

AUSTRIA

CERD A/9618 (1974)

130. The Committee considered the initial report of Austria in conjunction with the information submitted by that State Party in response to decision 3 (VII) of the Committee. It found the information contained in the report comprehensive and thorough, and welcomed the fact that it was organized in accordance with the guidelines laid down by the Committee. On the other hand, it was noted with regret that information dealt only with legislative measures, to the exclusion of judicial, administrative or other measures; and that there was no indication of the extent to which some of the rights guaranteed by the laws in force were in fact enjoyed by those whom they applied. The texts of the legislative provisions mentioned in the report were not supplied in all cases. And no information was given on the relations, if any, between the reporting State and the racist régimes of southern Africa, as was envisaged in the Committee's general recommendation III.

131. With regard to the implementation of the provisions of the Convention by the Government of Austria, the Committee took note with satisfaction of the supplementary information furnished by the representative of that Government at the opening of the Committee's consideration of the report, to the effect that a constitutional bill designed to ensure the equal treatment of aliens in relation to one another had been approved by the National Assembly and that a new Criminal Code, containing provisions intended to implement article 4 of the Convention, had been adopted and would come into force on 1 January 1975. However, concern was expressed over the apparent failure to implement the provisions of articles 4 (a), 4 (b), 5 (e) (vi), 5 (f) and 7 of the Convention and over the status of minorities, as follows:

132. Section 290 (1) of the Criminal Code was more narrow in scope than article 4, paragraph (a), of the Convention, in two respects: it qualified the dissemination of ideas based on racial superiority or hatred which it prohibited, and thus appeared to limit its effect to the dissemination of racist ideas that was "intended to lead to racial discrimination"; and it was silent with respect to the prohibition of "the provision of any assistance to racist activities, including the financing thereof".

133. As far as article 4, paragraph (b), of the Convention was concerned, some members of the Committee were satisfied that section 3 (a) of the Prohibition of Nazi Act and sections 6 (1), 20, 21, 22, 24 and 29 of the Associations Act met the requirements of the Convention. Other members, however, noted that subsections 1 and 2 of section 3 (a) of the Prohibition of Nazism Act showed that act was limited in its application to seven specified Nazi organizations and their branches, and to other associations "whose purpose is to undermine the autonomy and independence of the Republic of Austria"; they doubted that an Act whose scope was so confined could be seen as satisfying the mandatory requirement of article 4, paragraph (b), of the Convention to "declare illegal and prohibit organizations... which promote and incite racial discrimination". The sections of the Associations Act which provide for the prohibition of illegal organizations (such as sections 6 (1) and 24), by being permissive in their language, fell short of the mandatory requirements of the Convention. Furthermore, one member noted that the failure to implement fully the requirements of article 4, paragraph (b), of the Convention was a cause of special concern in view of the fact that

such chauvinistic organizations as the Karntner Heimat Dienst were able to operate freely and oppose minority rights and seek the assimilation of the Slovenes.

134. Some members noted with concern that the report stated that there was no provision in Austrian law for a right to equal participation in cultural activities (as provided for in article 5, paragraph (e) (vi), of the Convention) and that a right corresponding to the provisions of article 5, paragraph (f), of the Convention was not specifically enacted in Austrian legislation because it was “taken for granted as part of the normal legal order in Austria”. The omission of information on the implementation of article 7 of the Convention was noted with regret.

135. With regard to minorities, some members questioned the premise underlying the information contained in the report, which was stated explicitly by the representative of the Government of Austria in the statement he made at the opening of the consideration of that Government’s report, namely, that there were no distinct national or ethnic groups in Austria although there were religious and linguistic minorities. It was observed that a breakdown of the population on the basis of the linguistic criterion would yield results different from those yielded by one which was based on ethnic consciousness and kindred sociological criteria. It was emphasized that the rights of minorities did not depend on their numbers or the percentage of the total population which they constituted. Furthermore, it was observed that, important as legislative provisions were, of equal importance was the actual application of those provisions. Thus, with respect to the provisions governing the use of Croatian and Slovene languages in the courts and other public institutions, interest was expressed in whether persons wishing to avail themselves of those provisions and use those languages were subjected to any delay or harassment when bringing cases to court. Certain disparities were noted between the provisions of some of the international treaties by which Austria was bound and those of its own laws, with respect to minorities. Thus, article 7 (3) of the State Treaty of 1955 provided that the Slovene and Croat languages should be accepted as official languages in addition to German in the administrative and judicial districts of Carinthia, Burgenland and Styria, whereas the Federal Act of 19 March 1959 applied those provisions only to certain judicial districts of Carinthia and in Styria and Burgenland the provisions of article 66 (4) of the Treaty of St. Germain (providing that non-German-speaking Austrian citizens would be given reasonable facilities for using their languages in court) applied, appeared to indicate that certain obligations under an international treaty had been abridged or limited by a federal law.

136. In his second statement before the Committee, the representative of the Government of Austria commented on the concerns expressed by members of the Committee and replied to some of the questions put to him. He recalled that his Government had made declarations when it ratified the Convention stating its interpretation of articles 4 and 5. He stated that a new section (283 (1)), had superseded section 290 (1) of the Criminal Code and that it had the effect of amending the Prohibition of Nazism Act; that the term “nazism” had always been understood in its generic sense in Austria and included all totalitarian ideologies based on the concept of racial superiority; that the absence of specific provisions in Austrian law to give effect to the provisions of article 5, paragraph (e) (vi), of the Convention should be viewed in the context of the fact that it was a principle of the Austrian legal system that all persons were entitled to carry out any activity that was not prohibited by law; and that, although refusal to grant access to places or services intended for use by the general public (in violation of the provisions of article 5, paragraph (f), of the Convention) was not punishable by law, the right of access could be enforced by the courts.

137. With regard to the question of minorities, the representative of the Government of Austria reaffirmed that there were no racial minorities in his country, only linguistic and religious minorities; recalled that so far no cases of alleged discrimination against linguistic minorities in Austria had been brought before the competent courts and that none of the signatories to the State Treaty of 1955 had thus far complained of non-compliance by Austria with its obligations under that Treaty; and stated that the minorities were completely free to develop their culture and use their languages and had every opportunity to do so. He conceded, however, that there had been some problems in recent years, and even acts of violence; but the authorities had taken appropriate action. In one case, which was mentioned during the discussion, three persons had been brought to trial and sentenced to severe imprisonment. A special commission had been set up to study questions relating to the Slovene minority in Carinthia; and there was a standing body to ensure contact between the Government and the representatives of minorities to solve any problems that might arise.

CERD A/31/18 + Corr. 1 (1976)

50. The Committee noted with appreciation that the second periodic report of Austria covered a number of subjects which had not been dealt with in that country's initial report and on which the Committee had requested information, and that the comprehensive information contained in the report under consideration was organized in accordance with the guidelines laid down by the Committee at its first session.

51. Noting that the report provided a substantial amount of data on the demographic composition of the Austrian population, some members observed that the statistics given did not relate specifically to the criteria of "race, colour, descent, or national or ethnic origin" - to which article 1, paragraph 1, of the Convention and general recommendation IV refer - but mainly to the language criterion; that the legally recognized minorities were linguistic minorities; and that their right to equality appeared to be safeguarded by the provisions of the Peace Treaty of Saint-Germain-en-Laye of 10 September 1919 ^{14/} as well as the State Treaty for the Re-establishment of an Independent and Democratic Austria. ^{15/} However, one member of the Committee stressed that that Treaty referred to Slovene and Croat minorities, which he described as national minorities. He inferred from some of the information contained in the initial report of Austria that some of the rights safeguarded by those provisions (as well as by the provisions of article 2, paragraph 2, of the Convention) had been abridged by federal law, or had been limited as a result of the practice of making the enjoyment of some of their rights by national minorities contingent upon their relative numerical strength in the areas where they lived. He noted also that the data in the annexes to the second periodic report of Austria indicated a steady decline in the number of members of the national minorities. He therefore thought that the Committee should again urge the implementation, in the spirit of the Convention, of the relevant provisions of the State Treaty as it had done at its ninth session. Another member of the Committee stated that - since its competence did not extend beyond the Convention - the Committee could not consider the question of the implementation of the Austrian State Treaty; but a third member recalled that the second periodic report of Austria contained quotations from and comments on that Treaty and the Treaty of Saint-Germain-en-Laye.

