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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Second session

SUMMARY RECORD OF THE 4th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 9 February 1988, at 3 p.m.

Chairman: Mr. ALVAREZ VITA

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS (agenda item 6)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Initial reports concerning articles 6 to 9 and 13 to 15

Austria (continued) (E/1984/6/Add.17 and E/1982/3/Add.37)

1. Mr. BERCHTOLD (Austria), replying to a question raised by Mr. Alvarez Vita, said that in Austria international conventions could either immediately become part of domestic law in the same way as normal domestic statutes or they could remain as international obligations and be implemented by internal statutes either existing or to be adopted. The Austrian Government had chosen the second course in the case of the two International Covenants.

2. The International Covenant on Economic, Social and Cultural Rights was therefore 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.

3. With respect to implementation in general, the Austrian Government had been able to ratify the Covenant because the existing domestic legal order was in full conformity with it. Of course, law and practice could always be improved and indeed since ratification of the Covenant a number of changes had been made in domestic law.

4. As to the non-discrimination clause in the Covenant, and more particularly to the situation of migrant workers and women, he said there was no legal provision allowing discrimination against non-citizens as far as enjoyment of the rights under discussion was concerned. With regard to access to employment by non-citizens, Austria had a system similar to that in other countries whereby a labour permit was needed. The legal requirements for obtaining such permits were rather complicated.

5. In some cases there was justifiable discrimination in favour of women, who were not allowed to work in mines, at night or during pregnancy. However, especially as far as pay was concerned discrimination against them did exist as a matter of tradition, which was very hard to change. Women had entered the labour market only since the Second World War, and still had to be integrated into working life on the same footing as men. Much had in fact been achieved: for instance, there was no discrimination against women in the civil service or other State employment, but there was a problem in private enterprise where wages were freely agreed between employer and employee and because of the high value attached to the independence of the social partners it was difficult for the State to enforce equal pay for women workers, although it firmly intended to solve the problem. Some 10 years previously 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. The Commission's experience had been mixed and there seemed to have been some reluctance to apply to it.

6. In reply to Mr. Alston's question as to whether the right of workers to social insurance was justifiable, he explained that Austria intended to include in its Constitution the right of participation in a social insurance scheme and the obligation of the State to provide adequate institutions for the purpose. He believed that that right would be justifiable since anyone excluded could appeal to the courts, and his Government would be prepared to change the law in accordance with the decision of the courts. The whole matter was under consideration at the moment and he hoped that further details would be given in the next report.

7. Turning to specific questions raised by Committee members, he said, in reply to Mr. Simma, on the question of the de facto equality of women, that there was no discrimination in State, Länder or municipal employment but that the extent of the problem elsewhere was unknown.

8. As far as migrant workers were concerned, apart from requiring a work permit, they were on the same legal footing as citizens, but he was unable to say whether or not there was any de facto discrimination against them.

9. Regarding pensions, at the moment the retirement age for women was 60 and the retirement age for men was 65, the difference probably being explicable by the feeling that working women who also ran a home were entitled to a certain privilege in respect of retirement age. Generally speaking, past employment was a condition for receiving a pension, but of course there was provision for widows' and orphans' pensions.

10. The most disadvantaged sections of the population were probably those with low incomes, poor education or handicaps, or residents of remote mountain areas. An attempt had been made by the social welfare services to help such persons, but perhaps not enough had yet been done.

11. In reply to the question from Mrs. Jiménez Butraqueño about the unemployment rate among women, he believed the same tradition underlying inequality of pay between men and women was behind the slightly higher unemployment rate for women. Employers considered it preferable to lay off women rather than men, considered the breadwinners. That attitude could not be altered by law but only by a change of mentality, which took a long time. Highly qualified women did not suffer from that tradition and their position in all fields of work was good.

12. In reply to Mr. Mrachkov, he said that the Austrian Basic Constitutional Law did indeed date from 1867 and was in substance still valid, although provision had been made for some additional rights. His Government was trying to formulate fundamental rights in a new way and to recodify them, a difficult task which would take a long time.

13. The right to work, understood as a right to a job or a specific job, was not included in the Austrian legal order, and it was impossible for the State to guarantee a certain job to a certain person in a certain place. Employment opportunities clearly depended on the economic situation. What could be guaranteed was the right to help in finding a new job and in overcoming the difficulties associated with unemployment, and Austria had an elaborate system which assisted working people as far as possible in that respect.

14. As to the question of dismissal, the Austrian system of private labour contracts between employer and employee provided that the contract could be denounced under certain conditions and within a given time-limit not exceeding six months. He was unable to give details of the collective agreements for certain professional groups which contained specific conditions for dismissal.

15. There was one trade union federation with 15 branch unions. Before the Second World War there had been different trade unions with political allegiance, but the system had proved unsatisfactory and after the War all the political parties had agreed on the present system, and the trade unions had been refounded. Membership was approximately 1.5 million, which was large in proportion to the number of workers in the country.

16. The State did indeed subsidize the social security system, which was based on contributions from employers, employees and the State.

