

## AUSTRIA

### CCPR A/38/40 (1983)

178. The committee considered the initial report (CCPR/C/6/Add.7) submitted by the Government of Austria at its 412<sup>th</sup>, 413<sup>th</sup>, 416<sup>th</sup> and 417<sup>th</sup> meetings held on 22 and 24 March 1983 (CCPR/C/SR.412, 413, 416 and 417).

179. The report was introduced by the representative of the State party who indicated that his Government's intention had been to give an overall view of the legal position of the Covenant in the context of the Austrian legal system and that many specific questions which had not been dealt with in the report would be considered in future reports.

180. Members of the Committee praised the high quality of the report which they thought was well organized and comprehensive and which had clearly stated the legal position of Austria with regard to the implementation of civil and political rights. Nevertheless, it was felt that the frequent quotations and provisions of the European Convention on Human Rights in a way forced some members to consider a report based on a different legal instrument and lacking in sufficient and factual information on the factors and difficulties affecting the implementation of the Covenant, or the relevant provisions of the Constitution, and other legal instruments. It was asked whether the text of the Covenant had been disseminated in Austria and whether the report had been published and the public made aware of the fact that it was submitted for consideration by the Committee.

181. Commenting on article 1 of the Covenant, members requested further clarification of Austria's position on this article as well as details on the action taken to promote the realization of the right of self-determination of the Palestinian and South African people and to ensure that Austrian industry and banking were not collaborating with the apartheid régime of South Africa. One member wished to have more information on Austria's unique post-war experience in protecting and exercising its right to self-determination in the light of the Declaration of Independence of Austria, the State Treaty and the Declaration of Neutrality.

182. As regards article 2 of the Covenant, it was asked whether the legislative and executive authorities were required to refrain from any discrimination based on religion or political or other opinion as stated in this article. Some members expressed surprise at the fact that, whereas the European Convention on Human Rights, a regional instrument, had been integrated into Austrian constitutional law, the Covenant, a universal instrument, was not. One member, while admitting this weakness in Austrian law, thought that the proliferation of similar but not identical texts in the same legal system was not always desirable and could give rise to confusion. Noting that one reason why the Covenant had not been incorporated into Austrian legislation was that, upon approving the Covenant, the Austrian Parliament had decided not to add another source of special law to the many existing sources of Austrian law, in order to avoid "impairment of clarity and legal security and prevent any possible conflicts", members asked what those conflicts might be; what positive effects the Covenant had on domestic law and whether an attempt had been made to determine in what respect the Covenant went further than the provisions of Austrian domestic laws including the

European Convention on Human Rights; what measures had been taken to adapt the Austrian legal order to the provisions of the Covenant, as suggested in 1978 by the Foreign and political rights, referred to in the report, would be completed in the near future and whether the rights embodied in the Covenant would be incorporated and not simply “duly taken into consideration” in this work, as mentioned in the report; whether the Austrian Government felt that the Covenant was being implemented in substance or whether full implementation of its provisions was possible and, if so, what methods had been used to make sure that Austrian law and practice truly conformed to the provisions of the Covenant.

183. Members asked whether the remedies provided for under article 2, paragraph 3, of the Covenant would be available to anyone as soon as he merely claimed his rights had been violated. Additional information was requested on the way in which Administrative Court fitted into the Austrian legal system and on its functions and relations with the Constitutional Court. Noting the existence of a distinction between appeals to the Constitutional Court and appeals to the Administrative Court, members asked whether, if a case was brought before a court which was not competent to deal with the matter, it could be referred to the court which was competent without causing any disadvantage to the plaintiff; whether it was possible to appeal a judgement made by the Administrative Court to the Constitutional Court, and whether it was true that the possibility of lodging an appeal depended on the form of the act contested by the injured party and that the latter could appeal only against acts which were formally qualified as decisions. Referring to the establishment in Austria in 1977 of the institution of Volksanwaltschaft (mediator), some members wondered why it had been considered necessary to establish this institution since there appeared to be a variety of judicial and administrative remedies against infringements of fundamental rights. Other members asked whether that institution offered additional remedies, what the advantage was of applying to it rather than to the courts, what the composition of that institution was and how its independence was assured, what procedures the “mediators” used and to whom they were responsible, whether any report they might produce was duly publicized, whether their decisions were implemented automatically, whether that institution had any functions in respect of human rights in addition to receiving complaints from individuals and whether there was any analogy between that institution and the role of Ombudsmen or special national institutions to protect and promote human rights.

184. In connection with article 3 of the Covenant, members requested further information on how men and women were guaranteed equal rights in Austria, particularly on whether there had ever been a woman candidate for a judgeship of the State Supreme Court; on the number of women serving as ministers, judges and ambassadors and on the relative proportions of males and females in the civil service as well as at all levels of education.

185. As regards article 6 of the Covenant, it was asked whether there were specific provisions in Austrian legislation protecting the rights of fetuses and what provisions were applicable in relation to voluntary abortion.

186. Commenting on articles 7 and 10 of the Covenant, members asked what remedies were available to an individual deprived of his liberty who complained about treatment contrary to the provisions of those articles; whether places of imprisonment were inspected regularly by bodies composed of independent persons responsible for examining the conditions of imprisonment and

receiving and rectifying the complaints of prisoners; whether there had been complaints among the public or in the press concerning the situation in prisons; whether Parliament had taken an interest in the treatment of detained persons whether there was a difference in status and treatment between persons who had been deprived of their liberty because they were suspected of having committed an offence and those who had already been convicted; whether judges were authorized to take into account testimony obtained illegally by the use of methods of interrogation forbidden by law and whether there could be exceptions to that rule. Information was requested on who determined the cases in which there was no fear of a "harmful influence" on minor prisoners and, accordingly, no separation between minors and adults was warranted; and on whether educational courses offered to prisoners were aimed specifically at the rehabilitation of prisoners and crime prevention.

187. With reference to article 9 of the Covenant, it was noted from the report that the Constitutional Court had deliberately given a sufficiently broad interpretation to the legal term "arrest" for it to cover other forms of direct restraint of liberty and it was asked what those other forms were that were not formal arrests. Noting that, according to the report, an individual could be arrested if there was a danger that he might repeat the offence, members pointed out that that rule might run counter to the rule of "presumed innocence" established in the Covenant and asked how it could be determined with any degree of certainty that such a risk existed, who was empowered to decide in this respect, what the maximum period was for such an arrest and what means of appeal were available to a person deprived of his liberty through a decision taken by an administrative authority. In this connection, it was also asked whether, in determining compensation for the victim of unlawful arrest or detention, Austrian case law generally took account of the reasons which led the authorities to make such an arrest or, conversely, the fact that the accused person had been innocent and whether the amount of compensation depended on the degree of suffering of the victim or on other criteria.

