



# International Covenant on Civil and Political Rights

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## HUMAN RIGHTS COMMITTEE

Ninety-first session

### SUMMARY RECORD OF THE 2490th MEETING\*

Held at the Palais Wilson, Geneva, on Friday, 19 October 2007, at 10 a.m.

*Chairperson:* Mr. RIVAS POSADA

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\* No summary record was issued for the 2489th meeting.

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*The meeting was called to order at 10.05 a.m.*

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER  
ARTICLE 40 OF THE COVENANT (agenda item 6) (*continued*)

*Fourth periodic report of Austria (CCPR/C/AUT/4; CCPR/C/AUT/Q/4;  
HRI/CORE/1/Add.8)*

1. *At the invitation of the Chairperson, Ms. Siess-Scherz, Mr. Petritsch, Ms. Nikolay-Leitner, Mr. Bogensberger, Mr. Körner, Mr. Liberda, Mr. Grasel, Mr. Ruscher, Mr. Tichy, Ms. Zeichen and Ms. Schöfer (Austria) took places at the Committee table.*

2. Ms. SIESS-SCHERZ (Austria) said that she wished to express her Government's regret at the delay with which it had submitted its fourth periodic report. The delay was due mainly to a reorganization within the Administration and the resource problems that that had caused. Furthermore, the Government had been waiting for the results of the constitutional reform process begun in May 2003, so that those changes could be reflected in the fourth periodic report, but it had had to abandon that hope, as the process was lasting longer than expected.

3. The protection of human rights was a continuous process that needed constant improvement. Dialogue with the Human Rights Committee played an essential role in that process. Although Austria was already able to provide significant protection for human rights, it was fully aware that it must remain vigilant and work continuously to strengthen that protection.

4. Wide-ranging consultations were under way on reforming the Austrian Constitution, a process involving experts and representatives of all sectors of society. An expert group was currently preparing detailed proposals based on the work of the Constitutional Assembly. A first set of proposals had been published during the summer of 2007 and a second set was expected by the end of November, at which point all of the proposals would be discussed in Parliament.

5. The constitutional reform process was expected to lead to a new codification of fundamental rights, with greater focus on social rights and the rights of the child and on strengthening of the human rights protection system. Among other measures, the Government intended to restructure the Ombudsperson's Board and to establish an administrative justice system with two levels. One of the proposals that had already been made public called for the establishment of nine administrative courts, one in each *Land*, which would relieve the burden on the federal Administrative Court and would considerably reduce the number of cases in which the proceedings lasted so long as to impair the rights of the parties.

6. The establishment of a federal court for asylum cases was also being planned. It should make it possible to speed up the processing of asylum requests and to eliminate the backlog in that area. That measure would be kept separate from the overall constitutional reform process, so that the new court could begin work in 2008.

7. The Government had recently decided to allow same-sex couples to contract a civil union recognized under the law. Legal experts were currently working on drafting a law to that effect, which should come into force in 2008.

8. The Government was aware of the fact that no State, no matter how careful it was to respect human rights, was free of deficiencies, especially when it came to day-to-day administrative activities. Her Government would, therefore, welcome the Committee's recommendations and advice with great interest, which would be especially valuable in guiding the current constitutional reform process.

9. The Government felt bound to consult with representatives of civil society before adopting new laws. The representatives were usually invited to participate in working groups responsible for drafting new legislative texts. A similar procedure had been adopted in preparing for constitutional reform. Civil society was also involved in the work of advisory and monitoring bodies, where its representatives could also serve. For example, 5 of the 11 members of the Advisory Board for Human Rights had been selected by civil society organizations. The Government fully recognized the important role played by non-governmental organizations (NGOs) in monitoring the human rights situation in the country and was studying ways to further strengthen the participation of civil society, in particular in the preparation of reports to be submitted to United Nations treaty bodies.

10. In its current form, the Austrian Constitution included many provisions dealing with fundamental rights, although they did not form a consistent whole. The constitutional reform was intended to change that. Fundamental human rights were specified in the European Convention on Human Rights, which formed an integral part of domestic law. The fact that the International Convention on Civil and Political Rights was not directly applicable did not prevent effective protection under domestic law of the rights it enshrined. In any case, discussions on the new Constitution provided an opportunity to check whether the existing human rights protection system had gaps and, if so, to make improvements.