52. The status and rights of aliens in Austria were considered by the Committee, in the light of article 1, paragraph 2, of the Federal Constitutional Act on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (which stated that the prohibition of discrimination laid down in paragraph 1 of that article did not prevent the granting of special rights to Austrian nationals or the imposition of special obligations on them), as well as in the light of the statement, contained in the report, that "in some cases, procedural laws impose special requirements on non-citizens". In this connection, the information provided in the report concerning foreign workers and their rights was also carefully examined by several members of the Committee, as was the information that "only the privileged position accorded to German-speaking

^{14/} League of Nations, Treaty Series, No. 11 (1919).

^{15/} United Nations, Treaty Series, vol. 217, No. 2949, p. 223.

aliens in a number of laws introduced after the Second World War is likely to be inconsistent with the Convention”.

53. There was much discussion in the Committee of the following statement, contained in the report under consideration:

“On the assumption that it is the object of the Convention to rule out unequal treatment of people exclusively on account of their race, colour, etc., Article 5 of the Convention is interpreted not as an obligation for States Parties to grant the rights enumerated therein, but as a requirement to the effect that where these rights are safeguarded by a States’s legal order, their enjoyment must be ensured without any discrimination. Certain rights enumerated in Article 5 of the Convention are not safeguarded by Austrian law, hence the question whether or not they are granted without any discrimination does not arise.”

Several members of the Committee expressed their agreement with this statement, referring to the extensive discussion by the Committee at its eighth session of the meaning and scope of article 5 of the Convention; ^{16/} but some members expressed their disagreement with the position of the reporting State towards that question.

54. Several members noted that a new Criminal Code had entered into force in Austria on 1 January 1975, and that section 283 of that Code covered to some extent the obligations of the reporting State under article 4, paragraph (a), of the Convention. Doubt was expressed, however, as to whether the existing legislation satisfied all the requirements of paragraph (b) of that article, or the obligation contained in article 7, paragraph 5, of the State Treaty for the Re-establishment of an Independent and Democratic Austria (under which that country was obliged to prohibit the activity of organizations whose aim was to deprive the Croat or Slovene population of their minority character or rights). Some members stated in that connection that they had been informed of the existence of organizations, including neo-Nazi organizations, which should be penalized under those provisions of the Convention or the State Treaty.

55. In addition to the questions raised in connection with the comments summarized in the foregoing four paragraphs, the following questions were asked by members of the Committee: (a) Was the Convention regarded, in Austrian legal practice, as part of Austrian law: (b) What was the status of Austria’s relations with the racist régimes in southern Africa? (c) What measures had been adopted to give effect to the obligations of the reporting State in accordance with the provisions of article 7 of the Convention?

56. The representative of the Government of Austria commented on many of the observations made by Committee members during the consideration of his Government’s report. (a) Regarding minorities (para. 51 above), he said that the decrease in the size of some minorities was not a

^{16/} Official Records of the General Assembly, Twenty-eighth Session, Supplement No. 18 (A/9018), chap. V, paras. 38-67.

typically Austrian phenomenon; it was the result of the natural tendency of members of minorities to integrate. (b) Regarding the rights of aliens (para. 52 above), he recalled article 1, paragraph 2, of the Convention which declared that the Convention did not apply to distinctions between citizens and non-citizens; he gave some examples of special requirements which applied to non-citizens where no bilateral agreements existed between Austria and another State providing for reciprocal exemption of their citizens from those requirements; and he expressed his readiness to recommend to his Government that its next report should include a list of the provisions which made a distinction between nationals and non-nationals in civil law. As for the privileged position accorded to German-speaking aliens, he explained that the persons concerned had been treated as Austrian nationals by virtue of a number of laws introduced after the Second World War, but that the laws in question - which were recognized to be in conflict with the Convention and which, in any case, applied to a group which had practically disappeared as a result of naturalization - would eventually be repealed.

(c) Regarding the rights enumerated in article 5 of the Convention (para. 53, above), he said that his Government considered that so long as a given right was not guaranteed by law, there could be no guarantee in respect of non-discrimination in its enjoyment. (d) As for the provisions of article 4, paragraph (b), of the Convention (see para. 54, above), he stated that the new penal provisions, taken in conjunction with the Associations Act, 1951, which prohibited associations having illegal aims, enabled the Austrian Government to dissolve any such association and fully met the requirements of the Convention; he asserted that the "Kartner Heimat Dienst" - an organization in Carinthia whose ideas did not correspond to those of the minorities - had been under close scrutiny by the Austrian authorities for the purpose of determining whether its activities came under the provisions of section 283 of the Criminal Code, but that that scrutiny had so far failed to show that the organization's objective was to eliminate the Slovene or other minorities and, consequently, it had not been prohibited.

57. Regarding the specific questions mentioned in paragraph 55 above, the representative of the Government of Austria informed the Committee: (a) that, since not all the provisions of the Convention were self-executing, it had been necessary to implement certain articles (such as articles 2, 4 and 5) through the adoption of specific legislation; (b) that Austria condemned the policy of apartheid in South Africa, but continued to maintain diplomatic relations with that country; and (c) that the next report of Austria would enumerate the administrative measures taken to give effect to the provisions of article 7 of the Convention and would also give a list of the organizations which endeavoured to promote understanding to combat racial prejudice.

CERD A/33/18 (1978)

118. The third periodic report of Austria consisted of four sections. The first section supplied information on a new legislative measure taken by the Government of the reporting State in order to give effect to the provisions of article 5, subparagraph (f), of the Convention. The second and third sections commented on observations made by members of the Committee during its consideration of Austria's second periodic report, relating to the special status of aliens under procedural law and to the discharge of Austria's obligations under article 4, paragraph (b), of the Convention, respectively. The fourth section related to the implementation of article 7 of the Convention.

119. In discussing the information provided in the first section of the report, members of the Committee expressed uncertainty about the nature of the provision quoted in the report - which was introduced by the words: "...The legislator has enacted a sanction reading as follows: ...". It was asked whether the measure in question was a regulation, an act, a decree or a simple administrative rule. The representative of Austria stated that the provision in question was a law enacted by both houses of the parliament and was therefore fully binding.

120. The text of the new law gave rise to some difficulties. It referred to anyone who "discriminates unjustly" against other persons; it referred to discrimination "exclusive" on the grounds of race, colour, national or ethnic origin or religion; it declared an act of discrimination falling within its scope an offence punishable by "administrative authorities"; and it did not specify the penalty to be imposed for such an offence. The representative of Austria explained that the word "unjustly" would perhaps have been better translated as "unjustifiably"; he agreed in English, but that was not true of the verb used in the original German. He said that the use of the word "exclusively" was necessary "because the provision covered all kinds of discrimination, and not only racial discrimination". He explained that dealt with by the courts and the latter by administrative authorities; and that the right of appeal to a higher body existed in both cases. And he stated that the fact that some cases came before the administrative authorities did not mean that the penalties were less severe' for the offence in question, a fine of about 3,000 Austrian schillings would be imposed.