17. He regretted that he had no information about the type of work done by migrant workers.

18. He thought Mr. Alvarez Vita had misunderstood the reference to compensation payments in paragraph 45 of document E/1984/6/Add.17, which related only to construction workers who were laid off on account of bad weather. He could assure Mr. Alvarez Vita that from the legal point of view there was no discrimination against workers who were non-citizens or who belonged to particular ethnic groups.

19. Mr. Texier had raised the very serious question of long-term unemployment. He had no recent statistics readily available but from the tables appearing in the annexes to document E/1984/6/Add.17, it appeared that the long-term unemployed constituted about 15 per cent of the total. With regard to unemployment among the young, a recent report by the Ministry of Social Administration stated that at the end of January 1988, nearly 5,000 fewer young persons between the ages of 19 and 24 had been unemployed than had been the case in January 1987. The unemployment rate for such young people was about 17.2 per cent. The corresponding rate among women was higher than among men.

20. In response to a further question from Mr. Texier, he said that there was no unified labour code; instead there were numerous statutes relating to individual sectors of the labour market. Collective dismissals, in the sense of the dismissal of a sizeable group of employees simultaneously, were sometimes impossible to avoid, but an early warning system had been instituted whereby the appropriate labour exchange was notified two or three months in advance.

21. Turning to the question of strike action, he stated that the right to strike was not recognized in law: 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 the social partners in Austria and consequently very few strikes; for example, there had been only 11 strikes in 1986 and the time so lost per worker, averaged out over the entire workforce, amounted to 33 seconds for that year.

22. Mr. Muterahejuru had asked about the impact of unemployment: Austria had been fortunate in that it had experienced a rise in unemployment only from the beginning of the 1980s and the situation was beginning to improve again. Maternity benefits comprised eight weeks' paid leave before the birth and one year's paid leave after the birth. The mother had the legal right to return to her previous employment.

23. Mr. Sparsis had inquired about the role of the State in relation to the social partnership: the social partners had complete autonomy in negotiations. Subsequently, in respect to policy, they could only offer the competent authority their opinion, but since that was based on a consensus view of important groups, it was usually taken into account by the Government. The social partners were not greatly concerned with taxation matters; in so far as taxation affected particular aspects of economic and social policy, it was generally dealt with by other bodies, such as co-operative housing associations.

24. Surprise had been expressed that the salaries of public officials were regulated by law and not by collective bargaining. That did not give an accurate idea of the situation. There were several trade union branches for public officials, covering the Austrian Federation, the Länder and the municipalities, which engaged in arduous negotiations with the competent authorities about the drafting of the relevant legislation to be placed before Parliament. There were no formal consultations with the workers concerned about the setting of the minimum wage, which was established by agreement between the trade union and the employers.

25. The option of taking early retirement at 55 had been introduced as a measure to combat unemployment but it was unlikely to be maintained, as it had proved to be expensive.

26. He regretted that he was unable to answer Mr. Konate's questions about Austria's position with regard to certain ILO conventions.

27. In response to Ms. Taya's questions, refugees, who were mostly very poor, enjoyed social welfare benefits; however, he thought that they, like other non-citizens, would probably require work permits in order to obtain employment, although in that respect they would be treated generously.

28. With regard to Mr. Fofana's question about fair remuneration, he could say that statistics showed that wages had been increasing faster than the cost of living ever since the Second World War and that the trade union federation was vigilant on that score. It was estimated that the cost of living per person was between 3,500 and 4,000 schillings per month.

29. With regard to Mr. Marchan Romero's question about the operation of the Insolvency-Compensation Covering Act (E/1984/6/Add.17, para. 47), he said that workers received a single lump-sum settlement in respect of any unpaid wages, including the period of notice required to terminate the work contract.

30. Austria had made no special provision for the dissemination of the Covenant, although copies were available in German and the Covenant had been published in the Official Gazette. There had been no consultation about the Austrian report (E/1984/6/Add.17) with groups outside Government circles and it had not been disseminated, although, as a United Nations document, it was readily available.

31. Mr. Neneman had rightly referred to the dangers inherent in a declining population. Discussions were in progress as to how to remodel the pension scheme to safeguard future pension entitlements in view of the increasing proportion of elderly people in the population. His country was aware of the problem, but it was the general experience all over the world that as countries became richer, the birth rate tended to decline.

32. Mr. SPARSIS inquired how it was possible to conduct meaningful collective bargaining without the right to strike. That had been described by the ILO as an exercise in futility. Further, the Austrian representative had stated that there was one trade union federation. In that case, how could there be that individual freedom of choice which was a basic human right in a free-market industrial democracy? Lastly, it appeared that there were no formal consultations for fixing the minimum wage but only negotiations between the trade union and employers. However, the minimum wage was mainly applicable in sectors where trade unions did not exist or were very weak. For that reason it was customary to call on independent bodies to advise the Government.

