

564th meeting

Thursday, 11 March 1982

at 10.45 a.m.

Chairman: Mr. INGLES

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION (agenda item 6) (continued)

Second periodic report of the Republic of Korea (CERD/C/86/Add.1)

At the invitation of the Chairman, Mr. Park (Republic of Korea) took a place at the Committee table.

1. Mr. PARK (Republic of Korea) introduced the second periodic report of his Government (CERD/C/86/Add.1), which contained replies to questions raised during the discussion of its first report (CERD/C/61/Add.2), especially with regard to the composition of the population and the implementation of articles 2 to 7 of the Convention. On 4 January 1982, the Government had lifted the curfew, thus strengthening the fundamental rights of the population.
2. Mr. PARTSCH, referring to part I, section B, of the report, setting out the text of the provision contained in article 5 (1) of the Constitution of the Republic of Korea, wondered whether it meant that treaties had the same effects as the Constitution or as laws constituting domestic legislation, because in some countries laws adopted by Parliament did not have the same status as the Constitution. In the same section of the report, the Government of the Republic of Korea stated that because of that provision it had not been deemed necessary to adopt new laws or to promulgate new decrees against racial discrimination and segregation. Although article 3 of the 1980 Constitution condemned and prohibited racial discrimination, which was punishable under the Penal Code, paragraph 1 of article 260 of the Penal Code alone did not suffice, as had been stated during the discussion of the initial report, to give effect to article 4 of the Convention, in particular to paragraphs (a) and (b) of that article.
3. With regard to part I, section C, of the report, it would be interesting to have further details on the homogeneity of the population from the point of view of ethnic origins.
4. He had been surprised to note that the long list of rights enjoyed by the population of the Republic of Korea in accordance with article 5 of the Convention did not include the right to leave the country freely and to return. In part II, section D, paragraph 5, of the report, which referred to the economic, social and cultural rights listed under article 5 (e) of the Convention, the Government had replied to certain questions raised during the discussion of its first report, in particular with regard to trade unions; however, it had not replied to questions concerning the principle of equal pay for equal work and whether the Constitution could be criticized. Nor had it given any information on the implementation of article 6 of the Convention.
5. With regard to article 7 of the Convention, he asked how education on United Nations activities in respect of human rights, especially in respect of racial discrimination, was carried out in schools.
6. Mr. VALENCIA RODRIGUEZ said that in the report under consideration the Republic of Korea had endeavoured to reply to questions raised during the discussion of its first report, and in particular to provide demographic data. He noted from part I, section A, of the report that racial discrimination was contrary to the basic principles laid down in the Constitution of the Republic of Korea which, it was stated, sought in

sum "to harmonize the national security, law and order and efficiency with the people's desire for democratization, while guaranteeing basic human rights to the greatest possible extent" (CERD/C/86/Add.1, p. 2). He asked whether the words "to the greatest possible extent" meant that the guarantee was not comprehensive.

7. With regard to the application of the provisions of the Convention in the domestic laws of the Republic of Korea, referred to in part I, section B, of the report, he wondered whether article 5 (1) of the Constitution gave a victim of racial discrimination the right to bring suit before the courts or whether other appropriate provisions should be made, since States were obliged to adopt special measures to give effect to those provisions of the Convention that did not apply automatically.

8. With regard to the struggle against apartheid, referred to in part II, section B, of the report, he congratulated the Government of the Republic of Korea on having formulated guidelines on the export of military equipment prohibiting any direct or indirect trade in military equipment with South Africa.

9. With regard to article 4 of the Convention, referred to in part II, section C, of the report, he said that it would be useful to have the exact text of the relevant provisions so that the Committee could judge whether the Republic of Korea was fulfilling its obligations under that article.

10. Part II, section D, of the report contained an interesting analysis of the provisions concerning the rights set out in article 5 of the Convention. However, in view of article 35, subparagraph (a), of the Constitution, he would like to receive information on the protection enjoyed by citizens and the possibilities of appeal available to them.

11. He would also like further information on article 6 of the Convention, which had not been mentioned in the initial periodic report of the Republic of Korea.

12. Finally, he would like to have further details concerning the measures taken to promote tolerance in implementation of article 7 of the Convention.

13. Mr. ARAMBURU said that the report showed that there were no measures implementing article 4 of the Convention and that the reference to the penal legislation did not cover all the cases envisaged in that article. The homogeneity of the population did not protect a State against the emergence of racial discrimination. Legislation adopted to implement article 4 played an educative role by informing the population of the respect due to human dignity.

14. He had been happy to note that there was no problem of racial discrimination in the Republic of Korea. Nevertheless, he would like to know whether, in implementation of article 2, paragraph 2, of the Convention, any measures had been taken in favour of certain social groups whose development had not followed that of the rest of society and who required protection in order fully to enjoy human rights and fundamental freedoms. He asked whether the Republic of Korea had taken measures in favour of Korean workers who emigrated and, if so, what they were.

