

481st meeting

Wednesday, 6 August 1980,
at 10.50 a.m.

Chairman: Mr. BAHNEV

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION (agenda item 2) (continued)

Sixth periodic report of Czechoslovakia (CERD/C/66/Add.8)(concluded)

1. Mr. PARTSCH said that those Governments which had taken their task seriously in preparing their report were often criticized more than those which had not.
2. That part of the Czechoslovak report which dealt with education appeared to contain a contradiction: it stated that the right to education was in practice secured "by the establishment of schools and/or individual classes with Hungarian, German, Polish and Ukrainian language of instruction", but went on to say that "schools and classes with the German language of instruction were not established due to the small concentration of German population". He requested an explanation.
3. He noted that the report stated that the Czechoslovak Socialist Republic fully supported "the position of the Committee on the Elimination of Racial Discrimination which rejected reservations made by some States to the Convention, particularly to the mentioned article 4". It was not the task of the Committee to reject reservations. The Convention provided for such rejection by a two-thirds majority of States parties, in which case the ratifying State could not accede to the Convention. Reservations fell into three groups. Firstly, the kind made by the United States of America which, when signing the Convention, had stated that article 4 should only be applied within the realm of national legislation. Secondly, the kind made by the United Kingdom of Great Britain and Northern Ireland, which had led to discussion at previous meetings of the Committee. Finally, there were reservations of the sort expressed by Austria, Italy and France to the effect that obligations under article 4 should be fulfilled with due regard for human rights guarantees. In its report, the Czechoslovak Government had based itself on the authority of the Committee, but the Committee had not acted in the way implied in the report.
4. In conclusion, the report stated that Czechoslovakia maintained no contacts with racist régimes. Yet World Bank statistics revealed that considerable trade took place between Czechoslovakia and South Africa. He requested an explanation of the apparent contradiction.
5. Mr. GOUNDIAM requested clarification of how appeal was made against administrative decisions. Did an appellant have legal representation? With regard to appeals which could only be made by the Prosecutor-General, what happened if he was unwilling to act?
6. Finally, he requested an explanation of violations of the Penal Code by analogy. Some definition was necessary if racial discrimination was to be compared to other violations, which had not been clearly defined. Further, the report referred to acts causing "considerable damage", which again seemed open to arbitrary interpretation.

(Mr. Goundiam)

7. The Czechoslovak Government was to be commended for its acceptance of the Committee's views, particularly on Fascist or racist groups, and on the freedom of information, which most would agree, had to be restricted in the collective interest.
8. Article 7 was one of the cornerstones of the Convention, rightly maintaining that racial discrimination could only finally be eliminated by means of education. He hoped that in its next report the Czechoslovak Government would provide more details of its programmes to educate the people with a view to combating racial discrimination.
9. Mr. DEVETAK requested further details on the law guaranteeing the protection of nationalities and their members against non-observance of their rights by individuals.
10. Referring to Constitutional Act No. 144/1968, concerning the status of ethnic groups in the Czechoslovak Socialist Republic, he inquired how "numerical strength" was determined, and whether a nationality required a certain minimum number of members for it to be represented.
11. The report stated that in certain cases citizens had a right to use their own language in official communications, and that "two-language public inscriptions" existed in some areas; he wished to know what the relevant legislation was.
12. The Czechoslovak Government was to be commended for having granted special rights to nationalities as groups, rather than just to individual nationals. He inquired whether members of minority national groups had contacts with cultural, linguistic and similar institutions of the countries where the nationals lived to whom they ethnically belonged. For example, would Czechoslovak Hungarians have contacts with institutions in Hungary? Were there any international agreements providing for the above-mentioned international co-operation? That question was of particular relevance to Czechoslovakia as a European State governed by the Final Act of the Conference on Security and Co-operation in Europe, in addition to the Convention.
13. The report also referred to national councils and committees. He wished to know what legislation governed such bodies, and how they were constituted.
14. Mr. NETTEL said that the report provided a clear idea of the state of race relations in Czechoslovakia.
15. Referring to the right of appeal against administrative decisions, he asked whether there was an independent, administrative court to hear such cases.
16. The report referred to "special remedial means" in proceedings before courts, in which action was initiated by the Prosecutor-General. If the later refused to take action, was there any obligation upon him to explain his decision to the parties involved?
17. In the section of the report on disciplinary measures applied to public servants, it was surprising to find judges included with other civil servants: there was an implication that judges were not, perhaps, completely independent. It was difficult to see how judges could be disciplined, at least for applying the law, but perhaps that part of the report was badly drafted.

(Mr. Nettel)

18. The matter of the representation of minority groups on elected organs raised interesting questions. If elections were freely held, he wondered how anyone could ensure that candidates from a particular minority group would be elected, since the electorate might well choose not to vote for them.