11. Since the presentation of its third report, Austria had achieved significant progress in the area of promoting and protecting civil and political rights, thanks in particular to the views and advice of the Committee. The Government was very committed to cooperating with the Committee and hoped that the consideration of its fourth report would provide an opportunity for new exchanges that would be as rewarding as the earlier ones.

12. The CHAIRPERSON thanked Ms. Siess-Scherz for her statement and invited the delegation of Austria to respond to questions 1 to 12 of the list of issues.

13. Ms. SIESS-SCHERZ (Austria) said that the guarantees enshrined in the International Covenant on Civil and Political Rights were fully reflected in domestic legislation and in the European Convention on Human Rights, which had constitutional status in Austria. The right to invoke the Covenant in courts was not provided for explicitly under domestic law. However, under a decision of the Constitutional Court of 1994, Austrian courts were obliged to interpret and apply the laws in a manner consistent with the European Convention on Human Rights and international law. The Supreme Court had never ruled on whether the Covenant could be directly invoked in domestic courts but had confirmed on several occasions that the provisions of the Covenant were fully reflected in domestic law. It was therefore clear that the provisions of the Covenant were duly taken into consideration by domestic courts. It should also be stressed that the Court of Justice of the European Communities often made reference to international human rights instruments in its decisions.

14. Ms. NIKOLAY-LEITNER (Austria) said that, since the law on the equality of treatment had been amended in 2004, there was now an ombudsperson for equal treatment of women and men in the working environment, an ombudsperson for equal treatment without distinction as to ethnic origin, religion or ideology, age or sexual orientation in the working environment and an ombudsperson for equal treatment without distinction as to ethnic origin in other areas. The task of the ombudspersons was mainly to provide information for victims of discrimination, civil society organizations and the broader public. To a great extent the requests that

they had received had been for information about the law. The Committee would find in the written replies sent to it detailed statistics on the number and subject of complaints sent to various ombudspersons. The ombudspersons were not authorized to prepare recommendations. They forwarded to the Commission on Equal Treatment cases where they deemed there had been violations of the law on equal treatment or other provisions punishing discrimination. They could, nevertheless, engage in informal negotiations with an employer or any other institution accused of discrimination, in order to arrive at an amicable resolution of the case. Experience had shown that such mediation was very effective

15. Ms. SIESS-SCHERZ (Austria) added that the Austrian Ombudsperson's Board submitted a report each year to the National Council, in which it reported on its activities, in particular follow-up to complaints it had received and drafted proposals aimed at strengthening the protection of fundamental rights and combating discrimination. The 2006 report had revealed that the Board had received 16,000 complaints that year, of which half had been acted on. Investigations had been launched in 6,542 cases. In 21 cases, formal recommendations had been adopted, of which 12 had been against the federal Government. In 3 of the 12 cases, the authorities concerned had refused to implement recommendations of the Ombudsperson's Board. One of those cases had involved the failure to comply with a decision handed down by the Constitutional Court that obliged those municipalities with greater than a 10 per cent minority population to arrange for traffic signs to be in two languages, a matter that was discussed under question 22 of the list of issues. In the 10 other cases, recommendations had been fully or partially implemented. It should, however, be pointed out that cases where formal recommendations had been adopted were relatively rare. Most cases were settled by agreement after consultations between the Ombudsperson's Board and the Government body concerned.

16. The establishment of a national human rights institution was not impossible. Austria, however, had not ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which called for the establishment of an independent mechanism for prevention, but the Government's programme of work included establishment, in collaboration with the Ombudsperson's Board, of a body for prevention, as called for by the Optional Protocol. That proposal existed as yet only in draft form and was being considered by a group of experts on constitutional reform, whose conclusions would be made available late in 2007. There would then need to be negotiations as to whether such a body could be given a broad mandate, in conformity with the Paris Principles.

