

AUSTRIA

CESCR E/1988/14

(Arts. 6 to 9)

23. The Committee considered the initial report of Austria concerning rights covered by articles 6 to 9 of the International Covenant on Economic, Social and Cultural Rights (E/1984/6/Add.17) at its 3rd and 4th meetings, held on 9 February 1988 (E/C.12/1988/SR.3 and 4).

24. The report was introduced by the representative of the State Party, who explained that, in Austria, there was a special form of co-operation between workers' and employers' organizations. Such organizations formed a system of joint social enterprises or "chambers" which, together with the trade unions defending the interests of workers, played a very important role in co-operation between the country's economic forces and in the harmonization of measures taken under the economic and social policy to deal with any problems which might arise.

25. He stressed that the principle of freedom with regard to work and, in particular, the free choice of occupation and membership of a trade union without interference on the part of the State, had been embodied in the Austrian Constitution. Nevertheless, the labour market authorities granted assistance to private bodies and institutions set up to provide vocational training and placement services.

26. He went on to give recent figures for unemployment in Austria, where the number of unemployed had fallen, from January 1987 to January 1988, to a level of 7.7 per cent of the workforce. He explained that the unemployment problem seemed really to be one of regional distribution of jobs, since the number of jobs available in Austria in 1988 was 10.7 per cent higher than in 1987.

27. He also referred to the measures provided in Austria for the protection of workers in such areas as conditions of employment, hygiene and safety, social security and sickness insurance. In that regard, he said that a special commission had been formed to ensure that the right to social security was guaranteed to all members of the population.

General observations

28. Some members of the Committee noted that the report did not contain sufficient details regarding the implementation of the first articles of the Covenant concerning the principle of non-discrimination in measures taken to guarantee economic, social and cultural rights. They expressed the hope that more complete information would be forthcoming on the general implementation in Austria of the provisions of article 1, paragraph 2, and article 9 taken in conjunction with article 3 of the Covenant. They asked, among other things, what was the actual situation regarding equality between men and women with regard to access to employment, remuneration and retirement conditions and what was the significance of a Constitutional Court decision to the effect that "unequal treatment of the two sexes was permissible if justified by the nature of the respective sex"

(E/1984/6/Add.17, para. 10).

29. It was noted that the report referred to differences in the way Austrian nationals and non-nationals were treated with regard to some economic rights and social benefits and the view was expressed that such differences of treatment in a highly developed country like Austria appeared to run counter to the provisions of the Covenant. In that regard, the Committee asked whether members of minorities living in Austria were treated like other Austrian citizens, exactly which groups of individuals did not receive social security benefits, what was the relationship in percentage terms between social security benefits and workers' incomes, what was the percentage of migrant workers in relation to the Austrian population and what were the economic and social rights of those workers, as well as the rights of refugees in Austria.

30. The Committee also asked to what extent the rights set forth in articles 6 to 9 of the Covenant had been the subject of court cases, what measures had been taken in Austria to ensure the wide distribution of the text of the Covenant, whether the Government's report had been prepared with the participation of non-governmental organizations and distributed throughout the country, and whether all the international instruments to which Austria was party had the same status under domestic law as the Covenant.

31. With regard to the social dialogue existing in Austria, further details were requested regarding the role of the State in areas other than labour, such as taxes, housing, education and health.

32. In his reply, the representative, referring to the non-discrimination clause in the Covenant, stated that in some cases there was positive discrimination in favour of women, who were not allowed to work in mines, at night or during pregnancy, or who were entitled to retirement at an age lower than that of men; in other cases, especially in respect of access to employment and pay in private enterprises, discrimination against women existed in his country as a matter of tradition, which was very hard to change. However, an Equal Treatment Commission had been set up to which anyone might apply if they believed they were receiving less pay than others for comparable work.

33. The representative also stated that there was no legal provision in Austria allowing discrimination against ethnic minorities, non-citizens or migrant workers to accede to employment. Disadvantaged people and, in particular, refugees, enjoyed social welfare benefits.

34. In addition, the representative explained that his Government was trying to formulate fundamental rights in a new instrument and that it was the intention of the Austrian authorities to include in the Constitution, in particular, the right of participation in a social insurance scheme and the obligation of the State to provide adequate institutions for the purpose. That right would be justiciable since anyone excluded could appeal to the courts and the Government would be prepared to change the law in accordance with the decision of the Courts. He explained also that according to Austrian law an international convention could either immediately become part of domestic law or could remain an international obligation and be implemented by internal statutes. The Covenant was not directly applicable in domestic law and could not be invoked in court proceedings. An application to a court had to rely on a specific domestic statute and not on the Covenant. He added that the text of the Covenant was available in German and it had been published in the Official Gazette and that no consultation outside Government circles had been made for the preparation of

his Government's report.