188. In relation to article 12 of the Covenant, information was requested on the Austrian legislation which provided for the possibility of withdrawing the nationality of certain Austrian nationals and on the available means of protection against what was described as a very serious penalty and on the effects of such withdrawal of nationality on the legal status and residence of the persons concerned.

189. Commenting on article 13 of the Covenant, some members pointed out that the provision that the Austrian authorities could override the suspensive effect of an appeal in cases where the public interest made early expulsion of aliens urgently necessary, was not in keeping with the safeguards stipulated in the Covenant. It was asked whether there were any safeguards under Austrian law to ensure that expulsion was only the denial of residence and that it could not be used as a pretext to extradite persons to other countries or to expose them to persecution.

190. As regards article 14 of the Covenant, it was asked whether criminal proceedings could take place in absentia, particularly if the accused person has fled to another country; whether there was any possibility of appeal in cases where the court ruled that the defendant was not entitled to free legal assistance and what would happen if the accused did not specifically request legal counsel and whether there were statistics indicating the normal duration of a criminal case.

191. Referring to an Austrian reservation upon ratification of the Covenant concerning articles 9

and 14 of the Covenant and whether it signified that the entire body of administrative penal sanctions was outside the provisions of the Covenant. Another member suggested that reservations made concerning article 14, paragraphs 5 and 7, should be reconsidered because they undermined very important principles of criminal law, namely the right of the convicted person to have his conviction and sentence reviewed by a higher tribunal and the principle of non bis in idem, respectively.

192. In relation to article 15 of the Covenant, it was asked whether, subsequent to the enactment of a law providing for the imposition of the lighter penalty, courts were required to apply the lighter penalty in all cases or only those in which a decision has not yet been taken.

193. In connection with article 17 of the Covenant, more information was requested on the rules relating to the seizure and opening of letters and other correspondence, whether there were provisions prohibiting searches at night and on whether forms of surveillance of citizens were subject to any restrictions.

194. With reference to article 18 of the Covenant, it was asked whether, in Austrian public schools, compulsory religious instruction in their faith for all pupils who were members of a church or religious community recognized by the law was compatible with freedom of religion; what forms of religious practice might be contrary to public order or morality and what body was responsible for establishment that they were and what forms of recourse were available to individuals and religious institutions in that respect.

195. In respect of article 19 of the Covenant, fuller information was requested on the way in which the right of reply was ensured in the Austrian media, the conditions under which financial assistance was granted to daily and weekly news publications, the provisions relating to censorship, referred to in the report, and on whether the penal provisions relating to the seizure of publications and the prosecution of the author applied only to safeguarding of public morals or the interests of young people, as implied in the report. With reference to the penal provisions applicable to the offence of publically insulting the Federal Army, or an authority, or the vilification of the State or its symbols, it was pointed out that those provisions could be interpreted and applied in a repressive manner and it was asked to what extent they could be applied to prohibit any criticism of public authorities, how the scope of the provisions in question could be delimited in order to prevent arbitrary action and to protect the right of dissent and what the case law on the subject was. Referring to the relevant provisions of the 1955 State Treaty for the Re-Establishment of an Independent and Democratic Austria, in particular articles 4, 9 and 10, one member asked if any court decisions had specifically prohibited Fascist and neo-Fascist propaganda and newspapers. Another member wondered how the “national socialist” ideas could be combated, since they would not disappear as the result of censorship.

196. As regards article 20 of the Covenant, it was pointed out that the relevant Austrian legislation did not really correspond to this article especially with regard to war propaganda or incitement to commit hostile acts. It was asked whether action had been taken to prevent activities or tendencies which were in violation of articles 5 and 20 of the Covenant, with regard to both Austrian citizens and foreigners and how many persons had been punished under the Prohibition Act, mentioned in the report, in the past three years and to what extent it was applied.

197. With reference to article 22 of the Covenant, it was asked in what circumstances an association was considered dangerous, how many associations or organizations had been prohibited in accordance with the relevant legislation, particularly under the provisions of the 1955 State Treaty and whether there had been any problem with the Committee on Freedom of Association of the International Labour Organization.

198. Commenting on article 24 of the Covenant, members asked what measures were taken in Austria to enable working mothers to protect the interests of their young children without making undue economic sacrifices; whether it was correct to conclude from the report that legal guardianship was given precedence over the parental relationship in connection with children born out of wedlock and, if so, whether that was compatible with the Covenant and what inheritance rights natural and adulturine children enjoyed under Austrian law.

199. In connection with article 25 of the Covenant, information was sought on the law concerning political parties and whether funds received by them from the State in order to carry out their constitutional mandates were distributed automatically or whether they were subject to certain conditions; whether Fascist and neo-Fascist candidates were prevented from standing for election, and whether a person who professed, without putting it into action, an ideology banned in Austria, such as national socialism, had equal access to posts in the civil service.

200. In relation to article 27 of the Covenant, members asked whether there were any other ethnic minorities in Austria in addition to those mentioned in the report and, if there were, what their legal status was, whether minorities had access to the conduct of public affairs and enjoyed the right to be represented in Parliament by their own candidates and whether they could use their national tongue. More information was requested on the situation of the Slovene and Croat minorities and on their position with regard to the Ethnic Minorities Act. A question was raised as to why the report referred only to paragraphs 3 and 4 of article 7 of the State Treaty, but avoided mentioning paragraphs 1, 2, and 5 of that article all of them relevant to the protection of minorities. Referring to the aforementioned paragraph 5, it was asked whether the new street signs which were posted to replace those in Slovene that had been destroyed, were written in Slovene or in German. Noting that, without the basic right to use and teach their languages, ethnic groups as such were doomed to extinction, members emphasized the need for more information on the positive action taken in accordance with his article to safeguard and ensure the rights of minorities, on the actual human rights situation of ethnic groups, on the relevant case law and on administrative memoranda or instructions on the subject as addressed to law enforcement officials.

