



**International Convention on
the Elimination of All Forms
of Racial Discrimination**

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Summary record of the 2189th meeting

Held at the Palais Wilson, Geneva, on Wednesday, 22 August 2012, at 3 p.m.

Chairperson: Mr. Avtonomov

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The meeting was called to order at 3 p.m.

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

*Combined eighteenth to twentieth periodic reports of Austria (CERD/C/AUT/18-20;
CERD/C/AUT/Q/18-20)*

1. *At the invitation of the Chairperson, the delegation of Austria took places at the Committee table.*
2. **Ms. Ohms** (Austria) said that her country employed a twofold approach in its fight against racism, prevention and protection, and assistance to victims. Its activities were based on dialogue and sustainable social equilibrium. The Austrian Government sought to set a good example, by avoiding racist statements and condemning verbal radicalism. Two members of the Government were Burgenland Croats and the State Secretary for Integration was an ardent advocate of comprehensive solutions to racism, discrimination and intolerance. The Austrian Government's social partnership model which aimed to guarantee a minimum income and high-quality education and health care for all. Measures were in place to provide members of minorities with access to the labour market. Austria drew a distinction between ethnic minorities and immigrant communities and responded to each group accordingly.
3. The National Action Plan for Integration had been adopted in 2010 to support and strengthen measures taken by the federal Government along with the regions, cities, social partners and civil society organizations, to provide equal opportunities for all immigrants. Integration indicators had been developed in the spheres of education, employment and health. Since 2008, the Integration Report had been providing comprehensive statistical data on the composition of Austrian society, and permitted the authorities to know the names, places of origin and circumstances of foreigners. According to the Integration Report 2012, which took stock of measures taken so far, the 20 projects designed to promote the integration of immigrants had begun to bear fruit.
4. The Austrian educational system was of high quality, and access to education bore no relation to citizenship, origin, ethnicity or, social or financial background of students or their families. The core values of democracy, humanity, solidarity, peace, justice, openness and tolerance were enshrined in the Constitution. Human rights courses were offered to encourage citizens to take a stand against racism. A number of measures had been adopted for foreign students: general measures to enhance equality of opportunity for all students; and targeted measures to promote academic success by students whose first language was not German. The next national Education Report, to be published in December 2012, would give a detailed insight into indicators that would facilitate policy decisions in the field of education.
5. In the labour market every effort was made to avoid discrimination based on ethnicity or race. All foreign nationals received the same treatment as Austrian workers, once they were authorized to work in the country. The Public Employment Service had placed more emphasis on qualification and training for immigrants in recent years. The Human Rights Advisory Board, an independent body whose mandate was to monitor the activities of law enforcement officials from a human rights perspective, had been transferred to the Ombudsman Board to strengthen its independence. Legislative measures had been adopted to better combat racism and to launch prosecutions when complaints of racist acts were filed. Section 283 of the Criminal Code had been amended to provide a new definition of the elements constituting an offence of incitement to hatred. The new criminal provisions, which had entered into force in January 2012, expanded the scope of prohibition

of incitement and broadened the range of protected persons and groups to cover many factors (race, skin colour, language, sex, age and sexual orientation, among others).

6. The administrative prohibition of discrimination had also been tightened. Article III of the Introductory Act to the Administrative Procedure Acts 1991, had been amended to permit proceedings to be instituted for discriminatory acts and practices even if such factors as race, skin colour, ethnic origin, nationality or religion were not the only motive, but an additional motive. The mandate of the Equal Treatment Commission and of the Ombudsman Board had been expanded and would henceforth also apply to persons who were victims of discrimination because of their close relationship to persons protected on the basis of their ethnicity or religion.

7. Negotiations on the display, in Carinthia, of place name signs in Slovenian and German had at last come to a conclusion in April 2011. Under the law, some public entities were required to use Croatian, Slovenian and Hungarian, in addition to German, as official languages, if so requested. The Employment of Foreigners Act, whereby foreigners were the first to be laid off in the event of staff reductions, had been abolished. Labour market access had been eased for victims of human trafficking, and persons entering Austria for the purpose of family reunification. Employment opportunities for foreign students had been expanded.

8. **Mr. Lahiri** (Country Rapporteur) recalled that racism and xenophobia had had a long history in Austria. Two far-right parties, the Austrian Freedom Party (FPÖ) and the Alliance for Austria's Future (BZÖ), were currently very popular and seemingly regarded as mainstream democratic parties. In recent years, police officers had been tried in cases of ill-treatment of foreigners, but the verdicts had been mild. Many questions could be asked about racism in the Austrian police force. In general, persons of African or Asian descent were victims of prejudice, by and large orchestrated by the communications media, the received wisdom being that they were responsible for the drug trade in Austria. Since the enactment of the Asylum Act in 1992, and the institution of yearly quotas for residence permits, net immigration to Austria had dramatically reduced, not exceeding 10,000 persons annually. The number of foreign nationals legally resident in the country was slightly over 10 per cent of the population.

9. The report contained no disaggregated data on the ethnic make-up of the population, although in previous concluding observations (CERD/C/AUT/CO/17, para. 9), the Committee had called on the State party to conduct censuses and collect data on the use of mother tongues and other indicators of ethnic diversity. He regretted that the State party continued to refuse to take survey ethnicity in its censuses, for historical reasons. The delegation might wish to comment on that matter. In its views on the UPR recommendations (A/HRC/17/8/Add.1), Austria had declined to develop a national action plan against racism in accordance with the Durban Declaration and Programme of Action because on the ground that it already had a National Action Plan on Integration. That plan's measures to prevent racial discrimination left much to be desired, and could not aspire to replace a national action plan against racism. He also regretted the absence of a mechanism to ensure systematic follow-up to and implementation of the Committee's concluding observations. He would appreciate the delegation's views on that topic.

