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Report of the Working Group on the Universal Periodic Review*

Austria

Addendum

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

* The present document is being issued without formal editing.



1. Austria welcomes the recommendations made during its Universal Periodic Review on 22 January 2021 where it deferred decisions on 34 recommendations. These have been examined, and Austria would like to provide the following responses.

Supported recommendations

140.1–140.7.

2. Prior to ratification of the 3rd Optional Protocol to the CRC, the practice of the CRC Committee in implementing the Protocol will be closely monitored. Steps have been taken to obtain a preliminary assessment of the Committee's practice. These efforts will be continued.

140.8.

3. Austria's objective regarding nominations to UN Treaty Bodies is to ensure highest qualification and competence. Candidacies are always based on merits and positions as academics or experts. This is, inter alia, ensured by hearings.

140.9–140.15.

4. Austria has elaborated a number of specific NAPs, in particular on Disability, on Trafficking in Human Beings, on the Implementation of UN Security Council Resolution 1325 and on Integration, a Strategy for the Prevention of Extremism and De-Radicalization and a National Strategy against Antisemitism, which are regularly evaluated and updated. Further NAPs, e.g. against Racism and Discrimination, are foreseen in the government programme. Progress on these projects has to be made before a general NAP on human rights can be envisaged.

140.17.

5. Austria acknowledges the efforts for a systematic compliance with internationally recognized principles and guidelines for responsible business conduct, in particular the compliance by companies with human rights and environmental, labour and social standards (e.g. UN Guiding Principles on Business and Human Rights, OECD Guidelines for Multinational Enterprises and ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy).

6. The recommendation is accepted with the understanding that the results of the ongoing EU consultations on a common approach to sustainable corporate governance (Sustainable Corporate Governance Initiative) will be awaited.

140.21, 140.24, 140.25.

140.26.

7. Austria sees currently no need to improve access to health care, as it is ensured for the groups mentioned in the recommendation. The Austrian system of compulsory insurance is based on employment; compulsory insurance is also linked to certain cash-benefits. Close relatives, asylum seekers in federal care and foreigners in need of assistance and protection are covered by health insurance. Voluntary self-insurance is possible, treatment in emergencies is compulsory.

8. Members of ethnic minorities have the same access to the labour market as other Austrians. A comprehensive strategy for Roma has been adopted, addressing, inter alia, the areas mentioned in the recommendation. See also explanation on 140.33.

140.32.

9. Under the current government programme, funding for national minorities has been doubled and financing of national minority media ensured: Since 2021, there is a dedicated budget for national minority media totalling € 700,000.

10. In Austria, non-discriminatory access to all media is guaranteed for everyone – regardless of membership of a national minority. The Federal Law on Austrian Broadcasting obliges the public broadcasting company ORF to offer an appropriate share of programmes in national minority languages. Further measures going beyond the government programme are not envisaged.

140.33, 140.34.

11. Austria has implemented the EU Reception Directive, according to which asylum seekers must be granted effective access to the labour market no later than nine months after filing an application for international protection. The Aliens Employment Act provides for the possibility of granting employment permits within the framework of a labour market examination. No changes are planned.

Noted recommendations**140.16.**

12. The term "Islamophobia" is increasingly used in a misleading and ideologized way – Austria prefers the term "anti-Muslim hatred", in line with the terminology of the European Commission. See also explanation on 139.35.

140.18.

13. Austria understands the recommendation as requiring that restrictions of the personal liberty of persons, who – due to their mental state – pose a danger to themselves or others, could only be based on their consent.

140.19.

14. The protection of internet users against violence and hatred is an essential element of the current government programme. Codes of conduct for politicians must be established by the political parties or parliament, not by the government.

140.20.

15. Austria ensures the protection of the family in accordance with various international human rights instruments. However, the wording of Article 16 (3) UDHR, reproduced in the recommendation, does not adequately reflect developments since 1948. The family is not above the rights of individual family members. Austria pays attention to various forms of cohabitation.

140.22.

16. Austria is committed to strengthening measures to protect workers; however, consensus on ratifying the ILO Domestic Workers Convention, 2011 (No. 189), could not be achieved yet.

140.23.

140.27.

17. In Austria, protection against discrimination, also in education, is guaranteed by numerous international and national norms and can be enforced in court. Ratification of this convention, dating back to 1960, is no longer envisaged.

140.28.

18. Due to the existing offer of bilingual education in the areas traditionally inhabited by national minorities as well as the broad offer of mother-tongue instruction open to members of national minorities also beyond these areas, Austria does not see a need for further action.

140.29.

19. Austria offers a wide range of bilingual and multilingual kindergartens in bilingual areas, currently, measures for quality assurance are taken. This is complemented by a broad offer of mother-tongue instruction in national minority languages in schools, strengthening knowledge of the first language, imparting information about the kin state and promoting the bicultural process.