201. Responding to comments made by members of the Committee, the representative of the State party informed the Committee that the Covenant had been published in the Federal Gazette and in private publications of the Constitution and that it had been discussed at a seminar on human rights held in 1981, but he thought that dissemination and distribution of international instruments on human rights were matters for the non-governmental organizations rather than for the States themselves.

202. Commenting on the questions raised by members concerning the measures adopted by Austria to give effect to the rights recognized in the Covenant, the representative stated that constitutional laws, ordinary laws and statutes were methods that had been used to meet Austria's obligations

under the Covenant; that the few legislative gaps referred to in Parliament during the ratification of the Covenant would be dealt with in detail in Austria's following report; that some laws had been enacted in order to implement the Covenant; and that the work carried out in the area of recodification of legislation dealing with fundamental rights would hopefully yield results in the long-term, despite the problems emanating from new developments since 1964, including the ratification of the Covenant.

203. The representative also stated that in criminal, civil and administrative law, civil and political rights were protected by effective remedies; that any alleged violation of those rights could be the subject of an appeal, that any court decision of a final nature could, in principle, be appealed; that, in criminal law, all decisions and measures taken at the pre-trial stage could be in the subject of appeal to the higher instance; that extraordinary appeals at the pre-trial stage could be taken to the Administrative Court and the Constitutional Court; and that *ex officio* reviews of cases were also made on a periodic basis. Replying to other questions, he indicated that cases relating to the duties and obligations between individuals fell within the sphere of judicial procedure; that there is a field of administrative law including the prohibition of offences with a view to maintaining public order which fell within the competence of the administrative authorities; that the Constitutional Court could hear appeals against decisions of the administrative authorities which allegedly violated any right guaranteed by Constitutional law and that if the Constitutional Court found that no constitutional rights had been violated in a case, that case could be referred to the Administrative Court if it was alleged that other rights had been violated. As to the *Volksanwaltschaft* (mediator), he stated that that institution had been set up as a last resort to be used after all other remedies had been exhausted; that mediators had nearly unlimited powers to deal with alleged cases of mismanagement or misbehaviour in, and to investigate complaints against, both national and local administrative authorities; to recommend solutions to those authorities which were then obliged to comply with such recommendations or state in writing why they could not; and that they could lodge appeals before the Constitutional Court against administrative decrees which they considered unlawful' that mediators were elected by Parliament for a four-year term; that there were currently three mediators in office and they were obliged to report their findings to Parliament annually.

204. With regard to article 3 of the Covenant, the representative informed the Committee that the role of women in public life had undergone significant changes in recent years, when a number of them occupied ministerial posts; that women had been active in provincial governments for several years; that the number of women in public life was still lower than that of men; that as at 1 January 1983, 15 per cent of the total number of judges and prosecutors in Austria were women and that 50 per cent of new appointments were women, which meant that the situation would change still further.

205. In response to questions raised under article 6 of the Covenant, he stated that the Constitutional Court had decided that, in principle, fetuses were not protected under that article, that the emphasis in Austria had recently shifted from a criminal to a non-criminal approach to the reduction of abortion and infant mortality and that although the Criminal Code had in 1975 decriminalized abortion in specific cases, abortion had not increased and that it was generally considered to be an undesirable means of birth control in Austria.

206. Replying to questions raised under articles 7 and 10 of the Covenant, the representative, who

stated that the Standard Minimum Rules of the Treatment of Prisoners were fully applied in Austria, explained the complaint procedures under the Prison System Act whereby complaints could be channeled, inter alia, through the presiding judge of the relevant court or through the “mediators”, depending on the type of prison. He also explained the prison inspection system whereby, inter alia, independent prison commissions, set up on a regional basis, visited all prisons at least once a year without notice and had direct access to the detainees and the prison files and reported each year to the Ministry of Justice. He explained the difference in treatment between accused persons and convicted offenders, the restrictions imposed on the former being generally limited to the measures necessary for their detention. He pointed out that juvenile prisoners could be detained with adults under 25 years of age, subject to the decision of either the Court, and Ministry of Justice or the prison director; that in some cases, other juvenile offenders could have a more detrimental influence on a young person than some adult detainees and that, considering that there were only 80 convicted juveniles in all Austrian prisons, segregation could, in respect of many of them, be tantamount to placement in solitary confinement. Concerning rehabilitation policy, he stated that it was the view in Austria that convicted offenders could best be rehabilitated without serving prison terms; that, as a result, prison sentences had been considerably reduced since the early 1970s and only 40 per cent of convicted offenders were given unconditional prison sentences, as compared to 1970; that emphasis had also been placed on release and post-release measures and that a successful network of release assistance centres had been set up.

207. As regards article 9 of the Covenant, he stated that mental health and juvenile delinquency were non-criminal grounds for the deprivation of liberty and that there were also cases where persons were deprived of liberty on grounds of health or violation of civil law, but that those were not significant. He also pointed out that detention pending trial was, in principle, never mandatory, but that for the most serious crimes, the court was obliged to order detention unless the defence was able to meet certain conditions and that the period of pre-trial detention was generally limited to six months but ranged from two months, in cases of collusion, to up to two years in very serious criminal cases. He indicated that it was the Court which handed down ex officio decisions on compensation for unlawful arrest; that if the detention was considered unlawful, compensation was always given, but if it was considered lawful but not justified in cases where there was no conviction, compensation was given when cause for suspicion could not be substantiated; and that compensation was inter alia, based on suffering caused to individuals.

208. In response to questions raised under article 12 of the Covenant, he stated that under the Nationality Act, nationality could be revoked if a citizen entered into the service of a foreign State and, in that capacity, carried out acts detrimental to the interests and good name of the Republic, but that a naturalized citizen could be deprived of Austrian nationality if he had not renounced his former nationality, had not been granted dual nationality and was not a refugee. The citizen in question had to be informed of the decision to revoke his nationality at least six months before the expiration of the period of two years after the initiation of legal proceedings.

209. In respect of article 13 of the Covenant, the representative pointed out that the suspensive effect of the appeal against the expulsion order could be annulled only for reasons of national security; that an alien could lodge an appeal even against an expulsion order handed down for reasons of national security and that the authorities were obliged to respect the will of the person concerned and not transfer him to the border of a State in which he could be legally prosecuted.