15. In its listing of civil rights under article 5 of the Convention, the report referred only to citizens of the Republic of Korea. He would like to know whether foreigners enjoyed the same rights and what texts were applicable to them.

16. The CHAIRMAN, speaking in his personal capacity, endorsed the comments made by previous speakers on the need for the Republic of Korea to adopt special legislation to implement article 4 of the Convention, since the penal legislation did not cover all

aspects of paragraphs (a) and (b) of that article. Like previous speakers, he noted that the report did not mention measures taken to implement article 6 of the Convention, in particular, to permit victims of racial discrimination to seek damages. He asked whether measures had been taken in respect of teaching, education, culture or information with a view to combating racial prejudice, promoting understanding among the various groups of the population and disseminating the principles laid down in the United Nations Charter and the Convention.

17. Mr. PARK (Republic of Korea), replying to questions within his competence raised by members of the Committee, said that international treaties had the same effects as domestic legislation in the Republic of Korea, that strictly speaking there were no ethnic minorities in his country, whose population had been homogeneous for 4,000 years, that foreigners residing in the Republic of Korea enjoyed civil rights and that nationals were free to leave the country and to return. In 1981, the Government had announced that it had decided to authorize dissident nationals to return and to participate in building a democratic society, and many of them had done so.

18. Workers' rights were laid down in the new Constitution, which contained 29 articles governing the rights and duties of citizens. Article 30 of the Constitution stated that all citizens had the right to work and ensured special protection for women and children who worked. Article 31, which was quoted in the report, stated that "to enhance working conditions, workers shall have the right to independent association, collective bargaining and collective action" (*ibid.*, p.6). In that connection, he reiterated that, in January 1982, following abrogation of the martial law proclaimed one year previously, the Government had abolished the curfew that had been in force for 30 years. Press censorship had also been abolished.

19. The Republic of Korea had taken measures to help certain sectors of the population. At the beginning of the 1970s a campaign (New Community Movement) had been launched to improve the standards of living of both the rural population, who had not benefited from the country's industrialization, and the inhabitants of the coastal regions, who derived their living mainly from fishing. The fifth five-year economic and social development plan contained special provisions to improve the distribution of riches among the various sectors of the population of the Republic of Korea.

20. The CHAIRMAN thanked the representative of the Republic of Korea and announced that the Committee had concluded the consideration of that country's second report.

Mr. Park withdrew.

Seventh periodic report of Hungary (CERD/C/91/Add.5)

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

21. Mr. SZELEI (Hungary), introducing his country's report (CERD/C/91/Add.5) said that his Government was prepared to pursue with the Committee the constructive dialogue that had been established between them with a view to ensuring the complete and effective implementation of the provisions of the Convention. He reaffirmed Hungary's full commitment to the objectives of the Convention, which occupied a major place in contemporary international law. Racial discrimination in all its forms was alien to the social, political and legal systems of socialist Hungary, as could be seen from the fact that most of the provisions of the Convention had already been implemented in Hungary well before its entry into force. His country had constantly demonstrated a resolutely hostile attitude to racial discrimination in all international forums and participated actively in the combat for the final and complete elimination of that scourge.