35. As regards the role of the State in relation to the social partnership, the representative stated that social partners had complete autonomy in negotiations and that their consensus views were taken into account by the Government in its policy. Taxation matters were generally dealt with by other bodies, such as co-operative housing associations.

Article 6: Right to work

36. The Committee noted that the Austrian Bill of Rights of 1867, as included in the Constitution of 1867, guaranteed Austrian citizens the right to free choice of occupation and asked whether Austrian law specifically recognized the right of work as defined in the provisions of the Covenant. It also asked whether dismissal was accepted under Austrian law, whether dismissal was subject to any judicial control, whether dismissed workers were entitled to compensation or could be reinstated in another enterprise in the event of unlawful dismissal and whether mass dismissals had taken place as a result of economic restructuring.

37. The Committee also asked for details on the planning of vocational training and its results, on the rate of unemployed in Austria, particularly long-term unemployment involving loss of entitlement to unemployment benefits, and on the remedies contemplated. It also asked whether the right to compensation for loss of earnings caused by insolvency, as provided by Austrian law, precluded the payment of benefits to which the worker was entitled in the event of unemployment.

38. Replying to questions of the members of the Committee, the representative of Austria stated that in the Austrian legal order the right to work, understood as a right to a job or a specific job, was not guaranteed: employment opportunities depended on the economic situation and the authorities could only guarantee the right to receive help in finding a job and in overcoming difficulties relating to unemployment. Under the Austrian system of private labour contracts, a contract could be denounced under certain conditions and within a given time limit, not exceeding six months. Sometimes, dismissal of a group of employees simultaneously was unavoidable.

39. The representative added that Austria had experienced a rise in unemployment from 1980 but the situation was beginning to improve again. Unemployment of women was slightly higher than unemployment of men. Long-term unemployment constituted about 15 per cent of the total unemployment. According to a recent report by the ages of 19 and 24 had decreased between January 1987 and January 1988 and amounted to a total of 17.2 per cent of the total unemployment. Under the Insolvency-Compensation Covering Act, workers received a single lump-sum settlement in respect of any unpaid wages, including the period of notice required to terminate the work contract.

Article 7: Right to just and favourable conditions of work

40. It was noted that wages and remuneration were governed by the Austrian General Civil Code and by a number of special laws. The Committee wondered whether specific legislation regarding conditions of work and the right to work existed in Austria in the form of a labour code. The Committee also asked what were the effects of the length of maternity leave on efficiency of

production and what was the attitude of employers in that regard, whether Austria had any machinery for consultation with workers on the minimum wage, how the ILO Equal Remuneration Convention, 1951 (Convention No. 100) was applied in Austria and what measures had been taken to assure all workers of equitable remuneration geared to the cost-of-living index.

41. In his reply, the representative of Austria stated that in his country there were numerous statutes relating to individual sectors of the labour market, but there was no unified labour code. He also stated that employers in Austria were not enthusiastic about the existing maternity leave provisions which remained, nevertheless, a legal obligation. He added that there were no formal consultations with workers concerned about the setting of minimum wages which were established by agreement between the trade union and the employers. Such an agreement was valid between the parties concerned and extended to non-trade union members working in the same enterprise. Moreover, the trade union federation was vigilant on the question of fair remuneration and wages had been increasing faster than the cost of living ever since the Second World War.

Article 8: Trade union rights

42. The members of the Committee asked for details on the level of unionization of workers in Austria. They also asked what was the spirit of the regulations on the right to strike in Austria and whether Austrian courts had the power to declare a strike illegal or unjustified. It was noted that, in Austria, a worker who went on strike was considered to be in breach of the labour contract and held responsible for compensatory payments. The Committee asked whether Austria intended to enact legislation ensuring observance of the right to strike referred to in article 8, paragraph 1 (d), of the Covenant. Some members of the Committee pointed out that the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (Convention No. 87), which Austria had ratified, established the right of workers to organize and to bargain collectively, and that the right to strike provided workers with a means of defending their interests. They also asked for information on the role of the State in collective agreements and on the content of such agreements and on the reasons why Austria had not ratified the ILO Labour Relations (Public Service) Convention, 1978 (Convention No. 151).

