

865th meeting

Tuesday, 7 August 1990
at 3.05 p.m.

Chairman: Mr. SHAHI

AGENDA ITEM 7

Consideration of reports, comments and information submitted by States parties under article 9 of the Convention (continued)

Eighth and ninth periodic reports of Denmark (CERD/C/158/Add.8 and CERD/C/184/Add.2) (concluded)

At the invitation of the Chairman, Mr. Kofod and Mr. Hagel-Sørensen (Denmark) took places at the Committee table.

1. Mr. RESHETOV said that Denmark's long-standing democratic tradition was reflected in its decisions on national as well as international issues, as evidenced by its exemplary handling of problems in its relations with Iceland. He had himself had first-hand experience of the democratic situation prevailing in Denmark at the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe, held in Copenhagen from 5 to 29 June 1990. Denmark had played an important part in the adoption by that meeting of a document 1/ of historic importance in the pan-European movement, which included a chapter on national minorities. Countries with such a tradition were expected to live up to their reputation.

2. On the subject of national minorities and with reference to Mr. Banton's discussion with Mr. Wolfrum at the previous meeting, he said that in Denmark, in addition to recent immigrants, there were basically three national minorities, Greenlanders, Faeroe Islanders and the German-speaking minority. He wished to know to what extent the exercise of certain rights was guaranteed for each of those minorities. Firstly, did members of the minorities have the right to learn their own language and to be taught in that language? Secondly, could a minority language be used in public institutions, such as courts of law? Thirdly, how was the right to cultural, economic and State autonomy exercised by the three national minorities? The right of a people to self-determination might take a variety of forms, including the right to form an independent State. As a purely hypothetical question, he wished to know to what extent it would be possible for national minorities in Denmark to enjoy such a right, should, of course, they wish to do so.

3. Turning to the eighth periodic report (CERD/C/158/Add.8), he commended the provision, referred to in paragraph 7, that immigrants resident in Denmark for three years had the right to vote in local government elections. He requested further information on paragraph 15, since the statement that 3,858 of the 6,168 persons employed in the Greenland civil service were "born in Greenland" left some doubt as to whether authentic Greenlanders were actually running their own affairs. With reference to paragraphs 33 and 35, from which it emerged that those guilty of incitement to racial hatred were fined or cautioned, he said that Denmark's position lay somewhere between that of countries in which there was no punishment for verbal incitement and that of other countries, like his own (the Soviet Union), where, under article 104 of

the Criminal Code, severe penalties, including several years' imprisonment, could be applied. He cited a trial currently in progress in Moscow concerning anti-semitism and said he hoped that the guilty parties would receive due punishment.

4. Mr. VIDAS thanked the Government of Denmark for its efforts to eliminate racial discrimination, including its contribution to the fight against apartheid through its attitude to the South African regime.

5. He associated himself with the very relevant questions raised by previous speakers, in particular those raised by Mr. de Gouttes (864th meeting), and hoped that a response would be forthcoming.

6. He requested information about the effects of the two new Acts passed by the Danish Parliament in 1985 and 1986 prohibiting new Danish investments in South Africa and trade with that country.

7. Mr. ABoul-NASR agreed with previous speakers that the sentences handed down for racially offensive statements in the "green jackets" case represented a welcome development, although, like Mr. Wolfrum (864th meeting), he would have preferred sentences also to have been imposed on those who had allowed such statements to be made.

8. He wished to know, however, what yardstick was used in Denmark to establish the borderline between freedom of expression and offensive or discriminatory utterances and acts, since the book, The Satanic Verses, which was well known to be insulting and blasphemous, had been published in Denmark. There was an inherent contradiction in the fact that in the "green jackets" case the Convention had been applied and the right to freedom of expression overruled, whereas in the case of The Satanic Verses, which insulted Islam and the Muslim people, freedom of opinion had been invoked as the overriding consideration. While freedom of expression was an important principle, prejudice to others placed limitations on such freedom.

