



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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COMMITTEE AGAINST TORTURE

Forty-fourth session

26 April - 14 May 2010

**List of issues to be considered during the examination of the
fourth and fifth periodic reports of AUSTRIA
(CAT/C/AUT/4-5)**

Articles 1 and 4

1. Please update the Committee with respect to the declared commitment of the new Government to legally define torture in full conformity with article 1 of the Convention and to include a crime of torture in the Penal Code. Would this definition include all the elements contained in article 1 of the Convention?
2. Please clarify whether the attempt to commit torture and the complicity or participation in torture are also (with the introduction of the new crime of torture) punished under the criminal law of the State party.
3. Please update the Committee on the envisaged amendment in the Penal Code aimed at incorporating the obligations deriving from the Rome Statute of the International Criminal Court regarding crimes against humanity and war crimes.
4. As requested in the previous concluding observations, please provide the Committee with information on cases of torture and ill-treatment since the consideration of the last report, where the aggravating circumstances as stated in section 33 of the Austrian Criminal Code, including racism and xenophobia, have been invoked in the determination of sanctions for such crimes.

Article 2

5. Please elaborate on the measures taken, if any, to prevent ill-treatment of women in places of deprivation of liberty. Does the State party monitor sexual violence in places of deprivation of liberty and, if so, with what results? Please provide statistical data on the number of complaints received and investigated in this respect during the reporting period, as well as the number of prosecutions and convictions thereof.

6. Please provide the Committee with updated information on the status of the legal aid programme initiated in consultation with the Austrian Bar Association.
7. With reference to paragraph 11 of the previous concluding observations and paragraph 67 of the report of the State party, please indicate:
- (a) Which authority - and at what stage - decides the instances where the defendants may be refused permission to call his or her counsel during interrogation;
 - (b) What is meant by “interference in ongoing investigation” and “corruption of evidence”;
 - (c) What is the evidentiary value of the statements given during the interrogation by the defendant in the absence of counsel;
 - (d) Whether this exclusion may apply to children in police custody.
8. Please provide additional information to the Committee on the measures taken to expand representativeness of the police force through recruitment procedures which would better reflect the gender and ethnic composition of the population. Furthermore, please update the Committee on the results of the initiative taken by the Ministry of Interior in 2007 to encourage applications from naturalized and second-generation immigrants for the Vienna police. Is this initiative going to be replicated elsewhere in the country?

Article 3

9. Please provide information on the number of reported cases of ill-treatment or physical abuse committed by law enforcement officials against asylum-seekers since the consideration of the last periodic report. Please also indicate what the outcome of these reports/complaints have been, including investigations carried out, disciplinary and/or criminal proceedings initiated and sanctions imposed.
10. Please clarify whether and how the new Asylum Law, effective as from 1 January 2006, meets the concerns of the Committee expressed in its previous concluding observations.
11. Please provide the Committee with further information on:
- (a) The content of the Aliens’ Police Act, which has reportedly resulted in an increase in the detention of asylum-seekers as well as of pre-deportation detention;
 - (b) The number of persons below 18 in pre-deportation detention;
 - (c) The measures taken, if any, to adopt a gender and age-sensitive approach to refugee status determination;
 - (d) The construction of a new pre-deportation facility for 250 persons in line with the recommendations made by the Council of Europe Committee for the prevention of torture and inhuman or degrading treatment or punishment (CPT) and the Human Rights Advisory Board (HRAB) with respect to the concept of “open stations”.
12. With respect to paragraph 3 of the comments of the State party on the previous concluding observations of the Committee, please indicate:
- (a) The measures/safeguards taken to ensure that asylum-seekers are not deported/extradited before a decision on their appeal has been taken;

(b) The criteria used by the Independent Federal Asylum Senate to determine whether an asylum-seeker is at risk of refoulement;

(c) How many cases of appeal for a stay of extradition based on possible non-refoulement have been rejected by the Independent Federal Asylum Senate;

(d) To what extent legal aid is provided in the context of deportation and expulsion procedures;

(e) The number of applicants, disaggregated – if possible – by age, gender, ethnicity and country of origin, who have been deported or extradited while awaiting a decision on an appeal of a decision denying asylum based on a procedural issue.

13. Please update the Committee on the case of the extradition to Egypt of Muhammad ‘Abd al-Rahman Bilasi-Ashri - which was stayed pending appeal before the European Court of Human Rights - and indicate:

(a) At what level diplomatic assurances were sought;

(b) The legal enforceability of the guarantees sought;

(c) If there are follow-up monitoring mechanisms in place to assess whether these assurances would be honoured;

(d) How this case is compatible with the statement by the State party that “Austria has never ordered an extradition on the basis of diplomatic assurance for the protection against torture”.

Articles 5 and 7

14. Please provide information on whether domestic legislation may provide for the establishment of universal jurisdiction for the crime of torture. Please provide information on any application of this jurisdiction by the courts.

15. Please provide information on cases where the State party has directly applied the Convention to extradite offenders suspected of having committed acts of torture, or has otherwise established its jurisdiction for the purpose of prosecution of such offenders before the domestic courts.

Article 10

16. Please provide detailed information on training programmes for judges, prosecutors, forensic doctors and medical personnel dealing with detained persons, to detect and document physical and psychological sequelae of torture. Do such programmes include specific training with regard to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, known as the Istanbul Protocol?

17. Please elaborate on the kind of training provided to officials dealing with the expulsion, return or extradition of asylum-seekers.

18. Is there mandatory training provided on racism awareness and cultural diversity for relevant authorities, including law enforcement officials and migration authorities? Furthermore, is there special training provided for, or available to, police officers dealing with victims of racist crimes?