210. Replying to questions raised under article 14 of the Covenant, he stated that according to Austrian law, an accused person could be tried in absentia provided that the offence was not regarded as a serious one, that the accused had been heard by the Court before the trial, that the warrant of arrest had been delivered to the accused in person and that the court believed that it would be possible to shed full light on the case despite the absence of the accused, but that it was very rare for all four conditions to be met. He also informed the Committee that legal aid was available in all civil and criminal cases for persons with inadequate means to provide for their own defence; that it was provided when defence was mandatory, namely, in all major criminal cases, with possible sanctions of more than three years, and when the court decided that it was needed to serve the interests of justice and to assist persons who required professional assistance.

211. Responding to comments made by members in respect of Austria's reservations on article 14, the representative explained those reservations in terms of the existing legal system and indicated that convenience and other good reasons convinced his Government to retain the relevant existing provisions.

212. With reference to article 15 of the Covenant, he stated that if the law providing for the lighter penalty came into force between the time when an offence was committed and the time when the case came to trial, the lighter penalty would apply; that if the law was changed when the case had already been tried, commutation of the sentence ought to be possible, but not automatic and that that should not become a general rule since there could be good reasons for upholding the original sentence.

213. As regards article 17 of the Covenant, the representative stressed that telephone tapping and seizure of private correspondence were legal only if ordered by the judiciary and that a private home could be searched only when absolutely necessary and when all necessary precautions were taken to protect the legitimate interests of the individual concerned.

214. In connection with article 18 of the Covenant, he stressed that the Basic Law, which granted the State the leading role in the field of education, was in no way designed to regulate religious instruction and that the State was empowered only to protect that freedom as outlined in the Constitution in the interests of public policy and morals.

215. Replying to questions raised under article 19 of the Covenant, the representative pointed out that the right of reply was ensured when incorrect information had been published in the press or broadcast on the radio or television and that broadcasting companies could be required through a court decision to correct false information; that the Press Promotion Act provided for the granting of State subsidies to newspaper companies in order to ensure a wide spectrum of opinions and to facilitate the publication of newspapers for minority groups; that no publication, theatrical play, film etc., could be subject to prior censorship, but that the law provided for certain measures in order to protect minors, safeguard public morality and prevent racist or war propaganda; that a citizen could demand seizure of a publication, for libel for example, but that in that event, the court, in reaching its decision, had to balance the interests of the appellant and those of the public, with the latter taking precedence; and that the inclusion of a notice of proceedings in the defendant's publication, a widely used practice, had rendered recourse to seizure virtually pointless. He also pointed out that a statement directed against the State, in order to be considered defamatory, and thus give rise to



legal proceedings, must among other conditions have been made in public with malicious intent and must have been widely circulated; that those with the best legal protection with regard to defamation were individuals, followed by civil servants, legal entities and the State.

216. As regards article 20 of the Covenant, he submitted that this article referred to a purely theoretical obligation and that propaganda for war in itself did not constitute a threat of war. He also pointed out that the Penal Code provided for guarantees concerning not only acts proscribed under the Covenant, such as hostile acts against ethnic groups, but also incitement to hostile acts.

217. Replying to questions relating to article 24 of the Covenant, the representative stated that as illegitimate children needed more protection, being deprived of the initial advantages of legitimate children, legal guardianship by means of social assistance had been retained in principle, but that mothers were entitled to apply for exclusive legal custody of their children. Those provisions could possibly be revised if social conditions changed, as currently seemed to be the case, since there was an increase in the number of children being born out of wedlock.

218. In response to questions raised under article 27 of the Covenant, he informed the Committee that, in Austria, there were four ethnic and linguistic minority groups, namely, the Slovene, Croat, Hungarian and Czechoslovak minorities, each living in different parts of the country and that the percentage of the general population they represented was not very high. There was no specific provision regarding the representation of minorities in Parliament, but the fact that two major parties dominate political life in the country did not make it easy for other parties to obtain sufficient votes to be represented in Parliament, hence the failure of the candidates of the Slovene minority in elections in Carinthia to obtain a sufficient number of votes to be elected. As regards to right of minorities to use their own languages, the representative stated that there were norms for each of the minorities, whereby the Slovene minority could be provided with bilingual teaching in the primary schools at the parents' request. Moreover, there was a secondary school which used Slovene as the language of instruction. Efforts were being made to set up courses in Hungarian but there were some problems, since few persons were concerned. The Czechoslovakian minority of Vienna had its own school where Czechoslovak was taught and used, whereas the teaching Croat depended on the percentage of Croats in the schools.

219. Recognizing that it had not been possible to answer all the questions asked, the representative of Austria promised to supplement the initial report with answers to the remaining questions within one year.

## CCPR A/47/40 (1992)

80. The Committee considered the second periodic report of Austria (CCPR/C/51/Add.2) at its 1098<sup>th</sup>, 1099<sup>th</sup> and 1100<sup>th</sup> meetings, held on 24 and 25 October 1991 (CCPR/C/SR.1098 and SR.1100). (For the composition of the delegation, see annex VIII.)

81. The report was introduced by the representative of the State party, who drew members' attention, in particular, to the fact that the Second Optional Protocol aiming at the abolition of the death penalty was currently before the Austrian Parliament, with ratification expected in early 1992.

### Constitutional and legal framework within which the Covenant was implemented

82. With reference to that issue, members asked what measures Austria had taken to give effect to the rights recognized in the Covenant and whether there were any difficulties in that regard. Members also inquired about the remedies available to individuals whose rights under the Covenant had been violated. Concerning the promotion of human rights, they wished to know, in particular, as well as about measures taken to increase public awareness of the Covenant and the Optional Protocol.

83. Members were concerned about the status of the Covenant, given that Austria had incorporated into its domestic law the European Convention on Human Rights, but not the Covenant. They wondered whether those parts of the Covenant that were not reflected in the European Convention, if not the Covenant in its entirety, could be incorporated into Austria's domestic law. In addition, members wished to know whether there was any governmental machinery for monitoring legislation to ensure its compatibility with Austria's international obligations under the Covenant; how complaints would be handled in the light of the provisions of the Optional Protocol; and whether there was any legal procedure under which the provisions of the Covenant could be abrogated. Members were also concerned about the reservations to the Covenant and the Optional Protocol entered by Austria and wondered whether the withdrawal of some of them was being considered.