9. Mr. LAMPTEY said that, while he agreed with Mr. Banton's comments (864th meeting), it would be extremely helpful to the Committee's work if, especially in matters such as the "green jackets" case, reporting countries provided the texts of court decisions in their reports. In his view, it would be incorrect, in the case in question, to place a restrictive interpretation on the court ruling, which, in stating that freedom of expression should not take precedence over protection against racial discrimination, made it quite clear that, with due regard to the freedom of speech clause in article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, there were limitations to freedom of speech in certain circumstances. It was the most unambiguous court decision that the Committee had ever been given to consider in regard to the interpretation of that clause, on which the Committee had had frequent discussions. It reflected the near unanimity in the Committee regarding the meaning and intention of the provision. It would therefore be extremely helpful to the Committee if the representatives of the Government concerned could furnish the full text of the judgement either at the current session or in its next report.

10. Mr. FOIGHEL said that he associated himself closely with Mr. Lamptey's comments on article 4 in connection with the "green jackets" case. He understood that that case would be brought before other human rights bodies, which would be looking at the Committee's interpretation of article 4.

11. On the subject of personal income in Greenland, the table in paragraph 4 of the ninth periodic report (CERD/C/184/Add.2) raised two interesting points. One was that the income level in Greenland was no lower than in Denmark as a whole. The other was that persons born outside Greenland but earning their income in Greenland earned more than the Greenlanders themselves. He requested an explanation of that discrepancy and, in particular, further information on the categories of persons included in the latter group. He would be interested in hearing the Danish representative's comments on whether the question of the steps taken by the Danish Government to implement the Convention specifically in Greenland was really relevant, since Greenland had had a system of local autonomy for a decade, covering nearly all issues included in article 5.

12. Referring to paragraph 39 of the eighth periodic report (CERD/C/158/Add.8) stating that there had been no instance of discrimination in the school sector, and to the comments made by Mr. de Gouttes, he said his impression was that intolerance towards foreigners or people who were different was on the increase. He wished to know whether the Government intended to respond to that situation, for instance, by amending the laws on immigration or using resources or funds to fight intolerance. The question of tolerance and minority rights was a delicate one. While non-discrimination and equal rights for minorities and the majority were a major concern in Denmark, the country's very liberal attitudes to such matters as religion or equality of the sexes conflicted with the views of many new immigrants, such as those from the Far and Middle East, who claimed certain rights that were not those of the majority. A case in point was the legally unexceptionable attendance by boys and girls alike in school physical education classes, which was disputed by those who did not wish their children to attend such classes. He would like to know whether the Government considered that there was a problem in that regard, whether it intended to take any action and whether, in fact, it considered such issues to be relevant to the Convention.

13. Mr. GARVALOV said that, like Mr. Reshetov, he had come away from the Conference on the Human Dimension of the Conference on Security and Co-operation in Europe in Copenhagen with a very good impression of the functioning of democracy in Denmark. As an "élite" country in that respect, Denmark was inevitably under close scrutiny. On his return home, he had recommended to his new Government that useful lessons might be drawn from Denmark in making Bulgaria a more democratic country.

14. He understood that in some countries, especially in Europe, the establishment of political parties on ethnic grounds was authorized, and he wished to know whether there was any such provision in Danish legislation. If so, what was the situation if they advocated some form of discrimination?

15. He wished to know how the Convention was incorporated into Danish legislation and, specifically, whether compliance with the Convention was

written into the Constitution or a special Act, or whether legislation had merely been amended to conform to the requirements of the Convention.

16. Like Mr. de Gouttes, he was concerned about the lack of information on article 5. If there were different ethnic groups in Denmark, such as the German-speaking minority referred to by Mr. Reshetov, were they allowed to have their own press, in their own language?

17. The important statement in paragraph 5 of the eighth periodic report (CERD/C/158/Add.8) that Danish citizens were not registered according to ethnic origin reminded him of the earlier discussion (864th meeting) between Mr. Banton and Mr. Wolfrum about article 27 of the International Covenant on Civil and Political Rights and the definition of minorities. Since international human rights instruments had so far failed to specify exactly what was meant by a minority, he would be inclined to favour a rather restrictive interpretation. He quoted the examples of article 27 of the Covenant, which did not take into account the collective aspect of minority rights, and of the draft international declaration on the protection of minorities currently being considered by the Commission on Human Rights of the United Nations, on which no agreement had yet been reached. The problem of minorities had been discussed at length at the meeting of the Conference on Security and Co-operation in Europe in Copenhagen, and delegates had not agreed on collective or special rights for minorities. They had agreed that no single participating country could serve as a model for others in that regard.