33. Mr. BERCHTOLD (Austria) said that the legal position was that, by striking, workers put themselves in breach of their work contract. There was no question of any criminal prosecution, although they might be held liable under civil law for damages. There was, however, no case law on the issue. On the other hand, collective bargaining about wages occurred every year between workers and employers and negotiations continued until agreement was reached. It seemed to him that the requisite freedom of choice in respect of trade unions was assured by freedom to become a member or not to become a member and, in fact, the trade union branches in the various sectors ranged from left to right in their political complexion. There had perhaps been a misunderstanding on the subject of the minimum wage. There was the possibility of a collective agreement, which was of course only valid between the parties concerned, being extended to non-trade union members working in the same enterprise. In such cases, there was an independent body competent to declare that the collective agreement, which probably also covered the questions of a minimum wage, held good for all the workers concerned.

34. Mrs. JIMENEZ BUTRAGUEÑO asked whether a husband was entitled to draw a widower's pension on the death of his working wife. She would also like to know whether a mother had the right to request an extension of her maternity leave beyond one year after the birth of her child, possibly as unpaid leave.

35. Mr. BERCHTOLD (Austria) said that, since about five years previously, husbands had been entitled to widowers' pensions in the circumstances described, as the regulation excluding them from pensions in such cases had been declared unconstitutional. The question of allowing an extension of maternity leave was a matter for the employer.

36. Mr. SIMMA said that he had understood from the Austrian representative that, when Austria had ratified the Covenant, Austrian law had already been in conformity with its provisions. However, it appeared that a worker choosing to strike might find himself in breach of contract, and thus liable to pay compensation. How could that be reconciled with article 8 (1) (d), concerning the right to strike?

37. Mr. BERCHTOLD (Austria) said that, as he understood it, the right to strike was linked to the existence of legitimate reasons for the strike. A strike could not automatically be exempt from legal consequences.

38. Mr. MUTERAHEJURU said that his question had related not to the length of maternity leave but rather to the attitude of employers, both private and public, to the possible extension of maternity leave beyond one year following the birth of a child. He observed that maternity leave also appeared to provide an opportunity of offering employment to other women.

39. Mr. BERCHTOLD (Austria) said it was quite possible that employers were not enthusiastic about the maternity leave provisions and might have difficulty in implementing them, but those provisions had been negotiated between employers and employees and remained a legal obligation.

40. Mr. MRACHKOV said that the representative of Austria, in his replies to members' questions, had demonstrated a wide knowledge of legal affairs as well as a good understanding of the actual situation in the country. However, it appeared that he had been unable to reply fully on some legal aspects. It would be appreciated if the representative of Austria would transmit certain questions concerning the application of the Covenant to his Government, which might wish to provide more detailed information in its next periodic report.

41. Mr. KONATE said that he had been very interested to hear about Austria's understanding of the right to strike. He considered that right to be a consequence of the right to collective bargaining, and an essential weapon with which workers could defend their rights. He inquired whether Austria intended to bring its legislation further into line with its international obligations.

42. Mr. ALSTON recalled that the Economic and Social Council and the General Assembly had urged that use should be made of supplementary reports where that was considered desirable and appropriate by the Committee and/or the State party. He wished to inform the representative of Austria that the Austrian Government was entitled to submit a brief supplementary report to the Committee at any stage, without waiting for its next period report, in order to clarify any outstanding issues.

43. Mr. DAO (International Labour Organisation) drew attention to the fact that the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) was among the conventions ratified by Austria. Although the right to strike was not specifically provided for in that instrument, it was the view of the ILO supervisory bodies, particularly the Committee on the Freedom of Association and the Committee of Experts on the Application of Conventions and

Recommendations, that the right to strike was an essential means for workers to defend their interests and therefore came within the purview of the Convention. In its recent general survey, the Committee of Experts had stated that the right to strike might be recognized implicitly or explicitly in legislation. Furthermore, there might be various restrictions on that right which had been accepted by workers within the framework of collective bargaining law and the industrial relations system. Information on those obligations, as well as articles and studies published by the ILO could be made available to the Committee.

44. Mr. BERCHTOLD (Austria), referring to the right to strike, said he did not think it justifiable to say that Austria had not yet complied with its obligations under the Covenant.

45. The CHAIRMAN, speaking in his personal capacity, thanked the representative of Austria for answering members' questions with such a sound knowledge of the subject. Nevertheless, there were one or two points which remained to be classified, relating to the performance of international obligations by Austria. Article 2 (3) of the Covenant stated that developing countries might be permitted to make a distinction between nationals and non-nationals with regard to economic rights. That provision was clearly not intended to apply to a country with such a high level of development as Austria, yet such a distinction appeared to be in operation. In that connection, he referred to the fact that non-citizens were not entitled to necessity benefits (E/1984/6/Add.17, para. 49 (b)) and that women who were non-nationals and resident in Austria for less than three years prior to the birth of their child were not entitled to child birth benefit (ibid. para. 172). He would be grateful if the representative of Austria could convey the concerns expressed by the experts to the Austrian Government. An official reply to the points raised in the debate would be extremely useful to the Committee.

The meeting rose at 5.05 p.m.