17. Mr. RUSCHER (Austria) said that the effort to combat discriminatory practices committed by the police, as raised in question 4 of the list of issues, formed a central feature of the training given to all law enforcement officers. In 2001, the Security Academy had developed a broad-ranging human rights training programme so that members of law enforcement services, with all services training together, could receive basic theoretical training in all aspects of their duties related to human rights. The training programme stipulated mandatory participation in a series of seminars on respect for differences, which was designed to make law enforcement officials aware of other cultures and to teach them to respect those cultures. The basic training also included lectures on the legal framework for the protection of human rights and fundamental freedoms, as well as mini-courses on psychology, codes of conduct and ethics, communication, conflict management and sociology. Continuing training focused on ensuring respect on the part of law enforcement officers for human rights norms in the exercise of their duties,

including when detaining a suspect or executing an expulsion order. In that connection, various seminars had been offered, in particular on relations between the police and persons of African origin. The subjects of the seminars could vary over the years, depending on priorities set by the Security Academy, but the common denominator would always be integration of respect for human rights and ethics in the exercise of one's duties. The Ministry of the Interior had also disseminated very strict instructions with regard to the manner in which policemen addressed others in carrying out their duties. From the legal point of view, those responsible for xenophobic acts, including members of law enforcement services, were subject to prosecution under various legal texts, such as the Criminal Law Code, the Equal Treatment Act and the rules for its implementation, as well as various administrative provisions.

18. Ms. SIESS-SCHERZ (Austria) said, with regard to question 5 of the list of issues, that detailed statistics on the representation of women could be found in the written replies sent to the Committee. Five of the twelve federal ministers were women. That ratio could also be found in the *Länder*, in particular that of Vienna, where 7 ministers out of 14, as well as 41 parliamentary representatives out of 100 were women. In the civil service, there were 9 women, compared to 60 men, in the highest posts of the federal ministries, namely, directors general, and 167 women compared to 438 men at the next lower level, namely, chiefs of service. Under the Equal Treatment Act, federal ministries were required to periodically prepare plans to promote women, so as to achieve a 40 per cent overall ratio for all posts and to encourage affirmative action, in particular to give women a preference where two candidates were equally qualified. In the judicial branch, 48 per cent of the personnel in January 2007 were women, including 46 per cent of the judges and 37 per cent of the prosecutors.

19. Ms. NIKOLAY-LEITNER (Austria), responding to question 6 on complaints of discrimination against women, explained that the Equal Treatment Commission consisted of several subcommissions that considered complaints, depending on whether they related to the private or public sectors. Detailed statistics had been provided in the written replies. With regard to compensation, since 2004 courts had been required to take into consideration the Commission's recommendations and to justify their decisions when they ran counter to the Commission's views. In any case, courts were not obliged to communicate their decisions to the Commission, which was therefore not always informed of the follow-up to its recommendations.

20. Mr. RUSCHER (Austria), with regard to question 7 of the list of issues, explained that the State party did not gather disaggregated data on cases of detainees who had been tortured or subjected to ill treatment, but the idea would be studied for the future.

21. Mr. BOGENSBERGER (Austria), responding to question 6 of the list of issues, said that judges and prosecutors were given training on the treatment of victims and non-discrimination in the form of theoretical lectures and practical internships during their four years of mandatory training. After that, continuing training was optional, but a recent survey had shown that 90 per cent of judges and prosecutors had attended lectures or seminars during the past three years. The Ministry of Justice planned to make attendance at continuing training sessions mandatory. Even highly experienced judges, such as those on the Supreme Court, could participate in continuing training programmes, as was seen in the case of the seminar organized very recently by the Chief Justice on the subject of the protection of human rights by court authorities.

22. Upon the entry into force of the law amending the Criminal Procedure Code in January 2008, confessions obtained under duress were no longer admissible. Other guarantees had also been provided for; all complaints involving torture or ill treatment committed by security forces were to be forwarded immediately to the Office of the Public Prosecutor, with an investigation to be conducted by a court and not by the police, and the Advisory Board for Human Rights was to be kept informed of the matter.

23. Turning to question 9 of the list of issues, an Austrian officer serving in the United Nations Civil Police in Kosovo had been sentenced, in absentia, in Kosovo in October 2003 to three years in prison. He had appealed the verdict and a hearing had been held in December 2005 but Kosovo authorities had sent no information regarding the decision. A criminal investigation had been opened in Austria and the court had sent several letters rogatory to the Kosovo courts to find out whether the verdict of October 2003 remained enforceable. That was a crucial element for continuing the judicial procedure in Austria, given that the *non bis in idem* rule might apply. The letters rogatory had gone unanswered, which blocked further developments.