43. In his reply, the representative of the State party pointed out that in Austria there was one trade union federation with 15 branch unions with a membership of approximately 1.5 million workers. He stated that according to the Austrian theory of labour law, both strikes and lock-outs constituted breaches of the work contract; however, there was a good relationship between social partners in Austria and consequently very few strikes. Workers on strike were not subject to criminal prosecution, although they might be held liable for damages under civil law. However, there was no case law on the issue in Austria. Public employees had their own trade unions which engaged in negotiations with the competent authorities about the drafting of the relevant legislation to be placed before Parliament.

Article 9: Right to social security

44. The members of the Committee asked whether the social insurance system in Austria was subsidized by the State or whether it was financed solely from the contributions of members and whether the Austrian Government intended to implement the programme established by ILO for dealing with occupational diseases. It was noted that the percentage of elderly persons in Austria

was very high, and the Committee asked what measures had been taken to ensure a decent life for pensioners; whether there was a compulsory retirement age and, if so, was the age fixed the same in the private and public sectors; whether a widower whose wife had worked was entitled to receive a widower's pension; and whether pensioners could continue to work. The Committee also asked whether criminal charges could be brought against persons who failed to honour their obligations with regard to maintenance payments and whether the State assumed partial responsibility for the maintenance in question.

45. The representative of the reporting State replied that in Austria the State subsidized the social security system which was based on contributions from employers, employees and the State. Furthermore, discussions were in progress to remodel the pension scheme in order to safeguard future pension entitlements in view of the increasing proportion of elderly people in the Austrian population. Under the existing scheme there was provision for widows' and orphans' pensions and well as for widowers' pensions.

46. In accordance with paragraph 9 of Economic and Social Council decision 1981/158 of 8 May 1981, the representative of ILO informed the Committee of the comments made by the Committee of Experts on the application of ILO conventions and recommendations concerning Austria's implementation of a number of ILO conventions to which it was party and which were relevant to articles 6 to 9 of the Covenant. He also informed the Committee of the views of ILO supervisory bodies on the exercise of the right to strike.

Concluding observations

47. In concluding the consideration of the report, the Chairman thanked the representative of Austria for answering the Committee members' questions and invited him to convey to his Government the concerns expressed by them during the debate. These included, in particular, the question of the status of the right to strike under Austrian law. He stated that it would be extremely useful to the Committee to receive more detailed information on certain questions relating to the implementation of the Covenant in Austria which could be provided by the Government either in its next periodic report or in a brief supplementary report. In this regard particular mention was made of the issue of non-discrimination in the enjoyment of social benefits.

48. In the course of the adoption of the present summary it was noted that there appears to be an imbalance in the extent and nature of the concluding observations made with respect to the report of Austria compared to those made with respect to the reports of some other States considered at this session. It was explained that this was attributable not to the particular details of the report of Austria and of its presentation but to the relative newness of the procedures adopted by the Committee in making concluding observations.

(Arts. 13-14)

49. The Committee considered the initial report of Austria on the rights referred to in articles 13 to 15 of the International Covenant of Economic, Social and Cultural Rights (E/1982/3/Add.37) at its third meeting, on 9 February 1988 (E/C.12/1988/SR.3).

50. In introducing the report, the representative of the State party said that, in Austria, education was compulsory up to the age of 15 and that higher education and participation in cultural life were accessible to all. He also explained that the State recognized the freedom of scientific work, art and research and promoted cultural activities by, among other things, granting subsidies.

Articles 13 and 14: Right to education

51. The Committee asked for further details on the three types of education in Austria and, on a more general level, whether a new illiteracy existed and was increasing in Austria as in other developed countries, and, if so, what remedies were envisaged.

52. The Committee also asked about Austria's policy with regard to the education of the children of migrant workers and, in particular, whether it endeavoured to integrate such children into the Austrian school population or whether it provided special classes or schools for them, with instruction in their mother tongue. The Committee also asked about the respective areas of competence of the State authorities and the Länder authorities with regard to educational legislation; about the effect of the concordat between the Holy See and the Austrian Government on education; about the arrangements for the separation of Church and State and the consequent legal restrictions on religious education in Austria; about the proportion of public education establishments compared to private education establishments in Austria; whether the latter were on the increase; and whether the debate on public and private education was a political issue.

