



**International Covenant on
Civil and Political Rights**

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Human Rights Committee

**Concluding observations on the fifth periodic
report of Austria**

Addendum

**Information received from Austria on follow-up to the
concluding observations***

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* The present document is being issued without formal editing.

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1. In its concluding observations of 3 November 2015 on Austria's Fifth Periodic Report pursuant to the International Covenant on Civil and Political Rights, the Human Rights Committee has invited Austria to submit within one year of the adoption of its concluding observations further information on the implementation of the recommendations made in paragraphs 20, 22 and 30.
2. The Republic of Austria submits the following information:

I. As to para. 20: "Racial profiling" and police misconduct

The State party should ensure that its legislation clearly prohibits racial profiling by the police and prevent investigation, arbitrary detention, searches and interrogation on the basis of physical appearance, colour, ethnic or national origin. It should also continue providing all law enforcement personnel with racial sensitivity training in order to curb racial profiling and police misbehaviour towards ethnic minorities. Law enforcement personnel who commit offences against persons belonging to ethnic minorities should be held accountable. The AOB should take steps to raise awareness about its new competence to receive complaints and consider making use of its ex-officio powers to open investigations into allegations of racial discrimination and racially motivated misconduct by the police.

3. In order to challenge police misconduct in investigation proceedings, the person concerned may file a so-called complaint against a measure (Maßnahmenbeschwerde) under Article 130 (1) of the Federal Constitutional Law (Bundes-Verfassungsgesetz) with the Regional Administrative Court (Landesverwaltungsgericht).

4. If the Public Prosecutor's Office (Staatsanwaltschaft) has ordered unlawful investigations or coercive measures in the investigation proceedings, the person concerned may file a complaint (Einspruch) pursuant to Section 106 (1) of the Code of Criminal Proceedings (Strafprozessordnung, StPO) with the (ordinary) court. Section 87 StPO provides for further rights of appeal against judicial decisions of the Public Prosecutor's Office to

- the defendant insofar as his/her interests are directly affected, and
- any other person who, as a result of the decision, has been directly deprived of rights or faced with duties or affected by a coercive measure;
- the victim of an arbitrary act ("private party to the proceedings" - *Privatbeteiligter*) against the discontinuation of the proceedings, unless the law provides otherwise;
- any person who alleges a violation of a subjective right by the court in the course of the taking of evidence.

II. As to para. 22: Ill-treatment of persons deprived of their liberty

The State party should undertake an independent investigation into the reasons underlying the discrepancy between the low number of criminal convictions for ill-treatment in police custody and the relatively high number of allegations. It should also ensure prompt, thorough and impartial investigations and documentation, in accordance with the Istanbul Protocol, into all allegations of torture and ill-treatment. Perpetrators prosecuted and convicted should be subjected to sanctions commensurate with the gravity of their acts, and victims provided with effective remedies. The State party should also collect and make public information on the number and nature of reported incidents of torture and ill-

treatment of detainees, disaggregated by age, gender and ethnic origin of victims, as well as on the convictions and types of sentences/sanctions imposed on perpetrators of such acts.

5. In response to the criticism of the Human Rights Committee, the Federal Ministry of Justice has initiated an evaluation of the previous approach of the Public Prosecutor's Offices and criminal investigations police to cases of alleged ill-treatment against police organs. It is intended to commission an external study on this issue still in the autumn 2016 in order to broaden basic knowledge and show possibilities for an improvement. The files of investigation proceedings of the Public Prosecutor's Offices of Vienna and Salzburg dealing with such charges from 2012 until 2015 will be analysed for that purpose. As a first step, there will be a "*classification according to age, sex and ethnic origin of the victims*" in those cases where the ill-treatment has not affected detainees. Workshops with representatives of the Federal Ministry of Justice and the Federal Ministry of the Interior will follow.

6. As regards the execution of sentences, statistics concerning allegations of ill-treatment against prison personnel have been initiated. As a first step, the following parameters for the years 2015 and 2016 will be evaluated at the beginning of 2017:

- investigation proceedings (including outcome)
- main trial (including outcome)
- disciplinary measures (including outcome).

7. As already set out in the dialogue with the Human Rights Committee in 2015, the Federal Ministry of Justice issued a decree in 2015 — as a supplement to the already existing decrees dating back to 2009 and 2010 — according to which allegations of ill-treatment against the prison personnel shall be submitted to the respective Senior Public Prosecutor's Office without delay, which must order a Public Prosecutor's Office other than that having local jurisdiction, to take further measures. The aim of the decree is to exclude any appearance of bias during the investigations from the outset.

8. The Federal Ministry of the Interior transmits all reports of ill-treatment allegations not only to the criminal prosecution authorities but also to the AOB. In response to recommendations to reform existing structures for examining allegations of ill-treatment, it is intended to amend the corresponding decree (of 23 April 2010 regarding allegations of ill-treatment, documentation, establishment of the facts, report to the Human Rights Advisory Council and organisation, BMI-OA1000/0047-II/1b/2010). By providing a transparent overview and documentation of all allegations of ill-treatment, this measure is intended to permit an earlier recognition of any organisational deficiencies in preventing abuses and resolving allegations of ill-treatment.

III. As to para. 30: Detention of asylum seekers and refugees

The State party should pursue its efforts to ensure that detention pending deportation is applied only after due consideration of less invasive means, with special regard being given to the needs of particularly vulnerable persons, and that individuals detained for immigration-related reasons are held in facilities specifically designed for this purpose. The State party should review its detention policy with regard to children above 14 years to ensure that children are not deprived of their liberty, except as a measure of last resort and for the shortest appropriate period of time.

9. Under Section 76 et seqq. of the 2005 Aliens Police Act (Fremdenpolizeigesetz) a detention with a view to expulsion may generally be imposed only as ultima ratio and only on adults and children who have completed the age of 14, if it has been shown after an

examination of the individual case that there is a manifest risk of absconding and it is necessary to secure the proceedings terminating a person's stay. Moreover, the detention with a view to expulsion must be proportionate. If the purpose of such a detention can be secured by alternative measures ("more lenient measures" (Gelindere Mittel): allocation of accommodation or requirement to register on a regular basis with the authority or deposit of an adequate financial security with the Federal Aliens and Asylum Office (Bundesamt für Fremdenwesen und Asyl), these measures shall be applied.

10. The needs of particularly vulnerable persons such as children beyond the age of 14 are taken into account in special institutions for detention with a view to expulsion (e.g. in the modern Detention Centre Vordernberg). Unaccompanied minors are accommodated separately from adults; children accompanied by their families, parent(s) or guardians, are accommodated together with these persons, unless this is contrary to their well-being.

11. There are currently very few detentions of minors with a view to expulsion: in 2015 detention orders were issued against three minors (14-16 years: one case; 16-18 years: two cases). In 41 cases more lenient measures were imposed on minors of the ages between 14 and 16 (all in all, 122 less severe means against minors up to the age of 18). During the period from January to October 2016 a detention order was issued against 13 minors (16-18 years) with a view to their expulsion. In 14 cases less severe means were imposed on minors of that age group (all in all, 31 more lenient measures against minors up to the age of 18).