121. The information given in the second section of the report under consideration, concerning the special status of aliens under procedural law, did not give rise to any problems among those members of the Committee who held the views that the right of States to treat nationals and aliens differently, including the right not to treat all aliens alike, was a generally recognized principle, or that the requirement of reciprocity did not constitute discrimination. However, some other members of the Committee held the view that the idea of reciprocity could seriously affect equality before the law if applied in cases concerning intellectual property or State liability. The representative of Austria, recalling that the principle of reciprocity was universally recognized in regard to the treatment of aliens, observed that acceptance of that principle was not incompatible with the purposes and norms of the Convention and that unequal treatment of aliens was in no way related to racial discrimination.

122. The situation concerning the implementation of article 4, subparagraph (b), of the Convention

- as described in the third section of the report under consideration - was considered satisfactory by some members of the Committee; some other members, however, were of the view that the Austrian legal system fell short of the requirements of the Convention inasmuch as it did not “declare illegal” and “prohibit” racist organizations and organized activities. Some members inquired whether, during the period covered by the report, there had been occasion to make use of the legal means available to the Austrian authorities to punish organizations which promoted racial discrimination, and also whether any organization had been prohibited in pursuance of article 4, paragraph (b), of the Convention. A specific inquiry was made about the Kaerntner Heimatdienst organization, mentioned in an earlier report. ^{16/} The representative of Austria observed that his Government interpreted the provisions of article 4, subparagraph (b), of the Convention as meaning that the State should have the power to dissolve - or to prevent the meaning of - an organization which promoted and incited racial discrimination, but that it was not possible to declare such organization illegal before the fact.

123. The information given in the fourth section of the report, concerning the measures taken in the field of education to give effect to the provisions of article 7 of the Convention, was welcomed. However, the statement that “the freedom of the press, the freedom of expression and the freedom of information set limits to a Government’s measures under article 7” was viewed by some members as an inaccurate interpretation of that article of the Convention which set no such limits to the scope of the obligations it created. The representative of Austria explained the statement under discussion to mean that “where freedom of the press existed, the State had no direct responsibility for the mass media and could not intervene”.

124. The Committee discussed three other questions not covered in the report under consideration: the implementation of article 6 of the Convention, the situation of minorities, and that information envisaged in general recommendation III of the Committee.

125. Concerning article 6 of the Convention, and in the light of the Penal Code promulgated in 1975, a member of the Committee asked whether the initiative in seeking a remedy lay in all cases with the Public Attorney, whether the injured party entitled to institute public proceedings and whether duly recognized associations and institutions which fought against racial discrimination had the capacity to institute such proceedings. The representative of Austria stated that, under the present legal system, it was possible for any person immediately affected by a law to lodge an appeal against that specific law; and that it had long been the case that every person who believed that he was the victim of an administrative decision affecting constitutionally guaranteed rights and the right of appeal to the Constitutional Court. If the judgement went in favour of the complainant, then the law or administrative decree would be null and void. In that connection, it was asked whether, during the period covered by the report, any legal remedy for racial discrimination had been sought in the Austrian courts and whether any complaint or appeal on grounds of racial discrimination had been lodge by Austrian citizens under the European Convention for the Protection of Fundamental Rights and Human Freedoms. The representative of Austria replied that, as far as he knew, since Austria had ratified the Convention, no cases of racial discrimination in Austria had come before

^{16/} [Official Records of the General Assembly], Twenty-ninth Session, Supplement No. 18 (A/9618), para. 133

either the Constitutional Court or the European Court of Human Rights.

126. Recalling discussions in previous sessions concerning the situation of the Slovene and Croatian minorities in Austria (A/9618, para. 135 and A/31/18 and Corr. 1, para. 51), and referring to “recent reports from several public Austrian sources” about trials in Austrian courts involving active members of the Slovene minority, a member of the Committee expressed surprise that the report under consideration contained no information on the present situation of minorities in the reporting State: he therefore asked the representative of Austria to furnish the Committee with information on that subject. Reaffirming that the Croatian and Slovene minorities “formed a linguistic minority” in Austria but “were Austrian citizens on an equal footing with all other citizens”, the representative of Austria stated that “those groups had never lodged a complaint against any Austrian law or administrative decree on the grounds of racial discrimination”. He added that the replies to the other questions “were contained in the second periodic report and in the records of the discussions on that report”. The member of the Committee who had raised the questions, however, could not understand “how it was possible to reply, during the consideration of the second Austrian report two years earlier, to questions concerning things which happened recently or were still happening”.

127. Although the Government of Austria had indicated earlier that it considered apartheid to be a crime against humanity, it was thought by a member of the Committee that it was desirable that that Government should explain what its position was with regard to the measures directed by competent organs of the United Nations against the racist minority regimes in southern Africa.

CERD A/35/18 (1980)

86. The fourth periodic report of Austria (CERD/C/48/Add. 6) was considered by the Committee in the presence of the representative of the reporting State.

87. The Committee commended the Austrian Government for its report. Members of the Committee drew attention to special measures taken by the Austrian Government for the implementation of article 1, paragraph 4, of the Convention and, in particular, to the provisions of the Federal Act of 7 July 1976 (Ethnic Groups Act) on the Legal Status of Ethnic Groups in Austria which provided, *inter alia*, for the establishment of a number of Ethnic Advisory Councils. In this connection it was noted that only the Hungarian ethnic group had accepted the establishment of an Ethnic Advisory Council. Members of the Committee wished to know the reasons why it had not been possible to establish Advisory Councils for the Croat, Czech and Slovene ethnic groups; why the members of those Councils were to be appointed by the Federal Government instead of being elected by the ethnic groups concerned; and why, in view of the fact that Croats, Czechs and Slovenes were ethnic, and not religious, minorities, persons nominated by a church or religious community should be included in the Councils. One member was of the opinion that objections raised by other ethnic groups to the establishment of Advisory Councils were due to the fact that, unlike the provisions of the State Treaty of 1955, the Act made the enjoyment of the rights by ethnic groups conditional on the groups' numerical strength and that ethnic groups, therefore, feared that their participation in the Advisory Councils would be interpreted as an endorsement of those restrictions of the Act. Another member pointed out that the objections to the Advisory Councils were perhaps due to the fact that the Act fell short of the goals of autonomy desired by the ethnic groups.

88. In connection with article 3 of the Convention and General Recommendation III of the Committee, additional information was asked for on the relations between Austria and the racist regime of South Africa.

89. It was noted that no new information concerning the implementation of article 4 (b) of the Convention was provided in the report and one member of the Committee wondered whether Austria's position on the interpretation of that article remained unchanged.

90. Attention was also drawn to the additional information and clarifications provided in the report in connection with the provision of the new statutory law enacted on 18 May 1977 with a view to implementing article 5 (f) of the Convention, already referred to in the third periodic report of Austria, which provides that: "Anyone, who in public unjustifiably causes disadvantage to a person or prevents his access to any place or service intended for use by the general public, exclusively on grounds of race or colour or national or ethnic origin or religious confession, commits an offence and shall be punished by the District Administrative Authority with a fine of up to 3000 S." In this connection, some members of the Committee wondered whether the use of the word "unjustifiedly" suggested that discriminatory acts might in some cases be justified. As regards the word "exclusively", some members observed that the use of this term might lead to the conclusion that acts of racial prejudice involving other factors might not be punished. Some members also wondered why offences committed under the statutory law were dealt with by administrative and

not judicial authorities.

91. In connection with article 6 of the Convention it was stated in the report that damages could be claimed from the State for acts of racial discrimination committed by a public official, and it was asked whether there was also provision to be sought from a private individual who committed such an act. It was also noted that in Austria a public official who committed discriminatory acts in the exercise of his functions, but on his own initiative, did not involve the responsibility of the institution he represented, and it was asked who would pay any damages to the injured party if the public official concerned was without financial resources. Furthermore, the victim of a discriminatory act could seek redress on the grounds that the order or law providing the legal basis for the discriminatory act was in itself unlawful or unconstitutional, and it was asked whether any cases of racial discrimination had been submitted to the Constitutional Court.