84. In his reply, the representative of the State party said that the Covenant, though not an integral part of the domestic law, was recognized as an instrument prescribing obligations under international public law. Fundamental human rights in Austria had been guaranteed since the enactment of the Basic Law in 1867 and the ratification of the European Convention on Human Rights, which in 1964 was made part of domestic constitutional law. Notwithstanding the fact that neither a judge nor an administrative authority was required to apply the provisions of the Covenant directly, there were no difficulties in giving effect to the rights recognized in it. Since the Covenant was an international obligation for Austria any abrogation would be a violation international law. Nevertheless, under the existing constitutional framework it would not be possible to consider its partial incorporation into domestic law.

85. Regarding the question of remedies, the representative explained that remedies could be sought from a hierarchy of courts and that appeals could be lodged at one or more levels. Compensation of victims was also available at various levels of the administration. After the exhaustion of all levels of appeal in the administrative branch the appeal could be further carried to the Constitutional

Court should the administrative decision be alleged to have violated human rights. The Constitutional Court could repeal the offending provision or rescind the administrative decision against which the appeal was lodged.

86. The Government had no intention to set up a commission on human rights or a special agency to promote human rights. However, the Office of the Ombudsman had been in existence since 1976 and all government institutions were ready to provide information on human rights upon request. While the public was less aware of the Covenant than of the European Convention on Human Rights, it was generally aware of its provisions and of those of the Optional Protocol. The Austrian Government believed that the provisions of the Basic Law and of the European Convention on Human Rights, as amended by subsequent protocols, would ensure compliance with the provisions of the Covenant. Furthermore, the text of every statute or decree was scrutinized in the light of the fundamental rights and freedoms provided for in the Covenant, the European Convention and domestic law. To ensure that any person whose rights or freedoms were violated would have effective remedies, Austria was prepared to change its domestic legislation to provide for new remedies or to allow the use of existing remedies, if regarded by the Human Rights Committee as suitable, in the same manner as it had done in respect of the decision of the European Court on earlier occasions.

87. The problems that had led Austria to make a number of reservations at the time of ratification of the Covenant were largely attributable to differences relating to existing practice in Austria and to the provisions of the European Convention and its interpretation. However, it would always be possible to consider whether or not any of those reservations should be withdrawn.

#### Non-discrimination and equality of the sexes

88. In connection with that issue, members wished to know how the Austrian Constitution guaranteed the rights provided for in article 2, paragraph 1, of the Covenant; whether women received equal pay and what measures had been taken to promote women's participation in the various sectors of society; what was the proportion between the sexes in educational institutions; how the special Federal Constitutional Act against racial discrimination had been applied in practice; how the rights of aliens were restricted as compared with those of citizens; whether all types of discrimination identified in the Covenant were prohibited; whether the Constitution still excluded members of the ruling and former ruling families from being elected as President: and why article 26 and 27 of the Covenant could not be brought into direct application in Austria whereas the International Convention on the Elimination of All Forms of Racial Discrimination had been made operational in Austria by means of a Constitutional Act.

89. In his reply, the representative said that discrimination was prohibited by the Constitution. Since virtually all the rights contained in Covenant were also embodied in the European Convention, which had become a part of constitutional law, Austrian law necessarily contained provisions similar to those of the Covenant. However, owing to historical reasons, article 7 of the Constitution (which referred to the rights of citizens only) was not identical to article 2 of the Covenant (which referred to the rights of all individuals). On the question of the treatment of the former imperial family, the representative said he would convey the views of the members of the Committee to the Austrian Government.

90. On the treatment of aliens and citizens generally, the representative stressed that the principle of equality applied to all aliens in Austria under the terms of the Constitutional Acts in relation to the International Convention on the Elimination of All Forms of Racial Discrimination and the European Convention, although some differences in respect of employment in certain professions, such as the civil service for which only citizens were eligible, were allowed for. No information was available concerning the application of the special constitutional law prohibiting racial discrimination as no court had ever had to deal with a complaint thereunder.

91. The figures for 1988-1989 showed that about 50 per cent of children attending day-care centres and primary and secondary schools were female, and that one third of all university students were female. A report on the measures taken to promote the participation of women in the life of the country would be brought to the attention of the Committee as soon as it was completed. On the issue of equal pay, the representative acknowledged that such equality had not been guaranteed in Austria. The Government had therefore established an Equal Pay Committee and it was expected that matters would improve slowly.

#### State of emergency

92. Concerning that issue, members wished to know, in the absence of any constitutional provision regarding the suspension of fundamental rights, how an emergency situation would be dealt with.

93. In his response, the representative said Austria had no specific legislation relating to emergency situations. The Constitution authorized the Federal Government to issue decrees which had the force of parliamentary legislation, but that power had never been used.

#### Right to life

94. With regard to that issue, members noted that Austria was considering ratification of the Second Optional Protocol aiming at the abolition of capital punishment. They also wished to know what rules and regulations governed the use of firearms by the police and security forces; whether the idea of homicide at the request of the victim included euthanasia practised by a doctor; whether suicide had been decriminalized; when it was planned to legalize abortions; and whether any steps had been taken to provide the population with a healthy environment by curbing pollution and by adopting measures against acquired immune deficiency syndrome (AIDS), cancer or tobacco-related diseases.

95. In his reply, the representative said that the use of firearms by the police and security forces was restricted by a 1969 law which provided that they could only be used when necessary to subdue an aggressive person after a warning had been issued and other means had failed. "Active" euthanasia was regarded as illegal and contrary to medical ethics. Attempted suicide had ceased to be an offence, but helping a person to commit suicide was still punishable. Termination of pregnancy during the first three months was not punishable by law. The Code of Criminal Procedure had been amended in 1987 with a view to imposing greater penalties for pollution-related offences, but discussion of that sensitive issue was still continuing. A system under which cases of AIDS were registered had been introduced and the principle of anonymity was strictly respected. Homosexual prostitution had also been decriminalized to enable the application of preventive measures and to fight AIDS more effectively. It was also planned to provide drug addicts with substitute products.

## Liberty and security of the person and treatment of prisoners and other detainees

96. With reference to that issue, members of the Committee wished to know whether there had been any allegations of violations of obligations under article 7 of the Covenant and whether statistics regarding ill-treatment of detainees were available. Noting that torture had been practiced in Austria, members requested information on the measures that had been taken to prevent ill-treatment, on the competent investigative authorities and complaints procedures, and concerning the main problems faced by the prison commissions and how such problems had been addressed. It was also asked how Austrian law complied with articles 7 and 9, paragraph 3, of the Covenant; whether guidelines had been issued to the security forces; and what was the average length of pretrial detention. Members also inquired about the principles of the Austrian law of evidence, in particular whether confessions obtained through ill-treatment were admissible in evidence.

