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Poland's application for membership of the Council of Europe

Report
Committee on Political Affairs and Democracy
Rapporteur: Lord Geoffrey FINSBERG, United Kingdom

The problem

Poland was, on 4 June 1989, the first country of Central and Eastern Europe to organise pluralistic elections which were free for the Senate (the Lower House elections were subject to a formula designed to allow the ruling Communists to save face but not, as it turned out, to retain power). It was also the first country to achieve a post-Communist government based on democratic legitimacy. However, having paved the way for neighbours in the region, Poland may be among the last (probably in March 1991) to hold wholly free parliamentary elections despite the fact that it was also the first country, on 25 May 1990, to hold fully free local elections.

The solution

In view of these pioneering achievements and the fact that the existing parliament already leads that European region in drawing up democratic legislation and guaranteeing human rights, it is proposed that Poland be invited to become a member of the Council of Europe without delay.

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A. Draft opinion

1. The Assembly has received from the Committee of Ministers a request for an opinion on the accession of Poland to the Council of Europe (Doc. 6188), in pursuance of Statutory Resolution (51) 30 A adopted by the Committee of Ministers on 3 May 1951.

2. It recognises that Poland set an example to all the countries of Central and Eastern Europe by organising parliamentary elections on 4 June 1989, which, although completely free only for the Senate, soon led to the formation of the region's first government based on democratic legitimacy.

3. The Assembly appreciates the vigorous contribution made by Poland to the work of the Council of Europe, both at parliamentary level since being granted special guest status on 8 June 1989, and at intergovernmental level since acceding to several European conventions, including the European Cultural Convention, signed on 16 November 1989.

4. It also notes that the local and municipal elections organised on 25 May 1990 were pronounced free and fair by the observer delegation from the Standing Conference of Local and Regional Authorities of Europe and that the first completely free parliamentary elections are likely to be called in March 1991.

5. The Assembly considers that Poland is able and willing:

i. to fulfil the provisions of Article 3 of the Statute, which stipulates that "every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms";

ii. to collaborate sincerely and effectively in the realisation of the aim of the Council of Europe as specified in Chapter I of the Statute of the Council of Europe, thereby fulfilling the conditions for accession to the Council of Europe as laid down in Article 4 of the Statute.

6. The Assembly therefore recommends that the Committee of Ministers, at its next meeting:

i. invite the Republic of Poland to become a member of the Council of Europe immediately following free general elections in that country;

ii. ii. attribute twelve seats to Poland in the Parliamentary Assembly.

B. Explanatory memorandum by Sir Geoffrey FINSBERG

1. Introduction

1. The history of Poland can best be described as phoenix-like after several ruthless attempts to obliterate it. Poland, after all, disappeared from the map between 1795 and 1918 – partitioned between Prussia, Russia and Austria. But its proud and patriotic people always rose again. On the latest occasion, the enemy was within and the genuine spirit of Poland was oppressed for some forty years by an alien political creed. Despite a brutal regime which even encouraged the murder of a priest, the spirit of freedom was kept alive by the Church and, later, by an alliance between Solidarity and the Church.

2. The events of the past five years have represented a triumph of the human spirit, and Poland has pioneered the emergence of a democratic system in Eastern and Central Europe. Guest membership of our Assembly was granted in June 1989 and we are now considering an application for full membership. Our guidelines are strict and represent, at the minimum, the requirement to have a democratic constitution, a freely elected parliament, an independent judiciary and a strict observance of human rights.

2. The Constitution, human rights and independence of the judiciary

3. The immediate outcome of last year's round table accords between the then-ruling Communists and Solidarity was the adoption of the first amendment to the Constitution on 7 April 1989, which introduced the principle of the separation of powers and that of political pluralism. Legislative power is vested in the National Assembly, composed of the Sejm and the Senate. The latter had disappeared after the war; at present, its powers are important because it may initiate legislation, is empowered to reject the decisions of the Sejm and examines the draft budget. Executive power is vested in a government, which is answerable to the Assembly. Lastly, the office of President of the Republic was created. The President is elected by the Assembly.

4. An important step was taken to guarantee the independence of the judiciary, which – as the "round table" observed – "is vital to the existence of a constitutional state and the protection of citizens' rights and interests". The Act of 7 April 1989 introduced into the Constitution the principle of the irremovability of judges. It also established a National Council of the Judiciary, thereby putting an end to the administrative dependence of the courts and guaranteeing the independence of judges.