18. Mr. YUTZIS said that in considering a periodic report, account should also be taken of what it failed to say. In that connection, he would like to know why the eighth periodic report (CERD/C/158/Add.8) of Denmark was silent with regard to article 5 of the Convention.

19. The report made no mention of progress with regard to the labour status of immigrants. Nor did it refer to developments regarding the process of granting autonomy to Greenland. Previous reports had indicated that all judges in Denmark, including those in Greenland, could become members of the Supreme Court and he would like to know whether a Greenlander was a member of the Court at the present time.

20. Mr. KOFOD (Denmark), replying to questions put by members, said that with regard to the judgements of the Supreme Court, his delegation would make the relevant texts available to the Committee as soon as they had been translated.

21. As to questions relating to Danish investments in South Africa, there were at present four Danish companies operating in that country. Two years earlier, there had been six and the previous year, five. That downward trend caused him to doubt that Danish investments in South Africa represented a considerable sum.

22. With regard to his country's re-establishment of a diplomatic mission in South Africa, he stressed that Denmark had never severed diplomatic relations with that country. It should be noted that Denmark's closure of its mission

in South Africa in 1985 had not been followed by similar action on the part of other countries, thus placing Denmark in a disadvantageous position in its efforts to bring pressure to bear on the South African Government.

23. With the transfer of ANC headquarters to Johannesburg, his Government had considered that in order to be able to conduct high-level talks with that organization, it was imperative to open a mission. That step had in no way changed his Government's general policy towards South Africa. The sanctions decided upon by the Nordic countries and the European Economic Community would remain in force until such time as a radical and irreversible change took place in that country. It should be noted that Denmark had never believed in total diplomatic isolation.

24. Mr. HAGEL-SØRENSEN (Denmark), referring to the question raised concerning the percentage of persons born in Greenland who were employed in the Greenland administration, said that the problem was to some extent a transitional one. Greenland had acquired home rule nearly 10 years previously. The situation in the country was changing and the number of persons employed in the administration who had been born and educated there was increasing.

25. As to the difference in the level of income between persons born in Greenland and those born elsewhere, it had been considered necessary to provide a higher remuneration for the latter group, who had had to relinquish normal family ties and move to Greenland. The home rule authority had recently decided to abolish that difference in remuneration.

26. With regard to a question raised by Mr. Foighel, he said that, under the Act establishing home rule in Greenland, legislation promulgated by the home rule authorities had to abide by all international obligations entered into by the Kingdom of Denmark. Therefore, all human rights should be strictly applied by the home rule authorities. In that connection, he said that the courts and the police were authorities of the Kingdom and not part of the home rule administration.

27. With regard to a question put by Mr. Vidas, he said that Greenland and the Faeroe Islands had two representatives in Parliament even though their total population did not warrant that number.

28. The possibility of a Greenlander becoming a member of the Supreme Court clearly existed, but account must be taken of the fact that there were only 15 judges on the Court.

29. It had been asked whether Greenlanders could receive passports like other members of the Danish population. The inhabitants of Greenland and the Faeroe Islands were Danish citizens and had the same rights as other citizens under the Constitution. However, as a result of a referendum, Greenland had left the European Economic Community and acquired an autonomous status. So long as a Danish citizen lived permanently in Greenland, he was unable to invoke rights under the regulations of the European Economic Community and could not receive a passport indicating that he was entitled to free movement within any member country of the Community. However, if he moved to Denmark, he would immediately become a citizen of the Community and could receive a normal Danish passport.

30. Referring to the comment that the report made no reference to article 5 of the Convention, he said that a basic principle of the constitutional system of Denmark was that everyone was equal under the law. Consequently, there was no need for the report to make specific reference, for example, to rules ensuring that foreigners had access to the courts, since they had such access and were also entitled to legal assistance.

31. With regard to the right to work, there was a high rate of unemployment in Denmark and the mere fact that a person was a foreigner did not mean that he would obtain work. In his opinion, it was necessary to provide foreigners with education and training so that they would be able to obtain employment. Positive action was therefore required and steps were being taken to provide schools and vocational training for foreigners.