97. In addition, members wished to know whether there was any procedure providing for the review of compulsory confinement decisions; whether the European Committee for the Prevention of Torture had detected any cases of violations of the provisions of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; how soon after arrest a detainee was allowed to contact counsel; what were the powers and performance of prison commissions; and which authority was responsible for the systematic monitoring of the treatment of persons held in psychiatric institutions and reformatories for juvenile delinquents. Members also questioned the basis for the reservation entered by the Austrian Government with respect to article 10 of the Covenant and wondered if it could be withdrawn.

98. Replying to the questions raised by members, the representative confirmed that there had been allegations of violations of obligations under article 7 of the Covenant. In 1989 a decree was issued, ordering that justifiable allegations should be the subject not only of a police inquiry, but also of a thorough investigation by an independent examining magistrate. While it was too early to provide statistics on the results of the inquiries (a decree stating that statistics should be kept of allegations of ill-treatment during detention was issued in May 1991), the representative referred to a report published by Amnesty International in 1990 in which 14 individual cases had been mentioned. Even before the publication of that report, a decree containing strict orders concerning the rights of detainees to communicate with counsel and the possibility of warning third parties of the arrest had been given. Furthermore, a pamphlet on the rights of detained minors had also been published. The prison commissions were independent bodies responsible for monitoring the prison conditions and recommending ways of improvement. As a result of their work, some proposals had been made with a view to improving prison conditions and promoting training programmes for inmates.

99. Regarding pretrial detention, the representative noted that a person remanded in custody after arrest would have to be brought before a magistrate within 48 hours and to be questioned by a magistrate within the following 24 hours, which could be extended up to 72 hours. Any doubt about the lawfulness of the arrest or detention in the view of the magistrate would result in the release of the detainee, although such a decision could be appealed against. According to the figures available for 1988, the average length of pretrial detention was 76 days.

100. On the issue of admissibility of evidence obtained through ill-treatment, the representative explained that the Austrian Parliament's declaration, made when the Convention against Torture and

Other Cruel, Inhuman or Degrading Treatment or Punishment was ratified, had in effect prohibited the use of statements obtained by torture. The Austrian Government was aware that the Code of Criminal Procedure would have to be amended in the light of article 15 of the European Convention on Human Rights so as to provide explicitly for the prohibition of the use as evidence of confessions obtained through ill-treatment. In the view of the Austrian authorities, article 15 of the European Convention was even more restrictive than article 7 of the Covenant.

101. In response to queries about confinement in psychiatric institutions, the representative said that compulsory confinement had dropped by two thirds over the previous 15 years and that a new law and new procedures had been in effect since 1 January 1991. Under that law, any person confined compulsorily in a psychiatric institution had to be brought before the competent civil court within two days and questioned by the magistrate within the following four days. Any restriction of freedom of movement and communication would have to be based on a judicial decision, which had to be given within 8 days, and against which an appeal could be lodged within 14 days.

102. Referring to the reservation entered in respect of article 10 of the Covenant, the representative explained that one of the reasons was that the Government had not regarded the provisions in the Covenant with respect to juvenile prisoners as adequate or in conformity with its own practice. Although Austria recognized the principle of separating young untried prisoners from adults, the strict application of that principle could have meant that a young person of 18 could not share a cell with somebody of 19, which had been the new age of criminal responsibility since 1988. Furthermore, in recent years there were barely more than 2 or 3 young prisoners in each penitentiary establishment and the total number of juvenile delinquents serving prison sentences had never exceeded 50.

103. In response to members' queries as to whether the maximum period of pretrial detention could be reduced from five days to three days, the representative said that the Government intended to amend the Code of Criminal Procedure in order to reduce the maximum from five to four days, thus bringing the practice into line with the decisions of the European Court of Human Rights. There were no special provisions relating to terrorism and, fortunately, there had thus far been no terrorist act committed by an Austrian. The installation of recording devices to monitor the questioning of detainees was not yet a current practice in the European democracies. However, under a planned reform of the Code of Criminal Procedure it was envisaged that a detained person would have the right to request a trustworthy third party, such as a lawyer, to be present during the questioning. Moreover, the Government had recently taken action on training police officers in human rights matters.

#### Right to a fair trial

104. In connection with that issue, members wished to know what criteria were followed in selecting members of a jury; what was the average length of criminal cases; whether there had been any application for payment of compensation in accordance with the Criminal Compensation Act; and whether the reservation entered under article 14 of the Covenant would be withdrawn.

105. Replying to the questions raised by members, the representative said that since 1 January 1991 members of a jury and assessors had been chosen in random manner. The average length of criminal

cases was rather shorter than in other countries, especially since the introduction of a monitoring system in 1990. The question of payment of compensation arose in the event of unlawful detention, pretrial detention and subsequent failure to bring charges, and in the case of an acquittal at the end of a second trial of a person who had been sentenced and imprisoned. Statistics for the previous 8 years showed that there were on average from 5 to 24 cases of compensation per year, most of which came under the pretrial detention category. Two thirds of the cases were found justifiable, with the victims receiving compensation.

106. As for the question concerning Austria's reservations in connection with article 14, paragraph 5, of the Covenant, the representative explained that since criminal proceedings in Austria were invariably of a two-tiered character, the Austrian authorities were not certain that the imposition of a more severe sentence by a court of second instance, which would not be subject to appeal, would be consistent with the provision in question. Thus, the reservations were entered by way of precaution. With regard to article 14, paragraph 7, the representative explained that only in exceptional cases, where new evidence was to be submitted, would a trial be reopened following a final judgement. The Government could envisage withdrawing Austria's reservations if the Committee or any other United Nations body could provide the necessary assurances that Austrian practice was not inconsistent with the Covenant.

#### Freedom of movement and expulsion of aliens

107. With regard to that issue, members of the Committee wished to receive further information concerning the relevant judicial or administrative procedures for appeal against a prohibition order and asked whether such an appeal had suspensive effect. In addition, members wished to know whether there were, in law or practice, any restrictions on the right of a citizen to establish his residence and domicile anywhere in Austria; what Austria's policy was on immigration and the granting of asylum; how many people had applied for refugee status or temporary status in Austria after fleeing Yugoslavia; and what policy was envisaged in the latter regard in the future.