92. The representative of Austria, replying to questions raised by members of the Committee, explained that Advisory Councils had not yet been established for the Slovene ethnic groups since they did not recognize the validity of the Ethnic Groups Act; the Croats and the Czechs on the contrary did acknowledge its validity, but could not agree on personalities. The Austrian Government had made contacts with various groups and was attempting to solve the problems; the numerical strength of the ethnic groups was only one aspect of the problem; the numerical strength of the ethnic groups was only one aspect of the problem. Furthermore, the method of election for Ethnic Advisory Councils had been considered, but had been rejected because of Austria's adherence to the principle that no one should be forced to declare himself a member of an ethnic group. It should also be noted that the Church played an important role in the Slovene and Croat ethnic groups and it had therefore been considered appropriate that there should be representatives of the Church in the Councils.

93. With reference to questions raised on the text of the statutory law enacted to implement article 5 of the Convention, the representative stated that the word "unjustifiedly" meant that in certain cases, like the exemption of women from military service, unequal treatment was justified: only if the unequal treatment was unjustified was it discriminatory. Similarly, the word "exclusively" meant that any liability for punishment depended on an act having been committed solely for racial reasons. Moreover, the reason for the provision that acts of racial discrimination might be dealt with in the first instance by the administrative authorities was that their procedures were usually more rapid and simple than those of the Courts.

94. In connection with a question raised regarding article 6 of the Convention, the representative stated that civil proceedings could always be taken against a private individual who committed an act of discrimination in a claim for compensation.

95. The representative of Austria assured members of the Committee that questions which had remained unanswered would be taken up in his Government's next periodic report.

CERD A/37/18 (1982)

182. The fifth periodic report of Austria (CERD/C/75/Add.9) was considered by the Committee together with the introductory statement made by the representative of the reporting State, who pointed out that the report contained many references to previous ones, since there had been no new developments in Austria concerning the implementation of the Convention.

183. The Committee commended the Government of Austria on its excellent report, which displayed clarity on its presentation and furnished proof of that Government's desire to continue its dialogue with the Committee. One member of the Committee, however, observed that some articles of the Convention such as article 3, were not amendable to static implementation and that it was not sufficient in such cases to refer to what had been said previously. Another member remarked that the report contained no direct reply to the questions asked by the members of the Committee during the consideration of Austria's previous report.

184. It was recalled that when the four previous reports by Austria had been considered, some members of the Committee had asked questions regarding the Ethnic Advisory Councils and the status and rights of the Croatian, Hungarian, Slovene and Czech minorities living in Austria, in connection with article 1, paragraph 4, and article 2 of the Convention, and with article 7 of State Treaty of 1955 as part of the constitutional system of Austria. However, the fifth periodic report made no reference to those points. Information was therefore requested on the current situation regarding the Ethnic Advisory Councils, their composition and their functioning. It was asked, in particular, whether it had been possible to convince the Croatian, Slovene and Czech minorities to agree with the establishment of their Councils or whether only the Hungarian Advisory Council was in existence at the present time, whether only the Hungarian Advisory Council was in existence at the present time, whether the interests of minorities were taken into account in the current educational reform of the country, and what policy was followed in kindergartens.

185. With reference to article 3 of the Convention, information was requested on Austria's implementation of the various resolutions of the United Nations and other international organizations designed to sever all relations, including trade relations, with South Africa and to promote activities to put an end to the régime of apartheid.

186. As regards article 4 of the Convention, further information was requested on legislative measures concerning directly the prohibition of organizations which incited racial discrimination. One member was of the view that the penal provisions referred to in the report did not adequately reflect the provisions of article 4 (a) and (b) of the Convention. He also wondered whether the interpretive declaration made by Austria with regard to that article was not being used as a bar against full compliance with it.

187. In connection with article 5 of the Convention, members of the Committee wished to receive further information on the conditions under which the number of foreign workers in Austria was to be reduced. It was asked, in particular, whether they would be sent back to their countries of origin and, if so, whether any agreements with those countries had been reached, or whether foreign workers were entitled to unemployment and other social benefits in Austria. Information was also

requested on education for immigrant workers and their families, on the percentage of those attending schools and the dropout rate, and on the attempts to strengthen existing methods for the reception of refugees in Austria.

188. In connection with article 6 of the Convention, it was recognized that Austria had a comprehensive system of protection against racial discrimination. One member, however, requested clarification with regard to the manner in which the provisions of the Convention were enforced by the Courts. Reference was also made to the State Liability Act and it was asked whether the State was also held liable when one of its officials acted contrary to the law, but not in the performance of his duties; which legislative provision would be applicable to claim reparation from the individual responsible for an administrative act of racial discrimination and not only from the State or agency represented by the individual and what was the legislation governing discrimination on the part of groups or individuals which were not public officials or did not represent State institutions. Additional information was requested on the institution of the Ombudsman and on the role of the Constitutional Court in preventing racial discrimination. It was asked, in particular, how many cases of racial discrimination had been referred to those two institutions and what the findings had been, whether the role of the Ombudsman went beyond the investigation of complaints concerning racial discrimination and whether people, especially persons with little education or migrant workers, were in any way informed about or oriented towards to Ombudsman.

189. With regard to article 7 of the Convention, information was requested on specific measures that might have been taken to strengthen Austrian action to implement its provisions, such as programs for education about racial discrimination and apartheid and publicity on United Nations activities, or on any possible obstacles encountered. It was asked, in particular, what the functions of the human rights center referred to in the report would be once the center was established, whether it would be responsible for preventing racial discrimination against Austrians alone or against foreigners as well and whether public servants, police and immigration officers and teachers received training to help them in their contacts with ethnic minorities.

190. In reply to questions by members of the Committee, the representative of Austria stated that the reason for the lack of information in the report with respect to the Ethnic Advisory Councils was that there had been no change in the situation described in the preceding report and that the establishment of advisory councils for ethnic groups other than the Hungarians was still under discussion at the federal and provincial levels with the representatives of those groups. In addition he informed the Committee that his Government was providing a financial subsidy to kindergartens for children of the Slovene ethnic group. Furthermore, he stated that article 7 of the State Treaty concerned not merely the prohibition of discrimination but also the granting of specific rights to ethnic groups - a function which was not even indirectly related to the Convention.

191. In connection with article 4 of the Convention, he stated that the general policy of his Government was to prohibit the activities of an organization only when they were proved contrary to the law.

192. As regards article 6 of the Convention, the representative explained that the reason why the Convention did not form part of the internal legal order of his country was that certain of its provisions could not be regarded as self-executing. With reference to questions concerning the State

Liability Act, he made a distinction between civil cases and cases of State liability where officials were concerned, and explained that the State Liability Act, dealt with cases where officials committed acts of racial discrimination either within or outside the framework of their duties. In cases of the latter type, it was considered easier for a victim to lodge a claim against the State as such rather than against a particular official. Compensation in the case of acts committed by other groups or individuals came under the normal rules governing compensation in civil law. With regard to the activities of the Ombudsman, the representative informed the Committee that 3,500 complaints had been lodged since the institution had come into being some five years previously, but there had been no case involving racial discrimination. Similarly, no specific case of racial discrimination had come before the Constitutional Court but the Court had dealt with many cases concerning equity before the law in other fields; and there was a large body of case law in that respect. The public was familiar with the procedure for applying to the Constitutional Court and to the Ombudsman, and over a thousand cases had been brought before the Court in 1981.