32. Referring to the second sentence in paragraph 8 of the ninth periodic report (CERD/C/184/Add.2), he drew attention to the need to strike a balance between combating racism and ensuring freedom of information. In that connection, he referred to the case of the "green jackets" and said that the reason why the Supreme Court had dealt only with the journalist and programming officer was not that the "green jackets" had not been found guilty but that the case had not been referred to the Court on appeal. Furthermore, the "green jackets" had committed other crimes for which they had been sentenced to lengthy prison terms.

33. With regard to the point raised by Mr. Aboul-Nasr concerning The Satanic Verses, it was important to remember that there was no reference whatever to religion in the preamble to the Convention.

34. Mr. Banton had asked about new legislation enacted since Denmark had submitted its seventh periodic report. ^{2/} He himself considered that the country's system of laws was probably adequate; what was needed was more positive action. Denmark was also committed to implementing the legislation of the European Economic Community, and the Council of the Community had adopted a decision on combating racism and xenophobia on 29 May 1990.

35. With regard to the question by Mr. de Gouttes regarding the educational system (864th meeting), ethnic minorities in Denmark had a right to be educated in their own language. In one town, where immigrants accounted for about 13 per cent of the population, the schools used 12 or more different languages, although such provision was naturally very expensive.

36. The number of foreigners living in Denmark was still relatively small, so there was little racial tension. Sadly, however, there had been a clash between asylum-seekers and local residents the previous week, which was being investigated. Denmark tried to foster tolerance and provide a multi-cultural education for its people, but it was essential that the immigrants, too, should show tolerance and obey the laws of the country.

37. Mr. Banton had asked about an alleged quota system for accommodation in the town of Ishøj. There was, indeed, a rule which stated that foreigners could not move into an apartment if there were other foreigners in the **same** building, but the rule had been invoked only eight times, and six of those cases concerned families who were already resident in the town. He felt,

therefore, that the problem had been exaggerated, particularly since two of the local councillors of Ishøj were foreigners themselves, foreigners being eligible to stand in local elections in Denmark.

38. Mr. Reshetov had asked whether ethnic minorities could study their own language, and study other subjects in that language. The main groups in question were the people of Greenland and the Faeroes, and the German minority in South Jutland. The first two groups had their own recognized languages - Greenlandic and Faeroese, respectively - and official documents and laws were published in those languages. In fact, however, Danish was still widely used in Greenland for historical reasons. It was possible to study Greenlandic and Faeroese, in mainland Denmark, but only at university level.

39. The German minority of South Jutland was protected by an agreement concluded some 35 years before by Denmark and the Federal Republic of Germany, which guaranteed representation of the minority in both the Landestag (State Parliament) of Schleswig-Holstein in the Federal Republic and the South Jutland regional council, even though the group was too small to qualify for political representation under the normal electoral rules. The German population had its own schools and educated its children in German, as well as having its own German-language newspaper.

40. Mr. KOFOD (Denmark), answering the question about the transport of oil, said that all Denmark's sanctions against South Africa were still in force and any company which ignored them would be prosecuted. For instance, some 18 months before, a company in eastern Denmark had been heavily fined for exporting packing materials to South Africa.

41. Mr. ABOUL-NASR said that, admittedly, the Committee had been set up to deal with racial rather than religious discrimination, but it had always dealt with religious matters if they had given rise to racism. The Danish representative had said that the book, The Satanic Verses, was not banned in Denmark because any insult it contained was an insult to the religion of Islam rather than an insult to Muslims. He was sure, however, that anti-Semitic remarks were not permitted in Denmark, and he found it difficult to see why, in that case, insults to Islam should be permitted. He had the greatest admiration for Denmark's human rights record, but he would welcome some further clarification on that point.

42. Mr. YUTZIS thanked the Danish representatives for their explanations and for their frankness about the recent incident of racial tension, which would, no doubt, be fully described in Denmark's next report.

43. He had asked why there were no Greenlanders in Denmark's Supreme Court, although he had not, of course, meant to suggest that a judge should be appointed solely on grounds of ethnic origin. He did not, however, feel that Denmark could continue for much longer to say that the absence of Greenlanders from senior posts was due merely to chance.