5. This amended Constitution is purely transitional. It will be replaced in spring 1991, probably on 3 May, which marks the bicentenary of the first Polish Constitution. Two parliamentary commissions are currently working on the new Constitution: one in the Senate, composed of thirteen members of the Citizens' Parliamentary Club (chaired by Mrs Grzeskowiak), the other composed of forty-five members of various parties, including twenty from the Citizens' Club (chaired by Mr Geremek). Each commission is working on a draft of its own with the help of experts in constitutional law. The Senate commission is planning to consult the European Commission for Democracy through Law in Venice. Common provisions will then be drawn up by a group composed of Senators and Deputies from each commission who can claim to have been democratically elected. The text will be finalised by the Senate commission.

6. Once the new Constitution has been adopted by Parliament, a referendum will be held with a view to its ratification. Spain, it should be remembered, was less far advanced in this respect when invited to join the Council of Europe in 1977, and the previous year Portugal had been invited to join at a time when a military "Council of the Revolution" was the guarantor of a constitution whose explicit aim was the installation of a "socialist society".

7. The constitutional amendment of 7 April 1989 paved the way for a series of reforms which are transforming, clarifying or supplementing existing provisions and removing the obstacles which prevented Poland from acceding to the European Convention on Human Rights.

8. This first amendment introduces freedom to form and join trade unions, freedom to form political parties and freedom of association. The introduction of freedom to form and join trade unions is accompanied by an amnesty for persons convicted on the grounds of their previous political or trade union activities (29 May 1989) and legislation permitting the reinstatement of persons dismissed from their jobs on the same grounds (24 May 1989).

9. Parliament is hard at work on measures to guarantee fundamental freedoms. All draft legislation is submitted to a Committee on Human Rights and Legality, whose function is to check whether the texts are in keeping with European standards.

10. Among the many measures adopted, mention should also be made of the Act guaranteeing freedom of conscience and freedom to practise the religion of one's choice (17 May 1989), the Press Act (29 May 1989) and the abolition of censorship (11 April 1990).

11. The Constitution guarantees citizens the same rights and equality before the law. This provision also applies to national and ethnic minorities, who, for example, have the right to be taught their mother tongue. In 1989, 6 346 pupils in 122 schools were learning their native tongue, mostly Belorussian but also Ukrainian, Lithuanian and Slovak. It should be noted that an agreement signed by the governments of the Federal Republic of Germany and Poland on 14 November 1989 confirmed the rights of the German ethnic minority.

12. A Constitutional Court was established in 1986 (reformed on 20 December 1989). Its role is to give rulings on the constitutionality of legislation. Its interpretation of the law is binding. A reform aimed at extending the Constitutional Court's jurisdiction is in preparation.

These measures put Poland far ahead of any other country of Central and Eastern Europe in the field of democratic legislation.

3. Democratic pluralism

3.1. National Assembly

13. Legislative elections were held on 4 June 1989. There was to be one round of voting, with 65% of the seats in the Sejm reserved for the government coalition. The elections to the Senate were totally free. The result of the voting was that the opposition had won all the possible seats. It agreed to the holding of a previously unscheduled second round so that all the "reserved" seats could be filled and the negotiated process could continue.

14. The newly elected Assembly was therefore composed as follows: Senate: 99 of the 100 seats to the Citizens' Parliamentary Club (candidates fielded by Solidarity), 1 independent. In the Sejm, the Citizens' Club won 161 seats. As for the coalition: 173 seats went to the Polish United Workers' Party (PUWP), 76 to the United Peasants' Party, 27 to the Democratic Party, 10 to Pax, 8 to the Christian Social Union and 5 to the Catholic Social Union. It was a cruel test of truth for the ruling coalition, which would not fail to note the discrepancy between representation in the Sejm and the wishes of the electorate.

15. The National Assembly, in which each side possessed a majority large enough to block legislation, had no choice but to reach an understanding. The opposition reluctantly agreed to have General Jaruzelski elected to the presidency, while, for its part, the coalition could not oppose the appointment of Mr Mazowiecki, who formed his government on 12 September 1989.

16. Since 1989, there has been intense political activity and a multitude of parties have reappeared or been formed. The entire political spectrum is represented, from anarchists to royalists. In the recent local elections, over 250 socio-political organisations, including 85 parties, fielded candidates. Only a few of these formations have a programme and are properly organised.