24. On question 10, dealing with minors in detention, he said that only 163 young persons between 14 and 18 years of age were currently held in Austrian prisons. That relatively low number included those held pending trial and those already convicted, which showed that detention was used as a measure of last resort only. At night, minors were always kept separate from adults, but they might mingle with adults during the day, if that posed no threat, under the monitoring of prison staff. Experience had shown that such mingling could have a positive impact on young prisoners. Minors spent 12 hours a day outside their cells, compared to 8 hours for adults, and were entitled by law to 1 hour a day of walking.

25. Mr. RUSCHER (Austria), responding to question 11 of the list of issues, was happy to state that detention conditions for foreigners awaiting expulsion from the country had been considerably improved. It was true that 17 former police centres used to detain such foreigners had been designed for short periods of detention and had not been converted, but everything was being done to remodel them. Individual cells were rare, used mainly for sick detainees or difficult cases, and the dormitory rooms held a maximum of six people. Men and women were separated, as were children and adults, but members of the same family could stay in contact. Mothers were allowed to keep their young children with them in specially designed rooms. Sports facilities and libraries had been set up, and detainees had access to television and foreign newspapers. The construction of a new centre specifically designed for the detention of 250 foreigners would begin in 2008. It should be stressed that the detention regime was relatively open, as detention was not seen as a punitive measure. Furthermore, detention of a foreigner pending expulsion was ordered only if the desired goal could not be achieved by less severe measures, such as house arrest or the obligation to check in with the authorities regularly. Foreigners could also shorten their period of detention by agreeing to leave voluntarily. There was a significant network of NGOs that facilitated voluntary departures. Statistics on the problem were available in the written replies.

26. Turning to question 12, on trafficking in human beings, he stressed that Austrian statistics sought to determine the number of women who had fallen victim to that practice, rather than to ascertain its causes. The Austrian delegation had presented in its written replies the figures it had available, but it was possible that other sources had different numbers. It should be pointed out that a national action

plan against trafficking in human beings, under the coordination at the national level of a working group formed by the Ministry of Foreign Affairs, had been adopted by the National Council with several goals in mind, including strengthening the training of appropriate officials and gathering statistics on the problem. Furthermore, a national coordinator would be appointed before the beginning of 2008 to facilitate efforts in that field.

27. The CHAIRPERSON thanked the Austrian delegation for its detailed replies and invited Committee members to pose additional questions.

28. Ms. PALM said that it was too bad that the report had been submitted four years late, as that made it harder for the Committee to follow developments in the human rights situation, but she nevertheless welcomed the resumption of constructive dialogue with the State party. With regard to implementation of the Covenant, she expressed doubt that Austrian legislation fully covered the obligations deriving from that instrument. In its final comments on the State party's third periodic report, the Committee had expressed concern that some articles of the Covenant went beyond the framework provided by the European Convention for the Protection of Human Rights and Fundamental Freedoms, which had been incorporated into the Austrian Constitution. At that time the Committee had recommended to the State party that it ensure that all of the rights covered by the Covenant were recognized under Austrian law. However, in its fourth periodic report, the State party again stated that the Committee's concerns did not have any legally binding effect and could not result in the revocation of a domestic decision at the highest instance or to the reopening of a domestic case (CCPR/C/AUT/4, paras. 9 and 10). It was to be regretted that the State party had not been able to implement some of the observations adopted by the Committee with regard to communications in which the Committee had found that there had been a violation of the Covenant. While it was true that the Committee's findings did not have the same authority as rulings of the European Court of Justice, they in no way lacked legal force, and it would be regrettable if a State party, in the event of conflict between the provisions of the Covenant and those of domestic law, found itself unable to fulfil its obligations under the Covenant. She therefore wished to know whether Austria was genuinely able to implement the Committee's observations and amend its domestic legislation as necessary, in particular in the context of the major constitutional reform mentioned by the delegation.