19. The reference to Gipsies in the report was disquieting. It seemed that Gipsies were to be considered as belonging to one of two groups: those who were willing to be integrated, and those who were not. The Committee was concerned with Gipsies in the latter category, as they constituted a true minority group with an individual life-style. Articles 2 and 4 of the Convention were tailored to the problems of such people.

20. The problem of Gipsies was not confined to Czechoslovakia. In many other countries the official view was that they had to be taught to integrate. That was a clear example of racial discrimination, of great concern to the Committee.

21. Finally, the report stated that the prohibition of racial discrimination was jus cogens. Yet at the United Nations Conference on the Law of Treaties many eminent lawyers had disputed that the concept of jus cogens existed in international law. Whether that opinion was accepted or not, it should at least be borne in mind that some international law authorities might consider that the concept was not admissible.

22. The CHAIRMAN, speaking in his personal capacity, observed that the International Court of Justice had held that the prohibition of racial discrimination and slavery was jus cogens.

23. He could not accept Mr. Nettel's interpretation of the section of the report dealing with Gipsies. The Czechoslovak Socialist Republic was helping that group of Gipsies which required assistance in development and health care, this being, in his opinion, completely in accordance with article 2, paragraph 2, of the Convention.

24. Mr. LAMPTEY welcomed the sixth periodic report of Czechoslovakia, which had been prepared with due regard for questions raised by members of the Committee concerning the fifth report. On the subject of Gipsies, he noted that they were to be found all over Europe and were dealt with variously in different countries. The Convention required Governments to attempt to bring disadvantaged peoples up to the level of other groups in society. In seeking to enhance the quality of life of such peoples, Governments should not, however, force them to reject their specific characteristics and ethnic identity. There was an element of compulsion suggested in the Czechoslovak report - perhaps due only to awkward wording - which was disturbing, and he asked that fuller information be made available to the Committee concerning measures taken by the Czechoslovak Government to integrate Gipsies into society without depriving them of their special characteristics.

25. With reference to the point raised by Mr. Partsch concerning reservations to the Convention, he said that the problem had been discussed by the Committee over many sessions and that the Legal Counsel had finally been asked to give an opinion on the effect of reservations, declarations, and so forth. It should be remembered that interpretative statements and declarations were not necessarily reservations. The Czechoslovak report was incorrect in stating that the Committee had rejected reservations to the Convention made by some States, particularly those to article 4;

(Mr. Lamptey)

that was beyond the Committee's competence. However, if a State had substantive reservations with regard to article 4, it was hard to see how that State could become a party to the Convention in view of the extreme importance of the article. Article 4 stated, inter alia, that States should take certain measures "with due regard to the principles embodied in the Universal Declaration of Human Rights"; the question was what weight should be given to that provision. It would seem from the report that the Czechoslovak Government generally shared the Committee's interpretation of the article.

26. On the point raised by Mr. Nettel with regard to jus cogens, he pointed out that although some eminent legal scholars present at the United Nations Conference on the Law of Treaties had been among those expressing doubts as to the existence of jus cogens in international law, that opinion had been upheld by only a small minority, while the majority of the participants agreed that such norms existed. Thus the norms with regard to racial discrimination set forth in the Charter of the United Nations, the Universal Declaration of Human Rights and the Convention, and developed by various United Nations bodies, formed peremptory norms of international law.

27. Mr. KALINA (Czechoslovakia) stated that his Government would provide in its seventh periodic report detailed replies to the questions raised by members of the Committee, but that he would now attempt to provide some preliminary answers.

28. Czechoslovakia did not make extensive use of foreign workers; there were approximately 13,000 in the country, nearly half of which were from Poland, most of the remainder coming from Viet Nam and Cuba, with small contingents from Mongolia, Bulgaria, Hungary and Cyprus. Most workers came without their families or dependents on the basis of bilateral intergovernmental agreements and in conformity with the principles of economic co-operation between socialist States. The foreign workers were employed in all sectors of industry and agriculture.

29. With regard to article 7 of the Convention and the problem of ethnic minorities, he said that the Government's policy was guided mainly by article 3 of Constitutional Act No. 144/1968. According to data from 1973 on children belonging to ethnic minorities who were being educated in their own language, there were 67 primary schools and 20 classes in secondary schools where Polish was the language of instruction, serving a total of nearly 6,000 pupils of Polish origin. Czechoslovak nationals of German origin were not sufficiently concentrated to allow for German-language schools, but there were 114 classes serving 1,350 pupils of German origin in schools with non-compulsory courses taught in the German language. Furthermore, there were 131 classes serving 1,104 pupils in schools offering non-compulsory courses taught in the Greek language, and 10 classes serving 77 pupils in the Macedonian language. In the Slovak Socialist Republic schoolchildren of Hungarian origin were served by 344 kindergartens, 48 primary schools, 22 general secondary schools, 20 technical secondary schools, and 19 apprenticeship and technical institutions, serving a total number of 89,925 pupils whose mother tongue was Hungarian. As for the approximately 7,100 pupils whose mother tongue was Ukrainian, there were 69 kindergartens, more than 30 primary schools, and 12 secondary schools whose primary language of instruction was Ukrainian or which offered courses in the Ukrainian language. There were 1,888 students of Hungarian origin and 411 students of Ukrainian origin studying in Slovak universities, whereas 200 Czechoslovak nationals of Hungarian origin were studying at universities and other institutions in Hungary.