17. The present period is one of shifting alliances and groupings. Mr Geremek, leader of the Solidarity parliamentary group, said recently that the single-party regime had totally destroyed the country's political culture and that ideological references had to be rebuilt. This search for an identity is the distinctive feature of the present political forces. Alliances change and groupings are formed on an *ad hoc* basis around ideas, goals and challenges facing the country.

18. The composition of the National Assembly, where coalitions are made and unmade, reflects this state of affairs, which was further compounded by the dissolution of the PUWP in January. Although the coalition formed by the PUWP and its allied parties held 65% of the seats in the Sejm after the elections of June 1989, the composition of the lower house by mid-June 1990 was as follows: the Citizens' Parliamentary Club: 156 seats, the Democratic Party: 23 seats, the United Peasants' Party: 76 seats (these three clubs formed a coalition to support Mr Mazowiecki's government), the Democratic Left: 111 seats (11 deputies belonging to the Social Democracy of the Polish Republic and 100 deputies without any political label), the Social Democratic Union: 44 seats, the clubs formed by the Catholic groups: 23 seats in total and the Club of independent deputies: 27 seats.

19. Political activity is dominated by Solidarity, which, without actually being a party, gives its support to the candidates of its choice. In the Assembly, these are grouped together within a Citizens' Parliamentary Club, which gives some ldnd of unity to the movement despite the various tendencies within it. The last Solidarity Congress in April confirmed the trade union's choice not to turn itself into a political party, but to continue for the time being to support candidates in elections.

3.2. Grass-roots democracy

20. From the Polish standpoint, the change of Constitution and the holding of totally free legislative elections will be the end result of a process of learning and gradually consolidating grass-roots democracy.

21. The reasonable deadline which has been set should enable the political parties to organise themselves in order to offer the electorate a real choice. The local elections (Electoral Act of 8 March 1990) are considered vital because they are "the precondition for grass-roots democracy and the best training school there is".

22. According to Mr Balcerowicz, Minister of Finance, it is also vitally important to avoid over-hasty action because of the need to stabilise the economic situation. Economic chaos is a constant threat to democracy because it acts as a catalyst for extremism.

23. The "calm and deep" course which Poland is following will continue, says the Prime Minister. The approach is an overall one, linking together political, economic and social reforms.

24. The Solidarity candidates won a wide majority in the local elections of 25 May, but it was not a landslide. Other political forces will be represented on local councils. It may be inferred from this that the electorate have been given the right to choose and are exercising it.

25. In response to an invitation from the Polish Government, a delegation of observers from the Standing Conference of Local and Regional Authorities of Europe visited Poland from 26 to 28 May 1990 to be present during the local elections. The delegation was as follows: Mr Morgan (Conservative, United Kingdom), Mr Haegi (Liberal, Switzerland), Mr Tchernoff (Liberal, Netherlands), Mrs Farrington (Labour, United Kingdom), Mr Mentz (CDU, Federal Republic of Germany).

26. The Polish authorities told the delegation that these municipal elections were as important as the national elections; they constituted a basic step in the construction of grass-roots democracy, the aim being to destroy the powers and networks of the *nomenklatura* existing at local level, hitherto a mere administrative step in the state administration.

27. The delegation found that Poland had, through the free and democratic elections and the new local self-government legislation, broken new ground in its advance towards a true democracy built upon the grass roots of everyday life in the local community. The new local councils completely replace the local foundations of the former nomenklatura. Thus, Poland is the first country to emerge from a communist regime and the first to tackle genuinely political change in depth and lay the foundations on which a democratic state can be built.

28. It can be argued that, although Poland has now a freely elected Senate, freely elected multiparty local government, a revised constitution and a judiciary which is not dominated by the state, it still does not have a fully freely elected lower-chamber as only one-third of its members were genuinely elected. On strict terms this could imply that full membership should wait until the holding of new elections for the Sejm in 1991, at which all seats would be freely contested.

29. Yet it should be remembered that the Council of Europe has not always insisted on full compliance with this requirement. Liechtenstein was invited to join in 1978 at a time when the female half of the population was disfranchised. Women's organisations in the principality argued at the time in favour of entry. They saw their cause as being more successfully pursued within Europe's most prestigious "Democratic Club" — and their analysis proved right since this anomaly was soon corrected.

4. Poland and Europę

30. Foreign Minister Skubiszewski said on 20 April that he refused to use the traiditional phrase "return to Europe" in referring to his country because, he added, "Poland has never left Europe".

