ordered on a routine basis in accordance with the severity of the offence and without due regard for the specificities of the case and that only around 3 per cent of appeals against pretrial detention were successful. He invited the State party to comment on those observations, to indicate whether the courts gave priority to cases in which the defendants had already spent considerable time in detention and to share with the Committee any plans to introduce a maximum time limit that would prevent unduly protracted periods of pretrial detention in future. An explanation of the rationale behind the new legislation that allowed the authorities to detain terror suspects for up to 14 days without charge, and to extend that period still further in certain circumstances, would likewise be helpful, as would confirmation as to whether the presence of both defendant and lawyer was mandatory during court hearings at which decisions on pretrial detention were taken.

12. Although prison occupancy figures indicated that overcrowding was not an issue, he had been concerned to learn of the State party's refusal to take action to ensure that all prisoners in Poland had living space of at least 4 m², as recommended by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and other experts in the field. While the State party was to be commended for its falling crime rate, institutional changes, including increased use of alternative non-custodial penalties, were nonetheless needed to preclude any future risk of overcrowding.

13. He would like to know what action had been taken to follow up on the proposal that a working group should be established to address the reportedly inadequate level of health care in Polish prisons. In particular, he would like to know what was being done to increase the availability of specialist medicines and rectify the lack of physical infrastructure that severely compromised the ability of prisoners with disabilities to function independently and placed them at risk of inhuman and degrading treatment. Information about mortality

rates in prison would also be appreciated, including information about the reportedly high number of suicides. Had the authorities investigated the circumstances of those suicides and what had their response been?

14. The situation of the “N” status inmates referred to as “dangerous inmates” remained a cause for concern. He would be interested to know what changes to the conditions in which such prisoners were held were envisaged in light of the ruling of the European Court of Human Rights that had identified numerous inherent human rights violations in that regime. Lastly, it would be useful to have an account of the circumstances in which a veto on the publication of key rulings of the Constitutional Court might be considered justified and to indicate whether rulings that were not published had the status of case law nonetheless.

15. **Mr. Iwasawa** said that the Committee was still awaiting the data on the number of persons with mental disorders being held in post-sentence preventive isolation pursuant to the Act of 22 November 2013 that had been requested previously. The delegation should clarify whether the Act applied only to persons who had committed an offence after its entry into force or applied retroactively to any person currently serving a sentence. It would be helpful to hear about the relationship between the Act of 22 November 2013 and the amendments to the Penal Code that had introduced preventive measures such as electronic supervision, addiction therapy or psychiatric treatment as a substitute for custodial measures. He wondered whether the courts’ powers of review extended to all cases of preventive custody or only to placements in the National Centre for the Prevention of Dissociative Behaviour. Noting that proceedings had apparently been instituted to challenge the constitutionality of the Act of 22 November 2013, he invited the State party to explain why, in its view, the provisions were constitutional.

16. He would like to know whether detainees, including young offenders, were routinely granted access to a lawyer and whether there were any plans to amend the Code of Criminal Procedure to ensure that telephone as well as face-to-face contact was permitted. He also invited the delegation to explain why monitoring of face-to-face and written communications between defendants and their lawyers was considered justified in certain circumstances, especially in view of article 14 (3) (b) of the Covenant and the Committee’s general comment No. 32.

17. **Mr. Shany** said that he shared other Committee members’ concerns about the State party’s decision to maintain a finite rather than open list of protected characteristics in its anti-discrimination and equality laws. As a State party to the Covenant, Poland had an obligation to guarantee protection from discrimination on any and all grounds, including “other status” within the meaning of article 2 (1) of the Covenant. He was particularly concerned that current laws appeared not to recognize political opinion and economic status as protected characteristics.

18. He welcomed the State party’s undertaking to review the restrictions imposed on the voting rights of persons with mental disabilities but would like more detail about its reform plans. For example, did it plan to amend article 62 (2) of the Constitution or to adopt enabling legislation? More information was also needed about the State party’s laws and policies on metadata surveillance and storage and the conditions in which access to such data might be permitted.