(Mr. Kalina, Czechoslovakia)

30. Although several members of the Committee had commented that the statistics offered in the Czechoslovak report seemed outdated, he could assure them that the proportions of the ethnic minorities to the majority Czech and Slovak populations had remained the same. As could be seen from the fifth periodic report, the Hungarian population had risen by 22,000, the German minority by 8,000 and the Ukrainian and Russian minorities by 1,000. Population growth in Czechoslovakia was very high, both among the majority Czech and Slovak peoples and among the ethnic minorities, almost certainly as a result of the successful government policy regarding social welfare.

31. With reference to the representation of the ethnic minorities in various national and regional bodies, article 2 of Constitutional Act No. 144/1968 established that election to the representative bodies was by universal, equal and direct suffrage and by secret ballot. The list of candidates was prepared by the National Front and took account of the numerical strength of the national minorities. No separate electoral constituency for the national minorities was formed. The elections were based on general democratic principles. Article 2 ensured that there would be adequate representation of the national minorities in the various representative bodies, including the judiciary.

32. With regard to the Gipsies, government measures affecting this minority group were taken under the guidance of the Committee for National Committees in regions inhabited by Gipsies, with Gipsy participation at all levels. These committees sought to promote voluntary integration of this group into society. He pointed out that Gipsies who had chosen a civilized way of life were given assistance in obtaining housing and in placing pre-school children in day-care centres. Young people were given vocational training, and lower-income families received coupons to purchase low-cost staples. There were, however, some individuals whose life-style ran counter to the principles of socialist society: they tended to drift from one job to another and their children were frequently absent from school. The programme of voluntary integration would require more than one generation to be completed. It was encouraging that there were more and more young people of Gipsy origin graduating from secondary and technical schools each year, and it was generally recognized that Gipsies had made valuable contributions to the cultural and political life of the country. The legal dimensions of the problem had been covered in the fourth periodic report, and the seventh periodic report would provide further information.

33. With regard to article 3 of the Convention, the Government of Czechoslovakia had repeatedly stated that it had terminated all official relations with the racist régime of South Africa as early as 1963 and that it conscientiously fulfilled all obligations under the relevant General Assembly and Security Council resolutions. More details on the subject would be provided in the seventh periodic report.

Mr. Kalina withdrew.

Fifth periodic report of Morocco (CERD/C/65/Add.1)

At the invitation of the Chairman, Mr. Rahhali (Morocco) took a place at the Committee table.

34. Mr. RAHHALI (Morocco) said that members of the Committee should bear in mind two points in reading the fifth periodic report of Morocco. Firstly, Morocco was a Moslem State with a Moslem society based on the principles of the Islamic

(Mr. Rahhali, Morocco)

religion, in particular the principles of equality and freedom for all. Secondly, the Moroccan legal system, in particular the Constitution of 1972, recognized the primacy of international law over domestic law. The provisions of the International Convention on the Elimination of All Forms of Racial Discrimination formed an integral part of public domestic law. The fourth periodic report had given details on those provisions of the Moroccan Penal Code under which violations of the Convention were punished.

35. Mrs. SADIQ ALI, in welcoming the Moroccan report, asked whether more detailed information could be made available concerning the procedural aspects of political trials, in particular the right to defence, and the detention and trial procedures. Noting that the King of Morocco had invited Moroccan Jews who had left the country to return, she asked how many had in fact responded to this invitation. Could more information be made available on the ongoing revision of the laws affecting Jewish communities? Inasmuch as the Government seemed to attach importance to decentralization and local participation, she inquired as to what progress had been made in transferring administrative and economic power to the provinces and how regional development was proceeding, especially in the more backward areas where the nomads and Berbers lived. After observing that Morocco had a long tradition of offering asylum to freedom-fighters and political refugees, she requested information on the refugees and their status, wondering how they could qualify for Moroccan nationality and what sort of civil restrictions applied to the foreigners. She noted that the report specified that Christians and Jews were given some degree of religious freedom, but that no mention was made of any other religions. In view of the importance of the subject for the implementation of article 7 of the Convention, she urged that fuller information be made available to the Committee concerning the measures taken by the Government to promote understanding and tolerance of all religions. She also wished to know how many Berbers there were in Morocco and what measures had been taken to protect their culture. She had heard that a new association for human rights had been formed and inquired about the status of the association, its role and its relationship with the Government.