53. In addition, the members of the Committee asked for further details on the type of education provided to adults by the Confederation of Austrian Trade Unions. They also asked what was the percentage of women students or teachers in higher education, from what age education was compulsory, whether pre-school and private education were free, how many scholarships the Austrian Government had awarded in recent years, whether human rights were taught in primary and secondary schools and what proportion of students completed further education studies. The Committee also asked whether higher education by correspondence existed in Austria, whether those who took courses at home subsequently had the same opportunities as others, what steps were taken to enable disabled persons to exercise fully their right to education and whether vocational education in the creative arts was well-developed.

54. In response to these questions, the representative of Austria said that research was being conducted into the question of the new illiteracy and he referred to a diagram to provide clarifications on the national system of education.

55. The children of migrant workers attended the same schools as Austrian children, in addition to special courses in German and in their own language, particularly in schools where such children accounted for a given minimum proportion of the student body.

56. He went on to explain that, in Austria, legislation on methods of education and school curricula were matters for the Federal authorities, but that the respective areas of competence of the Federal and Länder authorities in regard to education were quite separate, although still open to modification. The 1934 concordat between the Holy See and the Austrian State accorded the Catholic Church the right to provide catholic religious instruction in schools for children of that

faith. Private education played a very small role in national education, and there were no private universities in Austria.

57. He further explained that the Confederation of Austrian Trade Unions offered vocational training, that the country's twelve universities were attended by 162,000 students, of whom 70,000 were women, that there were no fees for admission to primary, secondary or higher education institutions, that textbooks were provided free of charge and that there was a wide range of scholarships, travel allowances and special study assistance. Furthermore, education at home was not common in Austria; every child was obliged to take the examinations organized by public schools and artistic training was provided by six university-level schools whose student bodies included many non-nationals.

Article 15: Right to take part in cultural life and to enjoy the benefits of scientific progress, and protection of the interests of authors

58. The members of the Committee asked who was responsible for education and cultural policy in Austria and what was the educational and cultural philosophy; how scientific research was organized and what measures had been taken by the Austrian Government to promote international cultural co-operation, in particular with developing countries. They also asked whether the Austrian courts had to deal with many disputes over literary and artistic property, whether the elderly were permitted to attend cultural activities at reduced prices and what systems of subsidies existed in Austria to enable persons with limited means to have access to high quality cultural activities.

59. The representative of Austria replied that the Austrian Parliament had the last word in formulating national education policy and that all parliamentary decisions on that matter had to be taken by a two-thirds majority. Radio and television broadcasting in Austria was the preserve of a monopoly which was supervised by a body of representatives of the various sectors of public life. Scientific research was conducted mostly in universities and also in a number of private-sector enterprises and received either State or private subsidies.

60. Austria participated in international cultural co-operation through artistic events and by accepting many foreign students in its universities. With regard to the protection of intellectual property, Austria had a type of conciliation procedure which authors and artists could avail themselves of if they considered their rights to have been infringed, but few such cases had been brought before the courts. Moreover, the fact that important cultural events were subsidized by industrial concerns meant that admission prices could be lowered in order to make them accessible to a large number of people.

Concluding observations

61. Following the consideration of the report, the Chairman thanked the representative of Austria for the highly useful information which he had provided.

CESCR E/1995/22

243. At its 39th, 40th and 41st meetings on 28 and 29 November, the Committee considered the second periodic report of Austria concerning the rights covered by articles 6 to 9 and 13 to 15 of the Covenant (E/1990/6/Add.5), together with the written replies to the supplementary questions raised by the pre-sessional Working Group, and, at its 52nd meeting on 7 December 1994, approved the following concluding observations.

A. Introduction

244. The Committee expresses its satisfaction to the State party with the detailed report submitted and the supplementary information provided in writing, and also with the constructive dialogue conducted between its members and the Austrian delegation.

245. The Committee greatly appreciates the Austrian delegation's frank, detailed replies to all its questions, which enabled it to gain an overall idea of the way in which Austria is discharging its obligations under the Covenant.

B. Positive aspects

246. The Committee welcomes the efforts made by the Austrian Government to create the conditions necessary for the exercise of the rights recognized under the Covenant. It notes with satisfaction the adoption of legislative measures guaranteeing non-discrimination against women, in particular Act No. 833/1992 amending the Equal Treatment Act of 1979, which addresses the problem of sex-based discrimination in the workplace, and the Federal Act on the Equal Treatment of Women and Men and the Advancement of Women in the Federal Service of 1993, as amended in 1994, which guarantees equal treatment for women and men employed by the federal Administration. The Committee notes the establishment, at the federal level, of the Equal Treatment Commission and the creation of the post of Equal Treatment Advocate.