19. The penalties under the State party’s criminal law provisions on insults and slander were disproportionate to the offences. Those provisions conflicted with the Covenant provisions on free speech. He appreciated why the State party might consider such laws necessary but failed to see how a 10-year sentence for ridiculing the political system could be justified. In that connection, he invited the delegation to explain why it had been

considered necessary to bring criminal proceedings against Doda, a popular Polish musical artist accused of deriding the writers of the Bible.

20. He would like more detail about the reforms planned to ensure that minors were never detained for more than three months and about the so-called provisional rooms in which minors were sometimes placed for punishment or examination. Although he accepted that it could be beneficial for minors in conflict with the law to be subject to civil rather than criminal procedure, he would appreciate confirmation that fundamental principles of due process such as the presumption of innocence that were established in the Code of Criminal Procedure were likewise guaranteed under the Code of Civil Procedure.

21. Lastly, he invited the delegation to comment on reports that declarations of conscientious objection to termination of pregnancy by a large number of physicians in a particular region of the country had made access to lawful abortion near impossible for women in that area. If those reports were accurate, what was the Government doing to ensure safe and legal access to abortion, as provided for under national law?

22. **Mr. Ben Achour** said that, while he appreciated the frankness of the State party's response to the Committee's calls for an amendment to its criminal provisions on defamation in the press, its reluctance to take action posed a serious problem for compliance with the Covenant. Subjecting the press to criminal penalties had dangerous implications for freedom of expression, and he urged the State party to consider using civil rather than criminal measures to address such issues.

23. According to certain NGO reports, freedom of assembly could be under threat following the adoption of new counter-terrorism legislation that introduced a system of terror alert levels under which the authorities were permitted to prohibit, terminate and clear large-scale events whenever the terror threat reached a certain level. The problems identified were rooted in the vagueness of the definition of terrorism contained in the new law and the lack of transparency in the alert system, which could be used as a pretext to halt peaceful demonstrations called to promote the right to abortion, LGBT rights or any other issue of political significance.

24. **Ms. Cleveland**, noting that the State party had failed to provide the requested data for the number of legal versus clandestine abortions, said that information from other sources indicated that clandestine abortions far outnumbered legal abortions and that the vast majority of legal abortions were due to fetal anomalies. Those data suggested that access to legal abortion in other circumstances was extraordinarily limited. Furthermore, up to 15 per cent of abortions were apparently carried out outside the country, placing the women involved under additional economic and physical strain.

25. She would therefore appreciate details of any plans to establish standardized guidelines for medical practitioners in order to prevent hospitals from introducing additional procedures that obstructed access to abortion and also of any plans to introduce a constitutional amendment to ensure that all refusals to practise abortion on the grounds of conscientious objection were duly documented. There was a need for information about the recourse available to women seeking abortion as a result of an illegal act and about any action taken to ensure that women were duly referred to available abortion providers and that effective oversight and disciplinary mechanisms were in place to address failures to comply with the law on the part of medical practitioners.

26. Given that a Constitutional Court ruling in July 2016 had upheld a 2015 law that limited the rights of persons whose property had been seized either during the Holocaust or subsequently during the Communist era, she asked what the State party was doing to ensure effective restitution of confiscated property and provide former owners and members of their families with meaningful and effective opportunities for claiming compensation.

The meeting was suspended at 11.30 a.m. and resumed at 11.45 a.m.

27. **Mr. Kaczor** (Poland) said that custodial penalties were gradually being replaced by alternatives such as electronic surveillance. Such surveillance could be imposed for short periods of up to one year and was accompanied by protective measures. Non-custodial measures of that kind, which were overseen by the Central Administration of the Prison Service, had first been introduced six years earlier and were proving very effective. In addition, a number of legislative changes had been introduced to limit the use of custodial measures. For example, article 37 (a) of the Penal Code provided for the use of non-custodial measures for sentences of up to 8 years; such measures had previously been restricted to sentences not exceeding 5 years. Under article 58 (1), for sentences of up to 5 years, non-custodial measures were to be given priority and imprisonment used only as a last resort.