29. On the subject of the ombudspersons, she asked how they were appointed, which Government body designated them, the length of their term of office and what effect restructuring in that area might have on their activities. She also wished to know whether the national human rights institution that was planned would have a broad mandate in conformity with the Paris Principles. Such bodies had shown themselves to be useful in protecting human rights in many countries and she strongly encouraged Austria to let itself be guided by those principles.

30. Mr. IWASAWA, also concerned about the implementation of the Covenant, recalled that Austrian legislation provided for two methods of implementing an international instrument. The first, which had been adopted with reference to the European Convention on Human Rights, consisted in incorporating the treaty into domestic legislation; the second, used for all United Nations instruments, including the Covenant, consisted in ratifying the instrument with a reservation guaranteeing that laws needed for its implementation would be adopted. The instrument was not, therefore, part of domestic law and could not be invoked directly. The question arose, then, as to why the State party had chosen the second method rather than the

first with regard to the Covenant. If the reason was a concern that its provisions might conflict with those of domestic law or the European Convention, it should be stressed that those two international instruments were complementary and that several articles of the Covenant were wider in scope than the provisions of the European Convention. That applied not just to article 26 of the Covenant, despite what the State party seemed to believe. It had been said that Austrian courts were required to interpret domestic law in a manner consistent with the European Convention and international law. He asked whether that meant that they were required to interpret and apply Austrian laws in a manner consistent with the Covenant, even though it had not been incorporated into domestic law. If so, it would be interesting to have some examples of cases. He also wished to know whether an individual could request the Constitutional Court to rule on the consistency of a law with the Covenant. With regard to the decisions of the Committee, a member of the Austrian delegation had said, during consideration of the third periodic report in 1998, that decisions of the Committee were not binding and that Austria was not required to comply with them. It would be interesting to know what mechanisms were available that enabled a State party to respond to a decision by the Committee. He welcomed the fact that the laws on extradition and legal aid had been amended to take into account the concerns expressed by the Committee in the *Sholam Weiss* case. He wished to know, however, what the federal Government could do in a case where a Committee decision dealt with a matter that was under the authority of a *Land* to encourage the authorities of that province to implement the decision. He also asked what the situation would be if the Committee recommended that a State party compensate a victim in a case where the Committee had found that a violation of the Covenant had occurred.

31. Mr. O'FLAHERTY noted that police training programmes aimed at combating discrimination against people of different ethnic origin tended to focus on people of African descent and wondered why they did not also focus on the Roma, who were just as likely to experience discrimination. It would also be useful to know whether means other than training were used to regulate police behaviour in that area. It would also be interesting to know how many complaints had been lodged against police for discriminatory practices over the past two or three years, how many investigations had been opened and their outcomes, and whether any disciplinary sanctions had been imposed.

32. With regard to representation of women in federal and provincial parliaments and in the civil service, the delegation had only cited positive examples. In some regions, however, only 11 per cent of the seats were held by women. He therefore wished to know what the Government intended to do to encourage better representation of women at the regional level. He also wished to know whether the Government had planned other measures than those mentioned to achieve the goal it had set of reaching 40 per cent representation of women in the civil service, particularly at higher levels. He asked whether a competitive examination system existed for such posts or whether one was planned.

33. With regard to complaints of discrimination against women, the numbers seemed to indicate that complaint procedures were not actively used, and it would be interesting to know why. He wondered whether the procedures were sufficiently well known by the public or whether the problem had to do with the rules on representation imposed by the procedures. It was certainly difficult, as the delegation had recognized with great frankness, to obtain information on judgements in which the courts had ordered that compensation be paid on the basis of conclusions reached by the Equal Treatment Commission, but there were perhaps

other ways of obtaining disaggregated data in that important area. With regard to discrimination in general, he wished to know whether there seemed to be, as certain NGOs maintained, a hierarchy of motives for illegal discrimination. In cases involving private contracts or the conduct of federal authorities, discrimination seemed to be based on ethnic origin, religion, sex, sexual orientation, disability or age, whereas in cases involving the provision of goods or services, ethnic origin or disability alone seemed to have been detected. He also wanted to know whether it was true that cases of discrimination based on disability could not be submitted to a court before the parties had spent time trying to work out an amicable solution, whereas the Equal Treatment Act stipulated that the case could be submitted to a court immediately.