193. With regard to the article 7 of the Convention, he explained that the main activities of the proposed human rights center would be in the fields of information and education; he also referred to educational activities for public officials, such as policemen and prison staff, in the field of human rights.

194. The representative of Austria finally stated that additional information on various points raised during the discussion would be provided in his Government's next periodic report.

CERD A/40/18 (1985)

128. The sixth periodic report of Austria (CERD/C/106/Add.12) was considered by the Committee at its 704th and 705th meetings, held on 7 March 1985 (CERD/C/SR.704 and SR.705).

129. The report was introduced by the representative of Austria who referred to the structure and the relevant parts of the report and emphasized the work carried out by the Mediation Service, whose function, similar to that of the Ombudsman, was to promote conciliation. The mediators had broad powers of investigation, much like those of human rights commissions in other States, and the institution might prove useful in the implementation of the Convention. He mentioned the efforts made by his Government to integrate the children of migrant workers into the school system and referred to the provisions in the Penal Code to deal with cases of racial discrimination.

130. The Committee commended the Austrian Government for having answered questions which had been raised during the examination of the previous report, but pointed out that the report did not follow the Committee's general guidelines (CERD/C/70/Rev.1) and did not provide any updated information on the demographic composition of the country. Concern was expressed at the recent incident involving the Austrian Minister of Defense who had officially greeted a former member of the German SS in Vienna.

131. In relation to articles 2 and 5 of the Convention, members of the Committee acknowledged that the Austrian Government was making considerable efforts to improve the situation of migrant workers by granting them the right to social security and to join trade unions and by providing teaching in their mother tongue for the children of migrant Yugoslav and Turkish workers. Clarification was requested as to whether children of migrant workers belonging to other ethnic groups received similar facilities from the Government. Members wished to receive detailed information on the unemployment rate among migrant workers as compared with Austrian workers; the number of migrant workers that had returned to their own countries and how many had acquired Austrian citizenship; the extent to which the Government had encouraged the return of migrant workers to their country of origin; why exemption from the requirement of a work permit was only granted after eight years of residence; whether a work permit restricted the holder to a particular locality or job, which, according to one member, would be a form of racial discrimination; whether employers in Austria were required to meet certain conditions before they were permitted to hire aliens, as that would represent a form of guarantee for them; what the situation would be if a marriage between an certificate of exemption and whether aliens might not be exploited by landlords under the present conditions which provided that a work permit would be issued only that the State was not among the charitable organizations which provided free services to foreign workers, members of the Committee asked what the State was doing, at the federal and local levels, to protect the rights or such workers. It was noted that approximately 12 per cent of the children of Yugoslav workers were sent to school for the retarded because of their inability to cope with the German language, and information was requested regarding any action the Government might be considering to assist such children so that they could enter regular schools. Further information was needed concerning the establishment of ethnic advisory councils for groups other than Hungarians. The committee was also interested to know what the situation was regarding refugees and the education of their children.

132. With respect to article 3 of the Convention, members wished to receive additional information and to know whether Austria had economic, cultural, diplomatic and commercial relations with the Government of South Africa.

133. As far as article 4 of the Convention was concerned, members of the Committee asked whether there were organizations or groups of individuals in Austria that currently propounded pan-German theories. Referring to the declaration made by Austria, when it ratified the Convention, invoking the “due regard clause” in connection with articles 4 (a) to (c) and 5 (viii) and (ix) of the Convention, concerning the rights to freedom of opinion and expression and to peaceful assembly and association, members pointed out that clause could not be interpreted to mean that the right to form racist associations was safeguarded in the Convention. Clarification was requested as to whether Austrian legislation relating to infringements of article 4 (c) of the Convention applied to civilians as well as to officials.

134. Regarding article 6 of the Convention, the Committee commended the Austrian Government for establishing the Mediation Service, an institution which made effective and speedy redress possible. The Committee wished to receive further information on whether the Mediation Service was empowered to make recommendations which included the payment of monetary compensation in cases where grievances were found to be justified but could not be remedied; whether the mediators could contest orders before the Constitutional Court; whether they were compensated for their services in a manner that ensured their independence; whether migrant workers had recourse to the Mediation Service; whether there was a time-limit for the submission of appeals to the Mediation Service and whether they could be submitted before, or only after, other internal remedies had been exhausted. Regarding the functioning of the Mediation Service, the Committee requested information concerning the number of consultations held per annum with the mediators in all parts of the country by members of ethnic groups and the percentage of cases which related to racial discrimination. Also data on the nature of the complaints, their justification and outcome would be useful in order to assess the efficiency of the Service. In that connection, it was asked why only about one third of the cases submitted to the Mediation Service had proved to be well-founded and why there had been such a high percentage of rejection. Members also asked whether the increasing number of appeals brought to the Mediation Service was an indication that problems were increasing. Noting that two Länder had refused the competence of the Mediation Service, members asked for the reasons behind that refusal and inquired whether any minorities or foreign workers were living in those two Länder.

135. Replying to questions raised and observations made with respect to article 2 in conjunction with article 5 of the Convention, the representative of Austria said that the Government had provided specially trained teachers and developed a special curriculum for Turkish schoolchildren. In general, other foreign children were given intensive language courses, but more information in that regard would be provided in the next report. Aliens were all free to change jobs or their place of residence. However, an alien could be employed only if the employer had a permit for alien workers. The State provided financial aid to some private organizations that assisted migrant workers. It also provided migrant workers with information in foreign languages about their rights. The next report would provide practical examples of how the Mediation Service assisted migrant workers, together with information on the percentage of unemployed workers. Austria had received 6,314 refugees in 1982 and 5,868 in 1983; their children benefitted from all the facilities provided

for foreign children.

136. Regarding the Mediation Service, the representative of Austria indicated that there had been 81 consultation days in 1981 and 74 in 1982. The next report would provide more information on that matter. There were no restrictions regarding compensation. The Government would endeavour to provide figures in its next report regarding the number of appeals relating to migrant workers. There was no time-limit for appeals and it was not necessary to exhaust other ordinary remedies before appealing to the Mediation Service. The possibilities of appealing to a federal court were limited, and the intent therefore was to use the Mediation Service as a channel for appeals to a federal court. There were no cases of racial discrimination before the Mediation Service. The only case that might be considered relevant in that regard was one in which a Croatian group had appealed to the Service. A special department for ethnic groups had already been set up.

137. As for the implementation of article 4 of the Convention, he stated that unfortunately there were a few cases of nazism and neo-nazism, and those were currently before Austrian courts. Such cases were covered by the Prohibition Act. He indicated that the same sanctions for offences were applied to officials and civilians alike.

138. In connection with the issue which had been raised concerning the greeting given by the Austrian Minister of Defense to a former war criminal, he informed the Committee that one of the conditions laid down by the Italian Government for his release and transfer to Austria had been that he should be received by a member of the Austrian Government. The Minister of Defense had taken charge of the matter in order to ensure compliance with those conditions; he had apologized for his error in judgement and had emphasized that he had not intended to welcome a war criminal. The Prime Minister of Austria and the parliament had accepted that apology.

139. Finally, the representative of Austria assured the Committee that, in its next report, his Government would endeavour to provide demographic data on the most recent census and to follow the Committee's guidelines.

CERD A/44/18 (1989)

159. The seventh and eighth periodic reports of Austria, submitted in one consolidated document (CERD/C/158/Add.1), were considered by the Committee at its 837th meeting, held on 11 August 1989 (CERD/C/SR.837).

160. The report was introduced by the representative of the State party who said that it was intended to be a comprehensive report, but that he would provide any further clarification sought by the Committee, either verbally or in the next periodic report.