31. Contact was established between the Council of Europe and Poland at parliamentary level when the then President of the Parliamentary Assembly, Mr Jung, visited the Polish Parliament in Warsaw in November 1988 on the occasion of the Conference of Presidents of the Parliaments of Europe, the United States and

Canada. Since then, Poland's participation in the activities of the Council of Europe has gradually expanded, resulting in the award of special guest status on 8 June 1989. Polish special guests have contributed most dynamically – of this members of the Political Affairs Committee need no reminding.

32. Previous to this committee's meeting in Warsaw on 10 and 11 September 1990, the following Assembly meetings were held in Poland: the Colloquy of the Committee on Culture and Education on linguistic diversity in Europe (Warsaw, 19-20 December 1989) and the meeting of the Sub-Committee on International Economic Relations (Warsaw, 19-20 April 1990).

33. At the intergovernmental level, contacts were established during a visit to Warsaw in March 1988 by the then Secretary General, Mr Oreja, at the invitation of the Polish Government. The visit to Poland on 1 March of this year by Mrs Lalumière and Mr de Deus Pinheiro, Chairman of the Committee of Ministers, confirmed the Council of Europe's interest in co-operation with this country.

34. Poland's accession to the European Cultural Convention on 16 November 1989 makes it a Contracting Party to that convention which participates as of right in all activities in the field of education, culture and sport, as well as in intergovernmental activities in the youth field. On the same date, Poland signed the European Convention on Transfrontier Television and the Anti-doping Convention, and has subsequently been invited to accede to several others conventions.

35. By a decision of the Ministers' Deputies in February 1990, Poland has a general invitation to participate as an observer in all the intergovernmental committees in which it has an interest. Furthermore, Poland has asked to participate as an observer in the conferences of specialised ministers in a large number of fields. Active co-operation has begun in the fields of legal co-operation, human rights and local government. Poland also took part in the special meeting of the Committee of Ministers held in Lisbon on 23 and 24 March 1990.

5. Conclusion

36. It is an indisputable fact that the Senate has had fully free elections, that the Lower House has had free elections for one-third of its seats and that national local elections have taken place in fully free conditions resulting in multi-party administrations. It is also important to note that the legislation proposed, the constitutional changes and the legal processes which are now in force, as a result of the Solidarity government proposals, have all been endorsed by Parliament even in its partially unreconstructed state, and that the Communist deputies have not attempted to obstruct such matters. Moreover, the (originally) Communist Ministers of Defence and of the Interior recently resigned (6 July 1990).

37. In the light of the above, I have come to the conclusion that full membership should be offered now. Progress towards greater democracy will continue and can be monitored in the case of Poland – as in the case of existing members whose credentials can be challenged if we observe a falling off in standards or a return to a system which is not fully democratic. In the case of Poland, I believe our faith in its progress will be fully rewarded.

Reporting committee: Political Affairs Committee.

Committees for opinion: Committee on Legal Affairs and Human Rights and Committee on Relations with European Non-Member Countries.

Budgetary implications for the Assembly: none.

Reference to committee: Doc. 6188 and Reference No. 1667 (21 March 1990).

Draft opinion adopted by the committee on 10 September 1990 by 28 votes to 0 and I abstention.

Members of the committee: MM. *L. Steiner (Chairman), Martinez*, Sir Dudley Smith *(Vice-Chairman, Alternate: Coleman)*, MM. Alemyr, Ålvarez-Cascos *(Alternate: Fabra), Antretter*, *Mrs Baarveld-Schlaman, MM. Baumel*, Björklund *(Alternate: Särkijärvi), De Bondt. Candal*, Caro *(Alternate: Forni)*, Cem *(Alternate: Genç)*, Collart *(Alternate: Noerens), Sir Geoffrey Finsberg, MM. Gabbuggiani*, Ghiotti, *Giatrakos, Hardy*, Mrs Helgadottir, MM. de Hoop Scheffer *(Alternate: Verbeek), Hyland*, Irmer, Kindle, *Mrs Lentz-Cornette*, MM. Lyssarides, Miville, Natali *(Alternate: Scovacricchi)*, Norgaard, Pangalos *(Alternate: Rokofyllos), Pontillon*, Portelli, *Reddemann, Sager*, Sarti, *Schieder, Soares Costa*, Tarschys, *Tascioğlu, Thoresen*.

NB. The names of those members who took pail in the vote are printed in italics.

See 16th sitting 2 October 1990 (adoption of the draft opinion as amended), and Opinion No. 154.