36. Mr. VALENCIA RODRIGUEZ said that, although the Convention had been incorporated in Moroccan public domestic law and no cases of violations of the provisions of the Convention had been reported, Morocco was nevertheless obliged, under the Convention, in particular article 4, to adopt domestic legislation in order to give effect to the Convention. The Convention did not itself establish any punishment for violations of its provisions, a matter which was left to States parties. He requested more detailed information concerning the penalties imposed for violations of the Convention in Morocco, and the laws on the basis of which courts could determine such penalties.

37. Mr. DECHENZELLES, noting that Morocco was well known for its tradition of tolerance, recalled that in a previous report the Moroccan Government had stated that it was considering the internal implications of article 4. He hoped that it would continue its investigations and that it would decide to take domestic measures to permit implementation of the Convention, particularly of article 4 and article 5, paragraph (f).

38. Mr. GOUNDIAM said that, although the principle of non-discrimination was recognized in Morocco traditionally, historically and under the Islamic religion, it was not enough to lay down principles. It was entirely possible that the man in

(Mr. Goundiam)

the street in any country might be racist, even though the policy of his Government was non-discriminatory. Accordingly, it was important that the Moroccan Government should introduce legislation dealing with racial discrimination which would permit implementation of the Convention, particularly with regard to article 4. He drew a parallel, in that connection, with the Government's handling of the question of corruption, noting that extensive legislation had been enacted in Morocco to deal with this vice, even though corruption was an offence according to Islamic religion.

39. Mr. PARTSCH observed that the Committee had been told several times that international law and the Convention had been incorporated in Moroccan domestic law and must be applied directly. However, a problem existed in that the provision on which the incorporation was based did not figure in the operative part of the Constitution but in the preamble and, as everyone knew, the preamble carried different weight in different legal systems. He asked whether the legal basis as provided in the preamble to the Constitution would be sufficient to enable a judge to apply the provisions of the Convention in preference to those of the domestic law, should there be an inconsistency between them.

40. Mr. RAHHALI (Morocco), replying to the question put by Mr. Partsch, said that in his country international law had primacy over domestic law. He had taken note of the comments made by members of the Committee and would convey them to this Government.

41. The CHAIRMAN expressed the hope that the next periodic report of Morocco would contain answers to the questions put by members of the Committee, and that it would contain more information concerning the measures taken in Morocco to implement all the provisions of the Convention. Furthermore, he hoped that the report would be prepared in accordance with the revised guidelines which the Committee had drawn up to assist States parties to the Convention in the preparation of their reports.

Mr. Rahhali withdrew.

Fourth periodic report of the United Republic of Tanzania (CERD/C/48/Add.8)

At the invitation of the Chairman, Mrs. Mbapila (United Republic of Tanzania) took a place at the Committee table.

42. Mrs. MBAPILA (United Republic of Tanzania), introducing her country's report, said that her Government had introduced mechanisms to ensure that the law was applied without any discrimination as to race, sex or religion. In addition to having independent courts of justice from village to national level, her country boasted a Permanent Commission of Enquiry, whose functions were described in the report. The United Republic of Tanzania was one of the few countries in the world where all races were represented in the Cabinet, not through the existence of any quotas but because there was complete racial harmony.

43. Mr. LAMPTEY said that although the situation in the United Republic of Tanzania was well known to all, reports submitted by States parties must fulfil certain conditions. He expressed the hope that, in preparing its fifth report, the Government would follow the guidelines laid down for the preparation of reports by the Committee. In addition, he expressed the hope that the next report would list the administrative measures which had been adopted for the implementation of the Convention, noting that the second periodic report had contained a partial list of measures.

44. Mr. VALENCIA RODRIGUEZ said that the Committee would like to know how the rights laid down in article 5 of the Convention were guaranteed by the legislation of the United Republic of Tanzania. As he had pointed out in the case of other countries, the Convention established certain obligations for States parties; accordingly, it was not appropriate for a Government to argue that it had deemed it unnecessary to adopt any measures concerning racial discrimination on the grounds that that phenomenon did not exist in its territory. He therefore asked the Tanzanian Government to reconsider its legal obligations under the Convention.

45. The information concerning the Permanent Commission of Enquiry, which had a mandate to receive complaints concerning any official except the President and the Vice-President, was very useful. Was the Commission empowered to consider also complaints levelled against persons who were not officials? If not, where could such complaints be submitted? It would be interesting to have fuller details concerning the Commission's functions, including information about its ability to impose sanctions.

46. Finally, he pointed out that the report did not contain sufficient information to show how the obligations stemming from articles 6 and 7 of the Convention were implemented.

The meeting rose at 1 p.m.