34. On the subject of trafficking in human beings, it would be important to have additional information on the National Action Plan against Human Trafficking, in particular on strategies to protect the fundamental rights of victims. According to certain sources, a humanitarian visa would not be granted to victims of trafficking, unless they cooperated with the authorities, whereas the Austrian delegation had maintained that the visa was always granted. Some clarification would be welcome. Furthermore, it was difficult to understand why there were no statistics for such visas, whereas those statistics were not difficult to compile and would be useful for the implementation of a national action plan to combat trafficking. In that connection, it would be useful to know how Austria cooperated with other States to punish those responsible for trafficking without failing to protect the fundamental rights of victims. He noted that coordination of the National Action Plan had been delegated to the Ministry of Foreign Affairs, whereas in other countries the Ministry of the Interior was usually responsible for such a plan. He wondered whether the Ministry of Foreign Affairs was really able to handle all national aspects of the Action Plan.

35. Ms. WEDGWOOD said that every country needed to compile statistics on acts of torture and ill treatment committed by the police, as knowledge of the situations and personnel involved in such practices made it possible to adopt preventive measures, which was always preferable. Ordinarily, such acts happened because of inadequate supervision. She was therefore surprised that a lawyer was not automatically assigned to each person held in police custody, especially since, in Austria, custody could last up to 96 hours, which was very long. It was just as surprising to learn that defence counsel could be excluded from an interrogation session at the discretion of the police. The new norms on the presence of counsel were particularly vague, since counsel could be excluded if it was thought that his presence might prejudice the gathering of evidence. Application of that provision was not restricted to particularly serious crimes or other special circumstances.

36. It would be desirable to make arrangements so that notification of a detainee's rights could be made in all of the ethnic minority languages of the country. It would also be useful to have the services of a psychologist available on a permanent basis in detention centres for immigrants, rather than to have such assistance available only sporadically. A system for testing the behaviour of police should also be established, for use on the occasion of their hiring or promotion, to see if they had a proclivity towards violence in situations of stress or confrontation. Such behaviour could be based on unconscious xenophobic or racist attitudes.

37. Several cases of ill treatment had led to ridiculously light sentences. One could cite the case of the Mauritanian who had died while several people had been standing on his chest with a policeman watching without even trying to resuscitate

him; the case of a man from Gambia beaten up by four policemen in a warehouse; the case of a young Iranian who had parked his car in a no parking zone and whose neck showed marks of strangulation; and the case of the young Cuban who had died in police custody in October 2006. In none of those cases were the policemen involved held to account, whereas they should have been not only severely punished but also dismissed from their jobs.

38. The establishment of the Human Rights Advisory Board was an excellent initiative but the fact that it reported to the Ministry of the Interior and that some of its members were appointed by the Minister of the Interior himself did not augur well for its independence.

39. Ms. CHANET said that the fourth periodic report of Austria had admittedly been submitted late but it contained interesting information and could serve as a model for other State parties, in particular for the fact that it included the Committee's previous recommendations of 1998.

40. The Austrian Government's efforts to combat exclusion and violations of human rights could easily be seen from one report to the next. She welcomed the developments in legislation dealing with improperly obtained evidence, in particular through abusive treatment.

41. She shared her colleagues' views on the status of the Covenant in the State party's legislation and added that she was particularly concerned over the high number of reservations that Austria had made, some of which, at least, she hoped would soon be removed. Aware that the Convention held a much lower rank than the European Convention on Human Rights, she was nevertheless surprised that article 25 of the Covenant, which dealt with political rights, had been completely ignored in the periodic report. Furthermore, the Austrian Government had stated, in response to a question raised by the Counter-Terrorism Committee of the United Nations Security Council as to whether article 278, paragraph 3, of the Criminal Code constituted a political exception for the prosecution of terrorist acts, that that provision was not a political exception clause and that it was consistent with the fundamental rights guaranteed by the European Convention on Human Rights and by article 6 of the Treaty on European Union. The Government's response had, however, made no mention of the Covenant.