44. The Danish representative had said that job prospects for immigrants in Denmark were unfavourable because of the country's high rate of unemployment generally. However, everyone knew that immigrants were the first to suffer when the job situation deteriorated. Of course, an immigrant did not have an

automatic right to a job merely by virtue of being an immigrant, but he felt that immigrants were being permanently excluded from some areas of employment on the pretext of a poor labour situation. In his view, the unified labour market proposed by the countries of the European Economic Community was bound to affect the status and job prospects of immigrants from outside the Community; it was a question which the Committee would be obliged to address more and more urgently in the future.

45. Mr. BANTON agreed with Mr. Aboul-Nasr that it was often difficult to distinguish religious from racial discrimination. In the United Kingdom, white youths sometimes shouted the word "Rushdie" as an insult to people they believed to be Pakistani, and therefore Muslims.

46. The Committee had very high expectations of Denmark, and he hoped that the Danish representative would think again about the assertion that positive action in favour of immigrants was unlikely to be successful in a situation of high unemployment and that it was better to concentrate on improving education and training. Denmark had a commitment under article 6 of the Convention to protect immigrants against discrimination in employment; although extra training might be desirable in itself, it was not an alternative. Denmark could easily follow the example of another European country which had laid down a code of practice for employers, requiring them to prove that they had treated foreign job applicants fairly. It was thus clearly possible to protect the special needs of immigrant workers, even in a time of high unemployment.

47. The CHAIRMAN, speaking in his personal capacity, said that Denmark was presumably a party to the International Covenant on Civil and Political Rights, article 19 of which stated that the right to freedom of expression could be curtailed in certain circumstances in order to protect, among other things, the religious beliefs of others. The Danish representative had said that the law against blasphemy had rarely been invoked in Denmark; he thought, however, that that was no defence, since the law applied only to Christianity, which was the dominant religion in the country. The law against blasphemy should, in his view, be extended to other religions in order to give the right of legal redress to all religious minorities.

48. Mr. GARVALOV said that he had noted a new form of racial discrimination which was developing throughout the world, and especially in Europe. Under article 5 of the Convention, a person had the right to leave any country. However, many people who wished to leave their own country for another were hampered by an excessive delay in the issuing of visas - an applicant might wait up to six months for a visa, with no guarantee that one would be issued at all. Such delaying tactics could be seen as racial discrimination against, for instance, a Slav who wished to move to a Germanic country, and it seemed to him that such practices contravened article 5 of the Convention, as well as other international instruments. He believed that the new form of racial discrimination which he had described would become more and more widespread in the future.

49. Mr. LAMPTEY pointed out that, under article 5 of the Convention, a person had the right to leave any country, but only had the right to enter his or her

own country. No one had a natural right to enter a country merely because he wished to do so. It was important to remember that Denmark had an excellent record for accepting large numbers of immigrants.

50. Mr. FERRERO COSTA said the major changes that had recently been taking place in the world situation would lead to new challenges in the matter of preventing racial discrimination. Although in Europe the East-West conflict was disappearing, substantial problems could arise as a result of immigration and, accordingly, the rights of freedom of movement affirmed in article 5 (d) of the Convention. Where the interpretation of those rights was concerned, he agreed with the approach suggested by Mr. Garvalov rather than the more restrictive one favoured by Mr. Lamprey.

51. The information provided by the representatives of Denmark had been wide-ranging and had led to a very valuable exchange of views. The fact that Denmark, with its notable human rights record, continued to experience problems relating to discrimination had led to an unusually thoroughgoing discussion.

52. Mr. HAGEL-SØRENSEN (Denmark), referring to the comments by Mr. Shahi and Mr. Aboul-Nasr, said that, in his view, there was a difference between a defamatory utterance directed towards a person or group of persons and a statement denigrating a religious or other belief as such. Thus, insulting comments about Jews or Muslims, for example, were punishable under Danish law, but it would be to go one step further to claim that expressions of hostility to the Koran would constitute an offence. However, article 140 of the Penal Code did stipulate that anyone publicly denigrating a religious belief or those professing it was liable to imprisonment. A similar provision applied to anyone making defamatory or threatening statements against persons because of their race, colour, national or ethnic origin, or their beliefs.