161. In welcoming the report, members wished to know why, despite the country's Constitutional Law on the implementation of the Convention, the report stated that it was not directly applicable to Austria. Details of particular rights granted to or obligations imposed on Austrian nationals were also requested.

162. With reference to article 2 of the Convention, members wondered whether there could be real equality of treatment for a person seeking a position if he were unable to speak the language of the country. They asked what steps had been taken, or envisaged, by the Government to ensure equality of ethnic minorities with other Austrians.

163. Turning to article 3, members wished to know whether Austria maintained diplomatic relations with South Africa; they also asked for details of the commercial relations existing between the two countries, and if such relations had increased or decreased in recent years.

164. In regard to article 4, further details on the implementation of this article of the Convention were requested. Members asked if neo-Nazi associations were allowed to be formed in Austria, and if the Government had taken any special measures to prevent the creation of such associations.

165. With specific reference to article 5, members requested information on migrant workers, and whether the Government supported their families, particularly in the field of education. It was asked whether dual citizenship was allowed in Austria, and how this affected the various minorities in the country. Members wished to know whether specific guarantees to the right to work existed in the Constitution. The question was raised as to whether the Government organized seminars to make young people aware of the need to respect human rights and to combat racial discrimination.

166. Under article 6, it was asked whether the Ombudsman could only be approached after all legal remedies had been exhausted. Clarification was sought on whether the Ombudsman was empowered to deal with complaints made against private employers or individuals, and if penalties were imposed for refusal to provide the Ombudsman with relevant information. Information was requested in the next periodic report accessibility of legal remedies to all citizens.

167. Responding to questions raised by members of the Committee, the representative stated that the provisions of the Convention were not directly applicable in domestic law, but the relevant Constitutional Law adopted in 1973 enabled the Convention to be invoked before the courts or administrative authorities. On the question of specific rights and obligations imposed of Austrian

nationals, the representative mentioned the obligation to undertake military service, which was not applicable to foreigners.

168. With reference to questions on article 2, the representative pointed out that the Ethnic Groups Act of 1976 safeguarded the rights of non-German ethnic groups. Such groups had the right to use their native language, and facilities for education in native languages were provided to them by local authorities, although most members of these groups recognized the need to learn German for daily living. A council representing the Hungarian group had been established, one for the Slovene group was imminent and one for the Croat group was planned. These councils were designed to advise the Government, particularly with regard to subsidies for the ethnic cultural activities.

169. Responding to questions raised under article 3, the representative said that Austria's policy towards South Africa was in line with that of the United Nations Security Council. Austria maintained diplomatic relations with, and had an embassy in, south Africa. He pointed out, however, that commercial relations with South Africa were discouraged by the Government but, as Austria had a free market economy, the State had to respect certain limits and could not interfere in economic relations between private enterprises.

170. With reference to questions on article 4, he pointed out that Austria's implementation of provisions of this article had been adequately covered in its sixth periodic report. Regarding neo-Nazi associations, the representative pointed out that all activities based on neo-Nazi ideology were prohibited under a law passed in 1945. A constitutional court had recently ruled that such associations had no legal status, and were not entitled to buy property or participate in elections. He acknowledged the existence of extreme right-wing groups in the country, but said that such groups were small in number and were totally without political influence.

171. On questions relating to article 5, the representative said that nearly 70 per cent of migrant workers came from Yugoslavia, with Turks forming the second largest group. He explained that all foreigners needed a permit to work in Austria, which are given by employers wishing to employ foreign workers, who are required to provide them with suitable housing. Foreigners permanently employed in the country were treated in the same way as Austrian nationals with regard to wages. Education in their native language was provided for the children of foreign workers, and they were also taught the German language. Dual citizenship was not recognized in Austria. The representative said the right to work was a complicated matter, as in a free market economy the State could not guarantee work for all, but Austrian legislation had granted the right to unemployment benefits to foreign workers as well as to nationals and set standards for working conditions. He added that the country's unemployment rate was 4 per cent. He was not aware of any seminars for young people on the theme of combating racial discrimination.

172. Regarding questions raised under article 6, the representative declared that the Ombudsman was competent to examine complaints against administrative authorities even if all legal remedies had not been exhausted, for it was possible to waive the right to such remedies and submit a case directly to the Ombudsman. He stated that the Ombudsman's competence did not extend to dealing with complaints against private employers or individuals. The representative declared that Austria's system of legal protection was highly effective and legal aid was readily available to those who could not afford to engage in legal proceedings.

CERD A/47/18 (1992)

179. The Committee considered the ninth and tenth periodic reports of Austria (CERD/C/209/Add.3) at its 947th and 951st meetings, on 7 and 11 August 1992 (see CERD/C/SR.947 and 951).

180. The representative of the State party introduced the report and indicated that it should be considered together with the core document submitted by his Government (HRI/CORE/1/Add.8) and the report on the question of ethnic groups. He explained that the Law of 17 October 1862 for the Protection of Personal Liberty, as referred to in the periodic report, had been replaced by a new law which had entered into force on 1 January 1991.

181. Indicating that the report submitted was very brief, members of the Committee noted that many of the questions asked during the consideration of earlier reports had not been answered adequately and that it would be desirable to have those answers in the next periodic report, which should be prepared in accordance with the Committee's general guidelines. They stressed that, in preparing its report, the State party should deal with new developments and problems encountered during the period under review, referring, if necessary, to earlier documents. Members noted with satisfaction that, in his oral introduction, the representative of the State party had supplemented the written report.

182. Members of the Committee asked whether the Convention was directly applicable in internal law and whether it could be invoked directly before the courts; whether the limitation of grounds, as contained in article 1 of the 1973 Constitutional Act, applied to other prohibitions in respect of racial discrimination; and whether Austrian courts had ever made a distinction between unlawful and lawful grounds for discrimination. In that connection, members pointed out that, if the Government of Austria limited the use of remedies in respect of racial discrimination to acts which could be proved to be solely the result of racial hostility, it was restricting the scope of the Convention significantly. The members asked whether the Austrian Government recognized anti-Semitism as a danger and whether it was taking measures, particularly in the field of education, to combat prejudices that could lead to acts of discrimination. Having expressed their gratitude to Austria for accepting so many refugees from the former Yugoslavia and other countries, they asked whether the influx of large numbers of asylum-seekers and refugees did not lead to manifestations of xenophobia in Austrian society. In that context, they requested more information on the ruling by the Constitutional Court dated 15 December 1989 and on the 1987 decision by the Court under which Croatian had been accepted as a second language in towns and districts in Burgenland and Carinthia where Croatians lived.

183. With regard to the implementation of article 2 of the Convention, members of the Committee asked whether the fact that it had proved unnecessary in Austria to take the measures provided for in article 2, paragraph 1 (d), meant that there was no racial discrimination in Austria within the meaning of that provision of the Convention.

184. Referring to the implementation of article 4 of the Convention, members of the Committee requested information on the existence of groups with racist or xenophobic views, examples of

manifestations of anti-Semitism, and statistics on formal complaints, proceedings instituted and sentences handed down for acts of racism.

185. In connection with the implementation of article 5 of the Convention, members of the Committee requested additional information on the political representation of Slovenians and Croatians in Burgenland and Carinthia, and on whether it was possible for them to set up political parties. Some members expressed concern about the results of a Gallup Poll conducted in Austria in 1991 in which up to 20 per cent of those interviewed did not recognize the equal rights of Jews in economic life. A further question was asked about the recourse available to a female migrant worker should she be dismissed because she had applied for maternity leave.

186. With regard to the implementation of article 6 of the Convention, members of the Committee asked what remedies were available to Austrian citizens in the event of racial discrimination and whether there was any way in Austria of evaluating the effectiveness of remedies.