247. The Committee takes note of the efforts made by the Austrian Government, notably in the field of education, to integrate foreign workers and their families. The Committee also notes the establishment of a fund for the integration of migrants, and also the measures taken to combat xenophobia and promote tolerance.

248. The Committee takes note of initiatives aimed at combating unemployment and the adverse effects of the restructuring of large companies, in particular the establishment of labour foundations.

249. The Committee expresses its satisfaction with the range and quality of the services provided to the population as a whole, and notably social benefits for elderly persons and the disabled.

250. The Committee notes with interest the efforts made in the field of vocational training and the wide spectrum of educational opportunities available after compulsory education has been completed. It takes note of the scope of the continuing education system, which enables adults steadily to expand their knowledge.

251. The Committee notes with satisfaction the measures taken by the State party to ensure the protection of the various ethnic minorities and to guarantee them the right both to be educated in their mother tongue and to preserve and maintain their cultural identity. In this regard, the Committee welcomes the recognition of the Rom minority as a national minority, and notes with satisfaction the allocation of subsidies for the promotion of the cultural activities of minorities, and the establishment within the Federal Chancellery of Advisory Boards on Ethnic Minorities.

C. Principal subjects of concern

252. The Committee notes that the provisions of the universal human rights instruments, the Covenant among them, cannot be directly invoked before the Austrian courts, unlike the European Convention for the Protection of Human Rights and Fundamental Freedoms, which has been incorporated into domestic legislation and has the force of constitutional law. Although the Austrian delegation has stated that its national legislation is consistent with the provisions of the Covenant, the Committee nevertheless expresses its concern that, in the event of a conflict between the provisions of the Covenant and those of domestic legislation, the international obligations entered into under the Covenant may not be fulfilled.

253. The Committee is concerned about the possible adverse consequences, for the implementation of the provisions of the Covenant concerning non-discrimination, of the regulations relating to the new law on residence and residence permits, whose purpose is to limit the number of foreigners authorized to work in Austria, and the conditions laid down - particularly in the area of housing - for the acquisition of an Austrian residence permit.

254. The Committee points out that the ILO Committee of Experts on the Application of Conventions and Recommendations, in its 1994 report to the International Labour Conference, expressed its concern at the persistence of inequalities in the remuneration of women as compared with men, especially in the private sector. In this context, the Committee notes that, despite the considerable legislative efforts made by the State party to ensure equality between the sexes, inequality persists in practice, particularly in the matter of promotion, and sometimes in the provision of social benefits.

255. The Committee observes that standards for the protection of workers concerning limits on the duration of the working day and weekly rest are not always fully met because some areas of the private sector are dilatory in enforcing the relevant legislation.

256. The Committee is also concerned that workers in small businesses (with five or fewer employees) seem not to enjoy adequate protection against the threat of dismissal or termination on the grounds of trade union activities. Similarly, the Committee considers that the representation of workers on works councils is not sufficient to ensure a balance of interests.

D. Suggestions and recommendations

257. The Committee recommends that the State party should envisage taking the measures necessary to place on an equal footing the international human rights instruments, in particular the Covenant, and the European Convention for the Protection of Human Rights and Fundamental

Freedoms as regards the place they occupy in the domestic legal order.

258. The Committee recommends that the Austrian authorities should continue their efforts to ensure de facto equality between men and women, especially in the areas of access to employment, remuneration for equal work, working conditions, the right to social security and participation in higher education.

259. The Committee recommends that the Austrian Government should take the necessary measures to ensure that the implementation of the new immigration and residence laws will not impede the exercise, by non-nationals, of the rights set out in the Covenant.

260. The Committee urges the State party to monitor carefully the possible effects of unemployment and reduced social welfare services on the realization of economic, social and cultural rights, in particular for the most vulnerable groups in society, and to take the necessary measures to mitigate their adverse repercussions.

261. Taking account of the observations made by the ILO Committee of Experts on the Application of Conventions and Recommendations, in its 1994 report, concerning work done by detainees within prisons for private businesses, the Committee endorses the recommendations addressed to the Government of Austria encouraging it to take measures to improve the level of remuneration and social welfare of such detainees.

262. The Committee recommends that the State party should continue its efforts to ensure the exercise of all the rights recognized in article 8 of the Covenant, in particular for workers employed in small businesses.

263. The Committee deems it essential that the State party should maintain a dialogue with civil society in the preparation of reports to the Committee and should disseminate them as widely as possible.