22. In submitting its seventh periodic report, the Hungarian Government had taken account of the revised guidelines of the Committee (CERD/C/70) and had endeavoured to reply to the questions raised during the consideration of the previous report. He stressed that, faithful to its position of principle, Hungary maintained no relations whatever with the racist regime of Pretoria and fully complied with the relevant resolutions of the United Nations General Assembly and the Security Council, and of other international organizations and conferences. He drew attention to the fact that, as a result of the 1980 population census, his Government was able to provide the Committee with the latest data on the demographic composition of Hungary.
23. Mr. DECHEZELIES said that he had found the report of Hungary, which was substantial and whose presentation was in accordance with the guidelines of the Committee, to be very interesting. In his opinion, it was an excellent idea to have included in an annex the texts likely to be of interest to the Committee.
24. He noted with satisfaction that the Convention formed part of the internal law of Hungary, that paragraph 1 of article 61 of Act No. I of 1972 provided that "the citizens of the Hungarian People's Republic are equal before the law and enjoy equal rights" (CERD/C/91/Add.5, p.2), that detailed information was given on the demographic composition of Hungary, and that article 54 of the Constitution provided that "human rights are respected in the Hungarian People's Republic" (ibid., p.6).
25. In the section of the report entitled "Fundamental rights and duties of citizens" (ibid., pp. 6-8), he noted a few points that perhaps needed to be clarified, for example in article 54, paragraph 2, and article 64 of the Constitution. Moreover, with regard to article 65 of the Constitution, he would like to know the text of the Act that regulated the right of association. Lastly, he asked what was the situation with regard to the rights to freedom of movement and residence within the State, to leave any country, including one's own, and to return there, the right to nationality and the right to form and join trade unions.
26. With regard to article 4 of the Convention, he wondered whether the "mental injury" referred to in article 156 of the Penal Code (ibid., annex, p.3) would not be rather the moral injury that was also recognized in his country, but not, for example, in the USSR. Nor was it clear in article 157 of the Penal Code what was meant by the words "an act prohibited by international law" (ibid., annex, p.4). He understood them to refer to the International Convention on the Elimination of All Forms of Racial Discrimination, but was surprised at the extensive application that thus seemed to be given to a repressive text whose provisions should be interpreted strictly, at least according to the approach thereto taken in the West.
27. He stressed the originality of articles 75, 76 and 84 of the Civil Code concerning the rights pertaining to persons and noted, in that connection, that in civil matters judges had considerable power of adjudication. He was pleased to note that in Hungary any person who was a victim of an act of incitement to racial hatred could bring a civil suit for damages and particularly that, under the terms of article 84, paragraph 2, "if the amount to be adjudicated by way of compensation is disproportionate to the gravity of the imputable conduct, the court may also impose on the tort-feasor a fine, the sum of which may be used for public purposes" (ibid., p.9).
28. The only point that seemed to be inadequately dealt with concerned the application of article 6 of the Convention. He would therefore like to find in a future report information on the judicial organization, and on civil, penal and administrative procedure in Hungary. In that connection, he would like to know whether, if for any reason the Public Prosecutor did not institute criminal proceedings, the victim could himself bring a criminal action and whether, when the guilty person was a State official, the proceedings were instituted against the officials or against the State.

29. Mr. VALENCIA RODRIGUEZ also stressed that the report under consideration testified to the fruitful and encouraging co-operation that had been established between Hungary and the Committee. He was pleased to find demographic information in the report and to see the prohibition of all forms of racial discrimination in Hungary reiterated. With regard to the implementation of article 2 of the Convention, he noted in particular that the National Assembly, the Presidential Council or the Council of Ministers could annul legislative provisions, resolutions or measures adopted by subsidiary State bodies in violation of Hungarian legislation, including provisions of the Convention. He welcomed the fact that the Hungarian Government maintained no diplomatic, economic or other relations with the racist regime of South Africa.
30. Referring to article 157 of the Penal Code, which punished acts prohibited by international law, he said it was his understanding that acts of racial discrimination could be included among those prohibited by international law, and he therefore concluded that Hungary complied with its obligations under article 45 of the Convention.
31. Most of the rights enumerated in article 5 of the Convention had been analysed in depth and were based on the principle of legal equality. However, it would be necessary to explain what was meant, in article 54 of the Constitution, by the expression "the interests of a socialist society" (*ibid.*, p.6). It would also be interesting to know how the provisions of article 67 of the Constitution were applied in practice.
32. With regard to article 6 of the Convention, he noted that in Hungary any person who was a victim of racial discrimination could initiate legal action before the competent judicial bodies to claim damages. Observing that article 75, paragraph 3, of the Civil Code provided that "the rights pertaining to persons shall not be deemed to be prejudiced by an attitude based on the consent of the entitled persons" (*ibid.*, p.8), and that article 76, relating to discrimination of any kind on grounds of sex, race, nationality or religion, made no mention of the concept of consent, he concluded - but would like to have confirmation - that article 76 related to basic rights that could not be renounced by the person concerned.
33. The Hungarian Government had provided ample information on the application of article 7 of the Convention in previous reports. He noted, in the report under consideration, that Hungary had concluded cultural, scientific and technical agreements with nearly 80 countries. He was pleased to stress the constant efforts being made by the Hungarian Government to improve the living and working conditions of gypsies and its concern to ensure respect for the fundamental rights of national minorities. He hoped that Hungary would continue to provide the Committee with that type of information and to submit to it reports of equally high quality.
34. Mr. SHERIFIS thanked the representative of Hungary for the useful comments he had made in introducing a frank report, in fact a model report. It was clear that the authors of the report had taken account of the comments made during the consideration of previous reports and had provided appropriate replies to the questions raised by the members of the Committee.
35. The first and second sentences of the report under consideration expressed unequivocally the position adopted by Hungary in the matter of racial discrimination. That position was made even clearer by article 61 of Act No. I of 1972. In paragraph 5 of that article, he noted the word "nationalities" (*ibid.*, p.2) and asked what exactly was meant by that term, and by the term "ethnic groups", which appeared in the Penal Code (*ibid.*, p.3).
36. The information relating to the demographic composition of Hungary, requested during the examination of previous reports, deserved the Committee's thanks, as did the

information provided on the effect given in Hungary to articles 4, 5 and 6 of the Convention. Article 157 of the Hungarian Penal Code was of considerable importance for the application of article 2 of the Convention. With regard to article 3 of the Convention, the position of Hungary was perfectly clear, since it maintained no relations whatever with South Africa, implemented the relevant resolutions of the United Nations and actively supported the resolutions and declarations of the specialized agencies concerning racial discrimination.