108. In reply, the representative said the substance of article 13 of the Covenant had been incorporated into the Seventh Protocol to the European Convention and consequently into Austria's Constitution. However, the Protocol differed from the Covenant on the issue of whether an appeal against expulsion order had suspensive effect. Whilst the Protocol acknowledged in principle that there should be suspensive effect in cases of expulsion, some exceptions were regarded as necessary in cases involving public order and for reasons of national security. In those exceptional cases an alien might be expelled before he could exercise his right to submit reasons against the expulsion, to have his case reviewed and to be represented.

109. Regarding the freedom of movement, the representative confirmed that Austrian nationals could move freely within the country. On the question of asylum, Austria's policy was to grant asylum to political refugees under all circumstances. For other refugees, the Government was trying to work out an adequate policy. At present, if a refugee had passed through a country where his security was guaranteed, he would be repatriated to that country. Only a few requests for refugee status had been made by Slovenians and Croatians and they had been granted.

#### Freedom of religion and expression; prohibition of propaganda for war and incitement to national

racial or religious hatred

110. In connection with those issues, members wished to be informed of the modalities applicable to conscientious objectors and the duration of the alternative service required of them; how Jehovah's Witnesses, objected to any kind of alternative service, were dealt with; which practices were not considered as being consistent with public order or public morals; how the right to seek information, envisaged in article 19, paragraph 2, of the Covenant, was guaranteed; whether the application of the article III of the Criminal Code had given rise to any difficulties with regard to the implementation of article 19 of the Covenant; and what limits were imposed by Austrian law on the right to seek and impart information.

111. Noting that there were no private television or radio stations in Austria, members also wished to know whether those forms of mass media were completely monopolized by the State. Members also asked what policy guidelines were followed to ensure objective reporting by the press and what the criteria and selection mechanism were with respect to the granting of subsidies to the press. In addition, they requested clarification of the legal basis, interpretation and application of article 188 of the Criminal Code, which provided for penalties in cases where a belief, custom or institution was ridiculed or discredited, and asked which person was duly authorized by law, pursuant to article 14 of the Basic Law, to compel another person to take part in religious activities.

112. In his reply, the representative explained that under a new proposal currently under study, conscientious objectors would no longer be subjected to examination and their alternative service would be only two months longer than military service. As for problems relating to Jehovah's Witnesses, a practical solution had been found based on the legal provision that the military authorities could dismiss people from military service who were unfit for such service.

113. On request, the Austrian people were completely free to seek and impart any information they wished, provided that they did not act contrary to the Penal Code. How information was made available to the public requesting information depended on the circumstances of the case, bearing in mind the interests of the parties concerned. Article 111 of the Criminal Code was essentially a mechanism to defend the reputation of private individuals and there was no intention, at present, to amend it. The violation of public order was not a criminal but an administrative offence and judges and prosecutors were therefore not dealing with questions of public order in the context of article 111.

114. The radio and television enterprise was not a state monopoly but was under a separate broadcasting authority, with a legal entity, which licensed newscasters to collect and broadcast information. A commission, comprised of judges and other individuals, controlled the objectivity of radio and television broadcasts, but its decision could be appealed. The Government was currently redrafting the anti-monopoly and anti-trust laws in general, with a special section relating to the mass media. The guidelines for granting subsidies to newspapers were not available, but it was clear that the Government had no influence on the editorial policy of new papers receiving such subsidies.

115. As regards article 188 of the Criminal Code, the representative shared the view that the provisions relating to blasphemy were obsolete, but noted that they had been designed to defend



public order and tolerance among different religious groups. Article 188 would come into play in the case of public behaviour causing justifiable annoyance and serious irritation to members of a particular religious group, and the article was not inconsistent with article 19, paragraph 3, of the Covenant. In the Lingens case, the European Court of Human Rights had ruled that a distinction would have to be drawn between the substance of information and opinion, which might be shocking and offensive, and the form in which such information or opinion was expressed. Thus, for example, The Satanic Verses would be protected under the special provision for freedom of the arts in Austrian legislation and article 188 of the Criminal Code would be interpreted in the light of that freedom. On the question of elucidation of the situation of persons having authority over others, the representative explained that children up to age 14 were, as far as religion was concerned, under the authority of their parents.

#### Freedom of assembly and association

116. With reference to that issue, members wished to know whether any meetings had been broken up by the authorities during the period under review; which formations had been prohibited and which associations had been dissolved; why open-air meetings were not allowed; and why aliens were not allowed to promote, organize or preside over any meetings for the discussion of public affairs.

117. In his reply, the representative noted that freedom of assembly has guaranteed in Austria in accordance with article 21 of the Covenant although 24 hours' notice had to be given to the authorities. Recent cases of meetings being broken up concerned the National Socialist Party which, under constitutional law, was forbidden to meet in Austria. Freedom to form associations was guaranteed and recent bannings related to the creation of neo-Nazi groups and other unconstitutional formations. Restrictions on foreigners with regard to the holding of meetings applied only to the case of interference in public affairs and were consistent with article 16 of the European Convention on Human Rights.

#### Rights of persons belonging to minorities

118. Concerning that issue, members of the Committee wished to be informed of factors and difficulties relating to the implementation and enjoyment of rights under article 27 of the Covenant; the composition, functions and activities of the Ethnic Group Advisory Councils; and the percentage of persons belonging to minorities who held public office.

119. In his reply, the representative said that Austria had not experienced difficulties in that regard since the provisions of the State Treaty of 1955 went well beyond those of article 27. As 90 per cent of Austria's citizens were Roman Catholic, religious minorities formed only a small proportion of the population and encountered no restrictions in the profession and practice of their own religion. The Government had completed a report on ethnic minorities and would make it available in English in due course. The Ethnic Group Advisory Councils advised the Federal Government and its ministers in matters concerning ethnic groups and sought to safeguard and represent the overall cultural, social and economic interests of the minorities. They were involved in the drafting of any relevant legal instruments and were empowered to make proposals for improvement. The Advisory Councils had the same position, functions and competence with regard to the governments of the

Länder. There were four ethnic groups living in Austria - Slovenians, Croatians, Hungarians and Czechs. Financial subsidies were being granted to ethnic minorities and the amount of such subsidies had been increasing. It had not been possible to determine the percentage of persons belonging to minorities in public office as they were hard to identify. Only those who claimed affiliation with a given ethnic group were considered as belonging to that minority group and they were small in number.