Article 11

19. Please provide updated information on the number of persons and the occupancy rate of all places of deprivation of liberty.
20. Please provide disaggregated statistical data regarding reported deaths in custody according to location of detention, sex, age, ethnicity of the deceased and cause of death since the consideration of the last periodic report. Please make available detailed information on the results of investigations in respect of those deaths, and in particular alleged suicides, and measures implemented to prevent the reoccurrence of similar violations.
21. Please inform the Committee of measures taken to protect and guarantee the rights of vulnerable persons deprived of their liberty, notably women, persons suffering from mental illness and children.
22. Please update the Committee on the result of the work of the group of experts appointed by the Federal Ministry of Justice who are studying the possible reintroduction of the use of Taser X26 stun guns in the penal service.

Articles 12 and 13

23. Please provide disaggregated statistical data since the consideration of the last periodic report regarding reported ill-treatment and/or torture during or after apprehension, according to location of detention, sex, age and ethnicity of the victim. Please also make available detailed information on the results of any investigations undertaken in respect of those allegations as well as on prosecutions and convictions thereof.
24. According to the State party report, only 55 out of 106 recommendations presented since 2003 by HRAB to the Federal Ministry of Interior have been fully implemented. Please clarify what kind of follow-up is given to HRAB recommendations and whether this body can handle individual complaints. If not, is there an independent body tasked with receiving and investigating complaints against law enforcement officials?
25. Please inform the Committee as to the reason why most of the appeals lodged by the public prosecutor's office in the case of Cheibani Wague were denied in their entirety by the Vienna Higher Provincial Court. Could you also provide more information on the reasoning behind the conviction in this case of an emergency physician and a police officer for the crime of "involuntary manslaughter" with a suspended sentence of only a few months?
26. With respect to the conviction of four security police officers for the ill-treatment of Bakary J, please indicate:
 - (a) The type of crime the officers were charged with and convicted of, as well as the reasoning behind the determination of a suspended sentence of only a few months;
 - (b) On what grounds the Disciplinary Senate denied the request of the Disciplinary Ombudsperson that the accused officers be dismissed from office;
 - (c) What have been the developments, if any, before the Higher Disciplinary Commission after the Administrative Court accepted the claim of the Disciplinary Ombudsperson and asked it to reconsider the case?

(d) Why the victim has not received any compensation yet, despite the fact that he was awarded EUR 3,000 by the Court for the damages resulted from the pain and suffering.

27. Please clarify what happens once the public prosecutor's office and the Office for Internal Affairs are informed of all complaints regarding alleged abuses by law enforcement officials.

Article 14

28. Please provide statistical information on compensation provided to victims of torture or cruel, inhuman or degrading treatment that has occurred in the State party since the consideration of the last periodic report. Please also indicate how this breaks down according to sex, age and ethnicity.

29. Please clarify whether the right to compensation depends on the existence of a judgment in criminal proceedings ordering compensation. Can compensation be obtained by a victim of torture or cruel, inhuman or degrading treatment if the perpetrator has been subjected to a disciplinary, but not to a penal, sanction?

30. Please provide more information on the services available for the treatment of trauma and other forms of rehabilitation of torture victims.

Article 16

31. Please describe measures taken to combat racism and discrimination, in particular racially motivated ill-treatment or violence against ethnic minorities, including at the hands of law enforcement or public officials. In this respect, please also provide information on the number of complaints, investigations, prosecutions, convictions and sanctions applied in cases of allegations of racially motivated ill-treatment or violence.

32. Please comment on measures taken to tackle violence against women. Has the State party introduced a comprehensive strategy to combat all forms of violence against women, including domestic violence, as recommended by the Committee on the Elimination of Discrimination against Women in 2007?

33. Please provide information on any independent inspections of psychiatric institutions and their follow-up, and elaborate on the bodies undertaking these activities. Please also elaborate on their findings and describe the situation of patients, including the use and extent of any coercive measures.

34. Please inform the Committee of any concrete measure aimed at ensuring that deprivation of liberty for children is always a measure of last resort used for the shortest appropriate period of time. Please also indicate whether alternative measures to detention are applied and whether children deprived of liberty are systematically separated from adults.

35. Please provide information, disaggregated by sex, age, ethnicity or origin of victims, on the number of complaints, investigations, prosecutions, convictions and sanctions applied in cases of human trafficking and commercial sexual exploitation since the consideration of the last periodic report.

36. Please provide statistical data on inter-prisoner violence since the review of the last periodic report. What measures have been taken to prevent such violence?

Other

37. Please indicate whether there is legislation in the State party aimed at preventing or prohibiting the production, trade, export and use of equipment specifically designed to inflict torture or cruel, inhuman or degrading treatment. If so, please provide information about its content or implementation. If not, please indicate whether the adoption of such legislation is being considered.

38. With reference to paragraph 4 of the State party report, please inform the Committee as to whether there are any developments concerning the ratification by the State party of the Optional Protocol to the Convention, which the State party signed in September 2003. If so, has the State party adopted measures to set up or designate a national mechanism whose members would conduct periodic visits to places of detention in order to prevent torture or other cruel, inhuman or degrading treatment?

39. Please provide information on the legislative, administrative and other measures taken by the State party in response to the threat of terrorist acts and explain how it has ensured that these measures have not affected human rights safeguards in legislation and in practice. In that connection, the Committee would recall Security Council resolutions 1456 (2003), 1535 (2004), 1566 (2004) and 1624 (2005), in the first of which the Council stated that States “must ensure that any measure taken to combat terrorism comply with all their obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee and humanitarian law”. Please describe the relevant training given to law and order officials, the number and type of sentences handed down in accordance with the law and the legal resources available to persons who have been the object of anti-terrorism measures. Please also state whether there have been claims of non-compliance with international law in this respect, and the result of such claims.