187. Referring to the implementation of article 11 of the Convention and noting that Austria was concerned about the events now taking place in the former Yugoslavia and that it had adopted an active position, especially in the Security Council, members of the Committee asked whether the Government of Austria would be prepared to invoke article 11 of the Convention and bring that very grave matter to the attention of the Committee.

188. Regarding article 14 of the Convention, the members of the Committee wished to know whether the Government of Austria intended to make the declaration provided for in that article.

189. Replying to the questions and observations of members of the Committee regarding Austria's implementation of the Convention, the representative of the State party said that all forms of discrimination based on race, colour, descent or national or ethnic origin were prohibited by a Federal Constitutional Law, details of which could be found in paragraph 57 of the core document (HRI/CORE/1/Add.8). However, positive forms of discrimination existed, such as exemption from military service and justified and non-discriminatory distinctions in the treatment of aliens, such as visa applications. He also informed the Committee that the Constitutional Court had for the first time been seized of a case which fell within the purview of the constitutional act on the elimination of racial discrimination.

190. On the question of minorities, he said that Austria was home to various ethnic groups whose circumstances varied significantly. He provided detailed information on the historical background and current situation of the Croat, Czech, Hungarian and Slovenian minorities. Austrians were prepared to accept and help refugees and harboured no xenophobic feelings towards them.

191. With regard to the implementation of article 2 of the Convention, he said that the relevant information had been provided in earlier reports.

192. With regard to article 4 of the Convention, he stressed that the re-establishment of the Nazi party was prohibited and any attempt to revive it constituted a punishable offence. As for anti-Semitism, the only danger came from organized anti-Semitic organizations or movements and not from individuals who were free to hold whatever opinion they wished regarding Jews.

193. Referring to article 5 of the Convention, he said that any minority could have its own political party, but that such parties had very little chance of being represented in the national Parliament. It had recently been proposed that a number of parliamentary seats should be reserved for minorities, regardless of election results. However, that initiative had not won unanimous support and no decision had yet been taken.

194. With regard to article 6 of the Convention, he explained that the purpose of the Mediation Service was to settle administrative questions; it did not concern itself with legal matters or with the payment of compensation and had no power to contest court decisions. However, it could bring to the attention of the Constitutional Court, for annulment, any measure which it deemed unjust. Immigrant workers had access to the Mediation Service and there was no time-limit for filing an application. In 1991, 4,783 complaints had been filed, compared with 5,675 in 1990. The Service declared itself competent in 80 per cent of cases. The Tyrol and Vorarlberg had not recognized the competence of the national Mediation Service and had set up their own mediation services. The Austrian Government would not conduct periodic surveys to determine the effectiveness of remedies. He considered that system worthwhile and wondered whether the Committee might not consider the question of remedies and propose a solution to the States parties, for example in the form of a general recommendation. The shifting of the burden of proof was a very sensitive question calling for lengthy discussion.

195. With regard to article 7 of the Convention, he said that children learned tolerance at school and during their further studies; many other measures were also taken to promote understanding and tolerance of others.

196. Regarding the possibility of Austria applying article 11 of the Convention in connection with the events leading to the destruction of what had formerly been Yugoslavia, he said that he would refer the matter to his Government. He would also raise the questions of the optional declaration provided for in article 14 of the Convention.

Concluding observations

197. The Committee noted that Austria's tenth periodic report was of a brief updating character. A number of questions asked during the consideration of the sixth report in 1985 remained unanswered, while the account of the State's obligations under international treaties concerning its ethnic minorities, and its discharge of those obligations, was too condensed.

198. The Committee found it necessary to recall that under article 5 (e) (i) of the Convention, everyone in Austria must be guaranteed the right, without distinction as to race, to equality before the law in the enjoyment of the right work. That guarantee must cover the private and the State sector. The Committee was disturbed to learn that in Austria, as in other parts of Europe, there were signs of an increase in racism, xenophobia and anti-Semitism, and readiness to ignore the rights of members of ethnic groups, including Jews. Since such hostile attitudes can be exploited by racist organizations, the Committee sought information about preventive and educational countermeasures.

199. The Committee noted that no case of racial discrimination had yet been taken to the Mediation service or been decided by an Austrian court. As when other countries reported an absence of such cases, the Committee cautioned against inferring that absence proved that there was no

discrimination. The Committee expressed appreciation of the extensive oral replies to questions but indicated that the next periodic report should be of a comprehensive nature.

CERD A/54/18 (1999)

26. The Committee considered the eleventh, twelfth and thirteenth periodic reports of Austria (CERD/C/319/Add.5) at its 1305th and 1306th meetings (see CERD/C/SR.1305 and 1306), on 1 and 2 March 1999. At its 1327th meeting (see CERD/C/SR.1327), on 16 March 1999, it adopted the following concluding observations.

A. Introduction

27. The Committee welcomes the eleventh, twelfth and thirteenth periodic reports submitted by the Government of Austria in one document and the opportunity thus offered to continue its dialogue with the State party. Although the report followed the guidelines, the Committee is of the view that the information in it was too concise, was too focused on legislation and administrative measures, failed fully to address the Committee's concluding observations relating to the previous report of the State party, and did not sufficiently consider the extent to which residents benefitted in practice from the protections promised in the Convention. The Committee expresses its appreciation for the constructive and concrete dialogue with the delegation and the additional information provided in response to the questions asked.

B. Positive aspects

28. The Committee notes with satisfaction that the State party has condemned genocide as a crime under international law, and trusts that all acts of genocide will be condemned without any distinction as to time, place or group of victims. In this regard, the Committee welcomes the establishment of the National Fund for Victims of National Socialism (1995), which offers a scheme for compensation of all the victims of genocide.

29. The Committee welcomes the information contained in the report concerning educational measures which provide for the teaching of the principles of tolerance and peaceful coexistence in a multicultural society. Satisfaction is also expressed in relation to the efforts undertaken by the State party to raise awareness and promote action against all forms of racial discrimination. The Committee notes, in this regard, the establishment of radio programs for this purpose.

C. Principal subjects of concern

30. While the Committee is aware that the Convention has been incorporated into Austrian domestic law (Federal Constitutional Act, 1973) and welcomes the judgements of the Constitutional Court (1994/1995) which provide for equality in the treatment of aliens, concern remains about the element of subjectivity in the rule that "decisions refusing an alien equal treatment may only be admissible if and when there is a reasonable justification".

31. Concern is expressed that the immigration policy of the State party, contained in the Aliens Act of 1997, classified foreigners on the basis of their national origin. The Committee considers that the concept and effect of this policy may be stigmatizing and discriminatory and, therefore, contrary to the principles and provisions of the Convention.

32. While the Committee welcomes the measures taken by the State party for the protection of the rights of the Slovenian, Croatian and Hungarian minority groups, concern remains at the lack of corresponding measures for other "national ethnic minorities", in particular Czechs, Slovaks and Roma, as well as for those who are sometimes referred to as "new minorities". Concern is also expressed at the lack of legal protection for residents of foreign origin against discrimination committed by Austrian citizens.

33. While the Committee notes with appreciation the State party's efforts in the field of legislative reform, especially the amendments to the Austrian Penal Code (sects. 281 and 283), which criminalize racist propaganda and the incitement to racial hostility, the Committee is nevertheless still concerned that the condemnation of such acts is qualified by a reference to public peace and that article 4 (b) of the Convention is not fully implemented, notably as regards prohibition of organizations which promote and incite racial discrimination. Concern is also expressed about the number of reported incidents of xenophobia and racial discrimination, including acts of anti-Semitism and hostility against certain ethnic groups.

34. The Committee expresses its concern that, seven years after it drew the attention of the State party to the absence of sanctions against racial discrimination in the private sector, little progress has been made in fully implementing the provisions of articles 5 (e) and (f). In addition, the Committee expresses its concern that non-citizens are not currently eligible for participation in work councils.