37. Section C of the report indicated how Hungary provided its population with information on the major international conventions, instruments, and documents' (*ibid.*, p.10). He would like to know more about education and school curricula in order to understand how they ensured respect for human rights and the promotion of tolerance and friendship among nations. He would like to know how young persons were educated to combat prejudices that led to racial discrimination.

38. Mr. APIOU observed from the report that Parliament annulled "measures of State organs conflicting with the Constitution or violating the interests of society", and that "the Presidential Council of the Hungarian People's Republic [supervised] the enforcement of the Constitution" and might "annul or modify any statutory provision, administrative decision or measure that [was] contrary to the Constitution" (*ibid.*, p.3). Two different bodies could therefore annul each other's decisions. He would like to know how any conflict arising between those two bodies was resolved and what was the procedure followed.

39. Mr. DEVETAK noted, by comparing the results of the 1970 census with those of the 1980 census, that the relative proportion of the populations whose mother tongue was not Hungarian had decreased, since while those populations had represented 1.52 per cent of the total in 1970, they had represented only about 1.2 per cent in 1980. He also noted that the Slovenian and Serbian minorities mentioned in the third report of Hungary (CERD/C/R.70/Add.9) were no longer included in its seventh report. He would like to know why the criterion of mother tongue had been chosen to determine the category to which the various ethnic groups belonged and how the concept of mother tongue had been defined for the purposes of the 1980 census.

40. The Hungarian Government stated in its report, with regard to article 2, paragraph 2, of the Convention, that "there had been no need to adopt special and concrete measures since the legal system of Hungary [guaranteed] for nationals and non-nationals alike the full and equal enjoyment of human rights and fundamental freedoms in accordance with the relevant provisions of the Convention" (CERD/C/91/Add.5, p.4). He took a different view, since he considered that the application of the principle of non-discrimination required the adoption of special measures, legal or financial, in favour of ethnic groups. In its previous reports, the Hungarian Government had provided a great deal of information on the special measures taken with a view to ensuring the development and protection of certain groups. The above-mentioned statement seemed to contradict the previous reports. He would therefore welcome additional information on that subject and on the application of article 61 of the Hungarian Constitution.

41. Articles 30, 35 and 51 of the Hungarian Constitution were of particular interest, since they concerned the functions of the Presidential Council of the Hungarian People's Republic, those of the Council of Ministers and those of the Office of the Procurator-General of the Republic. He would like to know by whom and in accordance with what procedure the type of initiative mentioned in article 2, paragraph 1(c), of the Convention could be taken. He would also like to know to what extent any individual could institute proceedings in that regard before the Presidential Council of the Hungarian People's Republic, before the Council of Ministers and through the intermediary of the Office of the Procurator-General of the Republic.

42. He noted that articles 148, 155, 156 and 157 of the Hungarian Penal Code gave full effect to all the provisions of article 4, paragraph (a), of the Convention, except perhaps the first. He would therefore like to know whether article 156 of the Hungarian Penal Code was sufficient to give effect to the provisions of article 4, paragraph (a), of the Convention concerning the dissemination of ideas based on racial superiority or hatred.
43. He paid tribute to the Hungarian Government for the way in which, in general, it gave effect to the provisions of the Convention and congratulated it on continuing to pursue and expand on the dialogue established with the Committee.
44. Mr. BAHNEV said that the report submitted by the Hungarian Government showed that the revised guidelines of the Committee were such as to produce extremely interesting reports that provided the Committee with the information or texts which it needed to study how a particular State party implemented the provisions of the Convention.
45. Mr. Dechezelles had asked about the situation with regard to the right to form and join trade unions, but he himself considered that the only question was whether all persons in Hungary were equal before the law in that respect and whether, without racial discrimination within the meaning of article 1 of the Convention, they had the right to form and join trade unions.
46. He wished to point out that the members of the Committee should take care not to go beyond the provisions of the Convention. With regard to article 2, paragraph 2, of the Convention, there was no reason to consider that the Governments of States parties should necessarily take and apply special measures, for example of a financial nature, to ensure the development and protection of minority groups or of individuals belonging to such groups. In fact, the text provided that States parties should take special measures "when the circumstances so warrant" to ensure the development and protection of "racial groups or individuals belonging to them". It was ultimately for the Government to decide whether the circumstances warranted special measures. The Committee should not interpret the provisions of the Convention in the strictest possible manner, but it was important not to lose sight of what were the real obligations incumbent on States parties to the Convention.

The meeting rose at 1.05 p.m.