140.30.

20. Austria will examine a possible modification of the wording of the criminal offence "Violation of Sexual Self-Determination" (Section 205a (1) Criminal Code) from "against their will" to "without consent".

21. A modification of the criminal offence "Rape" (Section 201 Criminal Code), however, would be inconsistent with the system. A clear distinction between acts of coercion (Section 201 Criminal Code: violence, deprivation of personal freedom and threat with danger to life or limb) and lack of consent must be made.

22. Austria provides comprehensive support for victims of rape. In December 2020, the guideline on criminal prosecution in the field of domestic violence (often including rape) was updated in order to ensure awareness regarding the specific challenges of handling such cases.

140.31.

23. The application of the existing non-judicial measures provided by the Juvenile Justice Act works well and is sufficient. A further expansion of such measures would be excessive and could even lead to a stricter response to the same behaviour.

**Explanations on some recommendations already supported
on 26 January 2021**

139.6.

24. Austria already ratified the Optional Protocol to the CRC on the involvement of children in armed conflict in 2002.

139.8–139.20.

25. The Ombudsman Board functions as Austria's national human rights institution in line with the Paris Principles. In 2012, the Board obtained the explicit constitutional mandate to protect and promote human rights. At the same time, it was mandated with the functions of the National Preventive Mechanism against Torture under OPCAT.

26. The independence of the Ombudsman Board is constitutionally guaranteed: the three ombudspersons cannot be dismissed during their six-year term of office. Their appointment by parliament guarantees their democratic legitimacy. The nomination of the three ombudspersons by the three largest political parties represented in parliament is addressed in the constitution; in practice, it ensures the right of the opposition to nominate at least one ombudsperson.

27. The Ombudsman Board has its own budget; it recently received additional staff and budget, which further safeguards its independence. The current government programme provides for a strengthening of the Board.

139.35, 139.21, 139.23, 139.24, 139.26, 139.27, 139.29–139.34, 139.36–139.49, 139.56, 139.59, 139.60, 139.62, 139.63, 139.196.

28. Austria attaches great importance to the prevention of and protection against racism, antigypsyism, xenophobia, intolerance and discrimination. Austria therefore continues measures in this area, including the preparation of a National Action Plan against Discrimination and Racism. Furthermore, see explanation on 140.16.

139.41, 139.49–139.60, 139.62, 139.63, 139.86, 139.89, 139.196, 139.200.

29. Combating hate crime, especially online hate speech, is already an Austrian priority. A major step against hate crime, racism and discrimination was taken with the Hate on the Internet Combating Act (in force since 1 January 2021), strengthening criminal law provisions (e.g. unauthorized image recording, hate-postings and cyberbullying), simplifying the investigation of perpetrators and further improving victim protection. Comprehensive changes in civil law include simplified law enforcement in cases of infringements of personal rights. To increase effectiveness of public prosecution, special units for "extremist crimes" were introduced.

139.47.

30. In 2020, staffing in public prosecution increased, in particular to strengthen the fight against hate crime.

139.78.

31. Continuous efforts have been made to advance the fight against terrorism and to further expand the rights of victims of terrorism. The establishment of specialized units for terrorism cases at many public prosecutors' offices led to a significant increase in the efficiency of proceedings.

139.79.

32. Any allegation of mistreatment of inmates is reported. To avoid the appearance of bias, the investigation of such cases is conducted by a public prosecutor's office not located at the correctional institution concerned.

139.80–139.82.

33. The occupancy rate of Austrian prisons was at 99% in March 2020 and was reduced to below 90% during the pandemic. The next amendment to the Penitentiary System Act will expand electronically monitored house arrest and other measures to reduce detention.

139.84.

34. In 2020, staffing in prison increased; additional comprehensive staffing for forensic-therapeutic centres is part of the plans to reform the system of involuntary forensic placement.

139.85.

35. There is comprehensive legal protection for detainees. In addition to numerous rights of the accused in criminal proceedings, there are further rights for detained accused persons (e.g. court decision on pre-trial detention within 48 hours of admission to the correctional facility, right to notify a defence counsel etc.). Information about these rights is provided orally and in writing (information leaflets by police and judiciary). The principle of expeditiousness applies in all criminal proceedings, especially in cases of detention.

139.87.

36. If racial profiling constitutes an act punishable by court, it is prosecuted and punished. In the course of investigative measures by the public prosecutor's office, the consideration of sensitive data, such as data on ethnic origin, is generally prohibited (such data may only be used in exceptional cases, and only if lawfully obtained).

139.89.