28. **Mr. Zoń** (Poland) said that, in the past year, the use of electronic surveillance and conditional release, in combination with effective rehabilitation, had allowed for a large number of prisoners to be released from prison on parole. A number of statistics demonstrated that prisoners had appropriate access to health services: there were over 2,000 medical professionals at prisoners' disposal; over 1.5 million medical appointments were held each year; and a total of 30 million zlotys had been allocated to prison health services in 2015. Special care was taken by the Central Administration of the Prison Service to ensure that prisoners with disabilities were placed in cells that had been adapted to their needs; such cells were currently available in 71 prisons in Poland. The Government's work in that field was coordinated by the Ministry of Foreign Affairs, with contributions from the Ministries of Health and Justice and the Commissioner for Patients' Rights. All cases of suicide in prisons were reported to the Prosecutor General and investigated. Following recent legislative changes, the status of dangerous inmates was now reviewed every three months rather than every six months. The total number of such inmates was falling constantly. Dangerous inmates could request for their status to be reviewed, and new circumstances were always taken into account by the review committee. Figures from May 2016 showed that there were 139 such inmates, including 103 who had held that status for less than a year, and only 19 who had held that status for five years. With regard to the use of coercive measures, it should be noted that all such cases were referred to the civil or criminal courts. As to whether the investigations were effective or not, the ruling of the court in each case was what counted. Certain high-ranking officials had been removed from their positions due to abuse of authority. Under the Prison Service guidelines and regulations, inhumane treatment of prisoners was always investigated.

29. **Mr. Cichomski** (Poland) said that the law on counter-terrorism concerned information collected during the initial inquiry and pretrial investigation stages of cases of suspected terrorism. There were procedural safeguards in place to prevent abuses. In cases in which there was evidence that a person had been involved in the commission or preparation of an act of terrorism, the courts, in conjunction with the public prosecutor supervising the investigative activities, could order the suspect to be held in police custody. All other criminal proceedings in such cases were covered under the Penal Code.

30. **Mr. Jaros** (Poland) said that, with regard to the functioning of the Constitutional Court, the legislative, executive and judicial bodies of the Government were interlinked, possessed equal authority and rights, and could regulate one another to prevent violations of human rights or international law and to ensure that decisions were constitutional. The discussion that had been taking place in Poland with regard to the functioning of the Court was at once justified, necessary and in keeping with the rule of law. The Court needed to be more democratic in order to function more effectively. It was important to question the extent to which a decision of the Court could be considered a valid ruling if it did not comply with a law issued by the legislative body. The executive body was proposing

further bills that would resolve the conflict, taking into account international obligations and the recommendations of the European Commission for Democracy through Law to ensure that the political rights of individuals were respected.

31. **Mr. Piebiak** (Poland) said that, under national law and the Constitution, the legislative body regulated the internal functioning of the Constitutional Court. The two historical rulings mentioned were no longer binding because they had been issued in accordance with legislation that was no longer in force.

32. **Mr. Jaros** (Poland) said that, under a regulation on prison institutions adopted on 6 July 2016, children could be placed in supervised temporary quarters, referred to in the report as “provisional rooms”, for 14 days for a particular purpose, such as an introductory conversation with a psychologist. Such rooms could not be considered a penal measure because the Penal Code applied only to persons over the age of 17. There were no juvenile justice courts as such; rather, family courts specialized in the protection of the rights of the child had jurisdiction over cases involving young people and made decisions on the educational and rehabilitative measures to be taken towards them. Polish law was based on the principle of children’s innocence and, as such, served as an example to other democracies where children were regularly imprisoned.

33. **Mr. Cichomski** (Poland) said that there were plans to amend the legislation on access to legal counsel for young people in police custody to ensure that decisions in that regard were no longer dependent on the heads of police custody centres.