53. One reason why Salman Rushdie's book, The Satanic Verses, was openly on sale in Denmark was that there had been no request to the Prosecutor General to initiate proceedings against it. In such a case the issue of literary value would also have to be taken into account, as it would in respect of pornographic works.

54. Mr. Shahi had raised the question of extending to Muslims the right to bring a case under the heading of blasphemy. Consideration could be given to that possibility, but to some extent immigrant minorities had to be prepared to accept the alien and perhaps uncongenial customs of the majority population of the host country. For example, in regard to modes of dress, could Danish women be expected to wear the chadar in deference to the views of a Muslim minority?

55. Turning to a point raised by Mr. Banton, he questioned the effectiveness of requiring employers to keep comprehensive records regarding the numbers of disabled persons, blacks, women, etc. in their workforce, and of affirmative action in general. However, that and the question of the rights specified in article 5 of the Convention would be addressed more fully in his country's tenth periodic report.

56. The CHAIRMAN, speaking in his personal capacity, said he thought that to equate the notion of an insult to Islam with a breach of a code of dress was to over-simplify a complex issue.

57. Speaking as Chairman, he thanked the representatives of Denmark, whose contribution had occasioned a candid and stimulating exchange of views, and said that the Committee had thus concluded its consideration of the eighth and ninth periodic reports of Denmark (CERD/C/158/Add.8 and CERD/C/184/Add.2).

Mr. Kofod and Mr. Hagel-Sørensen (Denmark) withdrew.

Organization of work

58. Mr. HUARAKA (Secretary of the Committee) said that a request had been received from the Permanent Mission of Qatar for postponement of the discussion of that country's sixth and seventh periodic reports (CERD/C/156/Add.2 and CERD/C/182/Add.1), as the current situation in the Middle East would make it difficult for Qatari representatives to be present.

59. The CHAIRMAN said that, following discussions held the previous day on the best use of the Committee's time, the officers of the Committee had consulted the representative of the Secretary-General, who had informed them that a number of countries, including Australia and Malta, would be unable to send representatives for the presentation of their countries' reports at the current session.

60. In reply to a question by Mr. RHENAN SEGURA, Mr. HUARAKA (Secretary of the Committee) said that, in preparing the provisional agenda, reports were scheduled in the order of submission, and States were then informed that a tentative date had been fixed for their consideration. The Permanent Missions of the States concerned were contacted during the two weeks prior to the session, but it was not possible to exclude or foresee all last-minute cancellations.

61. Mr. WOLFRUM wondered whether cancellations were always justified and whether the Committee might not envisage considering reports even in the absence of representatives of the countries concerned.

62. Mr. FERRERO COSTA proposed that the Committee should decide either to adopt such a procedure or to discuss the question of cancellations as an item of its agenda.

63. Mr. LAMPTEY said that although the Committee had not been able to consider the reports of Qatar, it had occupied its time profitably in discussing the issues raised by the periodic reports of Denmark.

64. He could not concur with the suggestion made by Mr. Wolfrum and Mr. Ferrero Costa; it was difficult to establish a dialogue with States, and the purposes of the Committee would not be well served if their representatives were not present for the consideration of their reports. The best approach was for the Committee to be patient.

65. Replying to comments by Mr. YUTZIS and Mr. ABOUL-NASR, the CHAIRMAN said that a revised programme of work had been distributed, and that matters relating to article 15 would be considered under agenda item 9.

66. Mr. de GOUTTES said that the issue raised by Mr. Wolfrum was important, and should be discussed either in the Committee or by its officers. He agreed with other speakers, however, that a cautious approach was required. Some countries might have perfectly legitimate reasons for requesting a postponement and, as a matter of courtesy, the first step should be to ask them for an explanation. Consideration might also be given to establishing a minimum period of notice.

67. The CHAIRMAN said that the points raised during the discussion would be considered, together with other organizational matters, at the meeting of the Committee's officers the following morning.

The meeting rose at 6.10 p.m.

Notes

- 1/ See International Legal Materials, vol. XXIX, No. 5, September 1990.
- 2/ CERD/C/131/Add.6.