35. Concern is expressed about reports of serious incidents of police brutality in dealing with persons of foreign origin and ethnic minorities, including the Roma.

D. Suggestions and recommendations

36. The Committee recommends that the State party introduce comprehensive legislation to prohibit racial discrimination in all its forms, covering both citizens and foreigners. Furthermore, it recommends that the State party consider amending the relevant provision in the Constitution Act implementing the Convention by deleting the word "sole" in connection with the basis of illegal racial distinctions.

37. The Committee encourages the State party to continue exploring ways of providing specific protection to all ethnic groups living in Austria. The Committee further recommends that the State party include in its next report more detailed information on the demographic composition of the Austrian population, in the light of paragraph 8 of the reporting guidelines. Information on the socio-economic situation, particularly the unemployment rate in the various ethnic communities, would be appreciated.

38. The Committee urges the State party to review those elements of its current immigration policy which classify foreigners on the basis of their national origin. In its forthcoming report the State party is requested to include information on current asylum practices.

39. The Committee recommends that the State party take the necessary steps to implement article 4 (b) of the Convention. The Committee further recommends that the State party include in its next

report information on complaints of discrimination under article 4 of the Convention, the prosecution by the authorities of such offences, including criminal attacks against members of certain ethnic groups, as well as the action taken by the Ombudsman and by the competent courts. Where appropriate, information on reparation granted to victims, in accordance with article 6 of the Convention, would be appreciated.

40. The Committee recommends that the State party review its provisions for implementing article 6 of the Convention. In its forthcoming report, the State party should address, *inter alia*, the effectiveness of the protection and the adequacy of the remedies provided.

41. The Committee recommends that the State party consider withdrawing its declarations regarding articles 4 and 5 of the Convention.

42. It is further suggested that the State party consider providing education and training on racial tolerance and human rights issues to law enforcement officials and police officers, in accordance with article 7 of the Convention and general recommendation XIII of the Committee. In addition, the Committee suggests that the State party review the adequacy of its measures for investigating allegations of police brutality and abuse of office.

43. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention.

44. It is noted that the State party has not made the declaration provided for in article 14 of the Convention, and some members of the Committee requested that the possibility of making such a declaration be considered.

45. The Committee suggests to the State party that its reports and the present concluding observations be widely distributed to the public. The Committee recommends that the State party's next periodic report, due on 8 June 1999, be an updating report and that it address all the points raised during the consideration of the eleventh, twelfth and thirteenth reports.

CERD A/57/18 (2002)

20. The Committee considered the fourteenth periodic report of Austria (CERD/C/362/Add.7) at its 1502nd and 1503rd meetings (CERD/C/SR.1502 and 1503), held on 7 and 8 March 2002, and at its 1520th meeting (CERD/C/SR.1520), on 21 March 2002, adopted the following concluding observations.

A. Introduction

21. The Committee welcomes the updating report presented by the Government of Austria, which focuses on the recommendations made by the Committee in its previous concluding observations (CERD/C/304/Add.64). The Committee also welcomes the regularity of the State party's submission of periodic reports.

B. Positive aspects

22. The Committee welcomes recent developments that have taken place in the field of human rights in Austria. It notes in particular the establishment in July 1999 of the Human Rights Advisory Council, an independent body with a mandate to review and monitor the activities of the law enforcement organs in accordance with human rights principles, as well as the establishment of the posts of human rights coordinator at the Austrian federal ministries and the governments of the nine Austrian Länder.

23. It notes with satisfaction the establishment of the Immigrants Fund to assist new immigrants by providing free advice in their native language on questions concerning their integration in Austria.

24. It notes also the continuation of the work of the Reconciliation Fund for Victims of National Socialism which so far has received and approved some 50,000 applications for compensation from persons who were subjected to forced labour during the Nazi era.

25. The Committee notes the inclusion of provisions aimed at combating racism and xenophobia in national legislation, such as the Industrial Code, the Maintenance of Law and Order Act and media law, in particular the Broadcasting Act and the Regional Radio Act.

26. The Committee further notes with approval the efforts undertaken by the State party to safeguard linguistic diversity in the country, including the adoption of bilingual topographical signs in areas inhabited by Croat and Hungarian minorities.

27. The Committee welcomes the fact that Austria recently made the declaration under article 14 of the Convention recognizing the competence of the Committee to examine communications from individuals or groups of individuals.

C. Concerns and recommendations

28. The Committee is concerned at the wording of article 1, paragraph 1, of the Federal Constitutional Act implementing the Convention, which stipulates that the legislature and the

executive shall refrain from any distinction on the “sole” ground of race, colour, or national or ethnic origin. In the Committee’s view, this may be regarded as representing a narrower prohibition of discrimination than is provided in the Convention. The Committee recalls that multiple discrimination, for example discrimination based simultaneously on race and sex, falls within the scope of the Convention, and that such phenomena are addressed in the final documents of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Therefore, while noting that an amendment to this provision is currently under consideration, the Committee reiterates its previous invitation to the State party (CERD/C/304/Add.64, para. 11) to consider the possibility of deleting the word “sole” from article 1, paragraph 1, of the Federal Constitutional Act, taking into consideration general recommendation XXV of the Committee.

29. Concerning articles 2 and 4 of the Convention, the Committee is of the view that the legislation in place to combat racism is not totally adequate to combat discrimination effectively. While noting the existence of provisions in criminal legislation aimed at combating racism, as well as recognizing racist or xenophobia motivations as aggravating circumstances for crimes, the Committee reiterates its recommendation (ibid, para. 11) to the State party to introduce general legislation prohibiting racial discrimination in all its forms.

30. The Committee has difficulty in understanding the distinction made by the State party between autochthonous and other minorities and the legal and practical consequences following from this. The Committee invites the State party to provide further clarification in this regard in its next periodic report.

31. The State party’s traditional respect for individual privacy when collecting information on the ethnic composition of the population is noted. However, the Committee expresses concern about the paucity of data at its disposal for monitoring the implementation of the Convention. The Committee wishes to emphasize that it is of fundamental importance to establish basic statistics that indicate how minorities are integrated into society, and invites the State party to find ways to provide such data in its next periodic report, including the percentage of minorities in the workforce and various governmental and private-sector institutions.

32. The Committee is concerned about the significant number of allegations which have been brought to its attention which reflect the existence of racist and xenophobic attitudes among some sections of the population. It is further concerned about allegations of racist incidents involving police officers and other State employees. In the light of general recommendation XIX, the Committee encourages the State party to continue to monitor all tendencies which may give rise to racial or ethnic segregation and to endeavour to combat the negative consequences of such tendencies. The Committee further recommends that the State party strengthen existing educational measures for civil servants who deal with issues involving foreigners. Efforts should be made to recruit more members of minority groups into the public administration, in particular law enforcement.

33. The Committee is concerned at the considerable number of asylum-seekers without identity documents who have been denied public assistance from the Federal Care and Maintenance Programme and who must therefore rely on private assistance and other agencies for survival. The Committee recommends that the State party ensure the provision of basic and equal assistance to all

asylum-seekers, without distinction as to race or ethnic and national origin.

34. The Committee also reiterates its appeal to the State party to ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111.

35. The Committee recommends that the State party's reports be made readily available to the public from the time they are submitted and that the Committee's concluding observations on them be similarly publicized. It encourages the State party to insert the Committee's concluding observations on the appropriate ministry's web site.

36. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report information on action plans or other measures taken to implement the Durban Declaration and Programme of Action at national level.

37. The Committee recommends that the State party submit its fifteenth periodic report jointly with its sixteenth periodic report, due on 8 June 2003, that it be an updating report, and that it address the points raised in the present observations.