34. **Mr. Domagala** (Poland) said that currently, in the Polish legal system, members of the National Council of the Judiciary were able to perform administrative functions and to preside over courts and were eligible for re-election. The system placed judges of higher courts at an advantage, but there were plans to liberalize and democratize the selection system by modifying the mandates of the members, allowing judges of lower courts to stand for election to the Council and possibly prohibiting members from reapplying. Such changes would not violate the principles of judicial impartiality and independence. The jurisprudence of the Constitutional Court permitted such changes to be made to judicial bodies. According to a legally binding decision taken by the Court in 2012, the President could refuse judicial appointments recommended by the Council. A Supreme Court ruling issued in 1999 had stated that the Council should submit more than one candidate for each vacancy. The Council merely issued opinions on whether candidates met the criteria for a judicial appointment and whether they were persons of high moral standing; the appointments themselves were at the discretion of the President, who was not bound by the Council’s recommendations. The President had so far declined to make 10 judicial appointments. There were some 10,000 judges in Poland.

35. **Mr. Jaros** (Poland) said that a number of proposals had been made to amend the Civil Code to increase access by legally incapacitated persons to public life and to certain social institutions, such as marriage. A coordinator had been appointed to advocate for such amendments, and there were plans to set up groups of external experts to bring Polish law into line with international policies for persons with disabilities and to facilitate participation in political life. Such changes would take some time.

36. **Ms. Korbasińska** (Poland) said that abortion was not permitted in Poland on economic grounds, but when a pregnancy was the result of rape, or when the fetus had a congenital disorder, abortion was legally permitted. There were plans to prepare guidelines on legal abortion for medical personnel. The viability of a fetus was determined at medical facilities by a board of professionals, including gynaecologists and other specialists. The decision issued by the Constitutional Court in 2015 had stated that physicians who invoked the conscience clause in order not to perform legal abortions could not be forced to refer patients elsewhere. The Government was of the opinion that publicly financed medical

services should not limit access to such services, and there had been cases where institutions had faced penalties for doing so. Such a case had recently occurred when a doctor had refused to perform a legal abortion for a pregnant woman whose fetus was seriously deformed and had eventually died after delivery. In practice, access to legal abortion was more restricted in certain regions, such as in the eastern part of the country. The Government was taking steps to rectify that situation.

37. **Mr. Piebiak** (Poland) said that most Poles considered abortion to be evil and to be the taking of a human life, a view generally shared by medical professionals as well, which was the reason for the conscience clause. While the delegation fully understood that, in certain situations, abortion should be performed, such cases were exceptional. By law, pregnant women were afforded financial aid and social support by social institutions and were thus able to carry their pregnancies to term; those not wishing to raise their unwanted children were able to renounce their rights as mothers.

38. The Government wanted to adopt a law to address the issue of restitution of private property in a comprehensive manner, which was complicated owing to the many years of stagnation under communist rule. The Ministry of Justice had already begun working on the subject, but its efforts were only at the initial stage, and an interministerial effort would eventually be needed to draw up a comprehensive solution. Ultimately, the aim would be to restore property rights to those who had legitimate claims, with no discrimination against anyone having entitlement.

39. **Mr. Cygan** (Poland) said that, by law, freedom of assembly could be restricted only on the basis of two types of grounds, the first being the possibility that the assembly in question might pose a threat to the life or health of people, and the second being that the purpose of the assembly violated the principles of freedom of assembly itself. Those grounds were of course subject to interpretation by the administrative authorities, but a decision to prohibit an assembly could always be appealed to a court, which had to issue a ruling within 24 hours. If the court ruling upheld the prohibition, an appeal against the decision could subsequently be lodged with the Administrative Court of Appeal, which, too, must issue its ruling within 24 hours.

40. **Mr. Chichomski** (Poland) said that the anti-terrorism legislation allowed the Minister of the Interior to prohibit assemblies in certain circumstances, for instance if the highest terrorism threat levels had been declared. During the recent summit of the North Atlantic Treaty Organization (NATO), held in Warsaw, and during World Youth Day and the visit of the Pope, a low terrorism threat level had been declared. The Minister of the Interior must immediately inform the speakers of the Sejm and the Senate if assemblies were prohibited owing to higher threat levels. Thus, such measures were subject to parliamentary oversight.