42. She shared Ms. Wedgwood's view that legal counsel should be present starting with the police custody phase; she noted that the relationship between counsel and client needed to be guided by strict principles and that decisions on the form that that relationship might take could not be left simply to the discretion of the police. With regard to the brochures specifying the rights of detainees, it was unfortunate that they were available only in German. It was also regrettable that there was no definition of torture, which was perhaps the reason for the lack of precise statistics in that area. It would also be useful if the delegation could update information on any follow-up to the concerns expressed by the Committee with regard to the *Perterer v. Austria* case (CCPR/C/81/D/1015/2001), which was mentioned in paragraph 13 of the report.

43. Mr. KÄLIN, referring to paragraphs 9 and 10 of the State party's report, in which the State party said that the Committee's concerns were not legally binding and could not result in revocation of a domestic decision taken at the highest instance or to a reopening of a domestic case, said that the Committee's findings had legal force under the mandate that States parties had given the Committee. The State party's approach to the matter suggested that it was willing to take the Committee's

findings into account in legislative matters but felt free to ignore them in specific cases. Further clarification would be useful, in particular with regard to the *Perterer v. Austria* case.

44. Mr. AMOR, sharing his colleagues' concerns about implementation of Committee views on communications, noted that States that had accepted the obligations stipulated in the Covenant had committed themselves to implement in good faith the duties to which they had acceded and had given the Committee the responsibility to monitor that implementation. It was true that, when the Committee considered an individual communication, it was not acting as a judge; it could only formulate its views. The force behind those views was not that of a judicial decision but rather that of a finding. A finding was actually stronger than a legal decision, as a decision was based on an interpretation, which could not entirely avoid being somewhat subjective. On the other hand, a finding involved only an ascertainment of facts. For that reason, it was regrettable that Austria, a State governed by law, whose contribution to the development of the international law of human rights had been significant, maintained the position expressed in paragraphs 9 to 13 of its report.

45. Sir Nigel RODLEY welcomed the new amendments to the Criminal Procedure Act regarding exclusion of evidence obtained as a result of torture or other unacceptable methods, but noted that, except for clear cases of ill treatment, it might be difficult to prove that there had been coercion, and he asked who bore the burden of proof in such cases. He regretted that the reply of the State party with regard to cases of ill treatment consisted essentially of statistics. In its 2004 report, the European Committee on the Prevention of Torture had also asked the State party for detailed information covering the years 2003 and 2004 on the number of complaints against abusive treatment committed by law enforcement officers, the number of disciplinary and judicial procedures brought on the basis of those complaints and the type of disciplinary and penal measures taken. The European Committee had also said that it was concerned by the high number of mistreatment cases it had heard about when it had visited Austria in April 2004.

46. The CHAIRPERSON invited the Austrian delegation to respond to the Committee's questions.

47. Ms. SIESS-SCHERZ (Austria) thanked members of the Committee for their comments. With regard to the status of the Covenant in domestic law, she explained that, when Austria had ratified the instrument in 1978, it was thought that the Covenant should not be directly applicable, so as to avoid establishing various levels of legislation. The Covenant was not the only instrument affected. The implementation of the European Convention on Human Rights had given rise to problems for a long time: although it had been ratified in 1948, it had become directly applicable only in 1964 because the Constitutional Court had considered that the Convention did not have constitutional status. Furthermore, complainants themselves rarely invoked provisions of the Covenant in courts and preferred to rely on the European Convention, which was better known and had been for a long time.

48. As for Austria's position on the Committee's observations, it should be stressed that each time a body such as the European Court of Human Rights or the Human Rights Committee drew attention to some deficiency in the situation in Austria, that fact was communicated to the competent authorities, and consultations were organized to work out specific solutions. For example, as a result of the Committee's findings in the *Perterer v. Austria* case, the law on municipal officials had been amended. In the *Perterer* case, it had proven simply impossible to settle the compensation issue, despite the intervention of the Ombudsperson. The amount

offered to Mr. Perterer had been based on the calculations arrived at by the European Court of Human Rights in similar cases, but Mr. Perterer had refused that amount and had launched a civil suit. The *Land* of Salzburg was not, at the present time, inclined to negotiate further. That in no way meant that Austria questioned the Committee's authority, but rather that it was sometimes difficult to reach a mutually satisfactory solution.

49. The CHAIRPERSON thanked the delegation of Austria for its replies and invited it to continue the dialogue at the following meeting.

*The meeting rose at 1 p.m.*