#### Concluding observations by individual members

120. Members of the Committee expressed warm appreciation for the high quality of the report, which was informative and straightforward. They also welcomed the candor and competence of the State party representatives in answering the Committee's questions, which had made for a useful and constructive dialogue.

121. While recognizing Austria's traditions and the Government's efforts to promote respect for human rights, members expressed continuing concern about a number of areas where, in their view, further improvements were needed. One such concern related to the status of the Covenant in relation to Austrian law. It was noted in particular that, as far as grounds for discrimination were concerned, Austrian law was not in complete conformity with the provisions of the Covenant. The incorporation of at least articles 26 and 27 of the Covenant into domestic law was suggested as one possible remedy in that connection. A related concern was the list of Austrian reservations to the Covenant, which members urged the State party to reduce.

122. Other concerns raised by members related to such matters as the independence of the administrative courts; the inadequacy of protection extended to detainees at the interrogation stage; the impartiality of the mechanisms for investigating cases involving alleged torture and ill-treatment by the police; the monopolistic character of the electronic media; and restrictions on speech under article 111 of the Criminal Code, as well as the freedom to impart information.

123. The representative of the State party said the dialogue had been extremely interesting and thanked the Committee for the warm welcome it had accorded to his delegation.

124. In concluding the consideration of the second periodic report of Austria, the Chairman thanked the delegation for its responses to the Committee's questions on an excellent report and requested the delegation to convey the Committee's views to the competent authorities.

#### **CCPR A/54/40 (1999)**

178. The Committee considered the third periodic report of Austria (CCPR/C/83/Add.3) at its 1718<sup>th</sup> and 1719<sup>th</sup> meetings (CCPR/C/SR.1718-1719), held on 30 October 1998, and adopted the following concluding observations at its 1726<sup>th</sup> meeting (CCPR/C/SR.1726), held on 5 November 1998.

## 1. Introduction

179. The Committee welcomes the detailed report submitted by the State party and expresses its appreciation for the clear, updated information provided orally by the delegation. While noting the high quality of the report of the State party, the Committee notes the considerable delay in its submission; the report would have been improved by the inclusion of quantitative and practical data, although the delegation provided such additional information.

## 2. Positive factors

180. The Committee welcomes the ratification by Austria of the Second Optional Protocol to the Covenant with effect from 2 June 1998.

181. The Committee welcomes the withdrawal by Austria of some of its reservations to the Covenant; it would have been appreciated if the reasons for these withdrawals and the precise nature of their effect, as well as the reasons for the maintenance of the remaining reservations, had been more clearly explained.

182. The Committee welcomes the recent constitutional and legislative changes aimed at improved protection against discrimination; legislation to promote the rights and prospects of disabled persons is also welcomed. The admission of women to the armed forces and their advancement in the Civil Service is appreciated.

183. The Committee also welcomes the end to the monopoly on radio broadcasting and the establishment of private radio stations in Austria.

## 3. Principal subjects of concern and recommendations

184. While noting that the European Convention for the Protection of Human Rights and Fundamental Freedoms has been incorporated into the Austrian Constitution, the Committee emphasizes that a number of articles of the Covenant exceed the scope of the provisions of the European Convention. The Committee, therefore, recommends that the State party ensure that all rights protected under the Covenant are given effect in Austrian law.

185. The Committee is concerned at the State party's clear intention not to adopt appropriate procedures for taking into account the Committee's Views under the Optional Protocol in accordance with its obligations under article 2 of the Covenant.

186. The Committee is concerned that there is no provision in the Code of Criminal Procedure whereby a statement by way of confession must, if challenged, be proved not to have been extracted by means of torture or ill-treatment. The Committee recommends that steps be taken to amend the Code of Criminal Procedure in this regard.

187. The Committee notes with concern that the presence of a lawyer to advise a detained person is not authorized at the preliminary stage of judicial criminal investigation (prior to the person's appearance before a judge). It recommends that the Code of Criminal Procedure be revised so as to

guarantee more fully the right of a suspect to be assisted by a lawyer at all stages of the proceedings. Further, while commending the efforts undertaken by the State party to prevent, investigate and punish acts of ill-treatment of suspects and detainees, the Committee regrets that audio recording of interrogations of detainees is not yet used systematically. The Committee recommends that audio recording of interrogations be implemented in all Länder.

188. The Committee is concerned about certain features of Austrian law and procedure concerning asylum seekers and immigrants. These concerns relate to (a) apparently insufficient legal guarantees to prevent deportation in cases where there is a risk of treatment that would violate article 7; (b) the treatment of persons against whom there is a deportation decision but who remain in the country, raising issues under articles 7, 10 and 16; and (c) sanctions against passenger carriers and other pre-frontier arrangements that may affect the rights of any person to leave any country, including his or her own (art. 12, para. 2, of the Covenant).

189. The Committee considers that, despite recent reforms, the nature and functions of the autonomous administrative tribunals continue to raise questions in connection with the requirements of "due process" under article 14 of the Covenant. It encourages the State party fully to implement the principle of independence of all courts and tribunals.

190. The Committee considers that existing legislation on the minimum age of consent for sexual relations in respect of male homosexuals is discriminatory on the grounds of sex and sexual orientation. It requests that the law be revised to remove such discriminatory provisions.

191. The Committee notes with concern that the State party appears to restrict the definition of minorities to certain legally recognized groups. It requests that specific information on all ethnic, religious or linguistic minorities be included in Austria's next periodic report, in the light of the Committee's general comment No. 23 (50).

192. The Committee is concerned that legal provisions in Austria relating to the recognition of religions and the benefits accorded to recognized religions may result in discrimination contrary to articles 18 and 26 of the Covenant.

193. The Committee would appreciate information in the next periodic report about the application and effect of article 283 of the Criminal Code, concerning propaganda and incitement to war and to national, racial or religious hatred.

194. The Committee requests that in its next periodic report the State party provide further information about measures being implemented to counter all forms of violence against women.

195. The Committee requests that the State party address the Committee's concerns and recommendations in detail in its next periodic report.

196. The Committee sets the date for the submission of Austria's fourth periodic report at October 2002. It requests that the text of the State party's third periodic report and the present concluding observations be published and widely disseminated within Austria and that the next periodic report be disseminated among non-governmental organizations operating in Austria.