41. **Ms. Mieszalska** (Poland) said that preventive surveillance measures had been taken for 41 persons under the legislation on mental disorders. In Poland, “chemical castration” was not a legal concept, as another term, “pharmacological therapy” was used in the law. The aim of such therapy was to limit a person’s libido by administering a progesterone derivative that reduced testosterone levels. Some of the side-effects included inhibition of spermatogenesis, depression and fatigue, but they tended to be short-lived and disappeared within a few weeks. Of the nine patients currently undergoing such treatment, three had been convicted of rape and the rest had been sentenced for acts of paedophilia.

42. **Mr. Domagala** (Poland) said that the use of the word “castration” was inappropriate, as the treatment in question was a form of therapy. As such, it was not covered by article 15 of the Covenant, which addressed only punitive measures. The therapy was currently administered only to individuals who had committed certain crimes or acts prior to the

entry into force of a new law, and, since the aim of the therapy was treatment and not penalization, it had been deemed to be constitutional.

43. **Mr. Shany** said that, although under the Juvenile Justice Act minors were not subject to criminal proceedings, young people did in fact suffer repercussions, such as limitations on their freedom. What guarantees were in place to guarantee the presumption of innocence and the application of the principle of reasonable doubt in cases involving children? Under the counter-terrorism law, monitoring of surveillance operations in cases involving foreign nationals was much less extensive than that provided in cases involving Polish citizens. Why was there such a difference in treatment?

44. **Mr. Vardzelashvili** asked what measures had been taken or would be taken to change the treatment of dangerous prisoners in the light of the relevant decision handed down by the European Court of Human Rights. The delegation's explanation of the separation of powers notwithstanding, the Constitutional Court had the power to strike down laws, and its decisions should be respected by the Government and all others unless the Constitutional Court itself reversed its decision. The delegation should also provide the Committee with further information on the status of the investigation involving the head of the Constitutional Court.

45. **Ms. Seibert-Fohr** said she looked forward to receiving more information about the new law governing the media and measures taken or planned to prevent undue government influence in that area.

46. **Ms. Cleveland** noted that both the Venice Commission and the Council of Europe had expressed concern about the lack of respect for the decisions handed down by the Constitutional Court and about amendments adopted in December 2015 and July 2016 affecting the independence and effective functioning of that body. The Commissioner for Human Rights of the Council of Europe had issued a report regarding the erosion of human rights in Poland. One of the Committee's main concerns was that the decisions of the Constitutional Court should be observed. Respect for court decisions was a foundation for the rule of law.

47. **Mr. Piebiak** (Poland) said that the delegation appreciated the opportunity to exchange views with the Committee members and would send further information in writing to address the numerous concerns and questions that had not been answered during the interactive dialogue for lack of time.

48. **Sir Nigel Rodley** said that some of the issues that the Committee would address in its concluding observations included the decision to abolish the Council for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance. The explanation given by the delegation had referred to that body's ineffectiveness and lack of tools; it was unsatisfactory, as it left the problems addressed by the Council unresolved. The Commissioner for Human Rights of Poland had said that the decision to disband that body was incomprehensible. The fact that very important judicial decisions had not been published in the *Official Gazette* under the pretext that they were not of historic significance gave rise to concerns about transparency. Another issue involved the treatment and restructuring of the judiciary, the conduct of which suggested that some underlying issues were being masked by abstract presentations on the country's separation of power. Given that, as a rule, when judicial decisions displeased the other branches of government, it was because the judiciary was on the side of human rights, it would be comforting to see some evidence that the reforms to the judiciary in Poland were aimed at ensuring greater protection of such rights.

49. The Commissioner for Human Rights had also pointed to the selective nature of the definition of discrimination as an issue of concern. Freedom of speech was held in high regard in the wake of the communist period, but it was still a controversial subject owing to

the current tendency to consider certain acts such as defamation and ridiculing of the political system to be criminal in nature. The Committee was also concerned about the financial security of the Office of the Commissioner for Human Rights. One way to ensure a better dialogue with the Committee in the future would be for the State party to follow the Commissioner's recommendations.

The meeting rose at 1.10 p.m.