37. The Hate on the Internet Combating Act already addresses these issues: more effective remedies against unlawful online content as well as faster and unbureaucratic support for victims are available. A clear legal framework for communication platforms has been established.

139.90.

38. As independence and diversity of the media are guaranteed, Austria currently sees no need for further action.

139.92, 139.94, 139.96, 139.97, 139.98.

39. The multitude of victims' rights and protective measures in criminal proceedings ensures the best possible and needs-based support for different groups of victims (e.g. for particularly vulnerable victims such as children, victims of sexual crimes or of domestic violence).

40. To ensure efficient prosecution of human trafficking, networking between all affected authorities, NGOs and advocacy groups is particularly important – since 2013, an annual exchange has taken place between representatives of law enforcement authorities and specialized victim protection associations.

139.110.

41. Representation of women on the boards: According to the Act on Equality between Women and Men on Supervisory Boards, a gender quota of 30% must be observed for all board members at listed or large (> 1,000 employees) companies.

139.158–139.160, 139.164.

42. Austria attaches great importance to prevention and protection of women from violence. Relevant measures are continued in accordance with the government programme.

139.169, 139.173.

43. See explanations on 139.92 (rights and protective measures for victims) and on 140.30 (guideline on criminal prosecution of domestic violence).

139.195, 139.208, 139.211.

44. Independent legal assistance is guaranteed by law. The framework agreement with the Federal Agency for Care and Support Services also includes organizational safeguards to this end. An advisory council has been set up, providing recommendations to management, to the department for legal assistance and representation and to the MoJ and MoI.

139.199.

45. Improving the protection and legal status of refugee minors is a major concern of the Austrian federal government, which is why the government programme includes this as one of the priorities of this legislative period. It is the federal government's objective to ensure by law that child and youth welfare services can assume custody of unaccompanied minors immediately after their arrival in Austria.

Explanations on some recommendations already noted on 26 January 2021**141.2–141.15.**

46. Austria does not intend to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as it does not sufficiently distinguish between migrants who illegally entered the country and those who are legally present.

141.12, 141.15–141.17, 141.19, 141.20, 141.21.

47. Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR): Respect for economic, social and cultural human rights is a major concern for Austria. By ratifying the ICESCR, the (revised) European Social Charter and other international human rights conventions, Austria has committed itself to comprehensive human rights protection in the ESC field. There are numerous possibilities for individuals to file complaints or appeals on national and European level. The ratification of the Optional Protocol to the ICESCR is still being examined, taking particular note of the jurisprudence of the ICESCR Committee. However, ratification is not envisaged for the time being.

141.15.

48. See explanation on 140.22.

141.18.

49. For OP CRC see explanation on 140.1, for OP ICESCR see explanation on 141.12.

141.26, 141.40, 141.44.

50. See explanations on 139.35 and 139.41.

141.40.

51. See explanation on 140.16.

141.41, 141.42, 141.43.

52. See explanation on 139.35.

141.46–141.53.

53. See first part of explanation on 140.17. The results of the ongoing internal EU consultations on a common approach to "sustainable corporate governance" (Sustainable Corporate Governance Initiative) will be awaited.

141.55, 141.56.

54. In Austria, freedom of religion and religious practice are constitutionally guaranteed (Articles 14 and 15 Basic Law 1867).

141.59, 141.42, 141.57, 141.58, 141.60.

55. On the representation of national minorities in politics and public life: National minority advisory councils for each national minority advise the federal government; members of national minorities hold mandates in general representative bodies and positions in public service. National minorities also organize themselves in private associations, which serve as their "voice" and promote educational and cultural activities.

56. The current government programme provides for the establishment of a working group, involving national minority representatives, to examine the modernization of the national minority representation.

141.61.

57. In view of European and national efforts to step up the fight against online hate speech, decriminalization of relevant individual offences, including defamation (Section 111 Criminal Code), is not envisaged.

141.64.

58. In 2021, funding for national minorities was doubled, with the objective to continuously and sustainably strengthen activities for minority protection. See explanation on 141.65.

141.65.

59. The institutionalised close involvement of national minorities is ensured by law, in particular through the national minority advisory councils also referred to in the current government programme. It is also maintained through a permanent dialogue with the national minorities.

60. On the doubling of funding for national minorities in 2021, see explanation on 141.64.

141.66.

61. The Integration Act 2017 already provides for measures promoting the participation of migrant groups in the social, economic and cultural life of Austria (Section 2 para. 2).

141.70.

62. From a quantitative perspective, statelessness is a rather minor problem in Austria. The majority of determinations of statelessness is already now made by a central authority. Regarding the access to residence permits, the same rules apply to stateless persons as to third-country nationals. Stateless persons who do not possess a valid travel document can be issued an alien's passport. Austria currently sees no need for further action.