10. Information before the Committee showed that the criminal justice system was still characterized by institutionalized racism, that the State party had not yet created a credible mechanism to investigate racial misconduct by law enforcement officials, and that the perpetrators of such acts were not prosecuted or, if they were, the punishments were very light, which contributed to the climate of impunity. He welcomed, however, the new regulations requiring prosecutors to alert the Ministry of Justice to all cases in which an aggravating circumstance cited in section 33, paragraph 5, of the Criminal Code, such as racism, was present. However, since the police generally did not state in their investigative

reports that the offence had been racially motivated, the prosecutors did not apply the new regulation. It would be interesting to know whether the State party had taken measures to remedy that situation. A reading of paragraph 35 of the report revealed that the State party had amended section 283 of the Criminal Code in response to one of the recommendations formulated by the Committee in its earlier concluding observations (CERD/C/AUT/CO/17, para. 15). He noted with concern, however, that section 283 as amended now covered acts that incited racist violence affecting a “broad public” – not 10 persons as in the past. In consequence, acts inciting racial hatred in which the public could not be considered “broad” no longer fell within the scope of section 283 of the Criminal Code. Explanations from the delegation on that topic would be welcome.

11. Recalling that the Committee had recommended that the State party should take measures guaranteeing persons of African descent, Latin-Americans and Roma access to public places (CERD/C/AUT/CO/17), he pointed out that, according to reports, “foreigner quotas” were still being applied by managers of public establishments, in other words, that they allowed only a limited number of persons of foreign extraction to enter their establishment. Article 87 of the Commerce Code, which provided that a license could be withdrawn from its holder in the event of a serious violation of provisions prohibiting racial discrimination, seemed never yet to have been applied. Additional information would be welcome on that point. Although the Asylum Court was still clogged, the State party had undertaken to improve its structure so as to clear the backlog of pending asylum requests and appeals. The delegation might indicate the current situation and whether measures had been taken to guarantee the independence of the Ombudsman Board, which the International Coordinating Committee of National Human Rights Institutions had demoted from “A status” to “B status”. Lastly, he would like further information on concrete measures to give effect to circular No. 19/2008 of the Federal Ministry for Education, Arts and Culture, which specified that the lack of command of the language of instruction must never be a criterion for sending pupils to special needs schools.

12. **Mr. Murillo Martínez**, referring to paragraph 3 of the report, asked whether the State party was planning to initiate reforms to permit the Convention to be directly applied in the domestic courts. He noted that the term “association with a national minority” was not defined in the Act concerning Equal Treatment in the Public Service Sector; according to paragraph 8 of the report, however, that gap was filled by the jurisprudence. The delegation might cite court rulings that had contributed to the evolution of the law in that area. He also wondered whether there had been any follow-up to the dialogue with the civil society on the occasion of the universal periodic review (UPR). He was surprised that Austria had not accepted 20 or so of the UPR recommendations (document A/HRC/17/8/Add.1), several of which concerned racial discrimination. He would also like more information on how the affirmative action mentioned in paragraph 14 of the report was specifically applied, and wished to know whether the Committee’s general recommendation No. 32 on the meaning and scope of special measures (CERD/C/GC/32) had been borne in mind in the formulation of such action.

13. Welcoming the repeal of the provisions in the Employment of Foreigners Act stipulating that in case of staff cuts, foreigners should be the first to be laid off, he asked the delegation how the results of that amendment were specifically reflected in statistics. He would also like more comprehensive information about the working groups for equal treatment issues that had been set up in all universities. It would also be useful to know the progress made in the ratification of the United Nations Educational, Scientific and Cultural Organization Convention against Discrimination in Education (UNESCO). More information would be welcome on projects dealing with relations between the police and Africans, mentioned in paragraph 22 (b) of the report, and on tutoring programmes for Roma, mentioned in paragraph 30, which meant that there were no longer any Roma children from Burgenland in the schools for children with special educational needs. He

also enquired whether the Additional Protocol to the Council of Europe Convention on Cybercrime, to which Austria was a party, and the Code of Ethics of the Austrian press, were used to combat the dissemination of racist ideas on the Internet. The delegation might comment on the charts on racist offences in paragraphs 44 and 45 of the report, it being difficult to grasp how the situation was developing. It could also provide more fuller information on Austria's activities to combat anti-Semitism, and might describe the results of the implementation of the Ethnic Groups Act, which provided for advisory boards composed of representatives of ethnic groups to advise the Government on matters affecting them. In conclusion, what activities had Austria carried out for the International Year for People of African Descent, and how had it contributed to preparations for the Decade for People of African Descent?

14. **Mr. Diaconu** asked why racial anti-discrimination legislation was not applied in the many cases in which political parties delivered racist speeches. The Ombudsman Board had formulated important recommendations on protection from discrimination, but funds were apparently in short supply and only the Vienna Office had the resources to fight discrimination. The delegation could perhaps explain. He noted that the University experts and groups were working to codify Romani, with a view to teaching in that language; nonetheless, Austria had rejected the relevant UPR recommendation. A clarification from the delegation would be welcome. He noted with satisfaction that bilingual road signs (in Slovenian and German) would be put up in the parts of Kärnten where at least 17.5 per cent of the population was multilingual; he would, however, like an explanation of the use of the word "multilingual".

15. **Mr. de Gouttes** said that, in view of the importance that the State party seemed to attach to the European Convention on Human Rights, the delegation might cite cases in which the courts had applied article 14 of that Convention in conjunction with the requirements of the Convention on the Elimination of All Forms of Racial Discrimination. He would like additional information on the State party's measures and strategies to stem the tide of xenophobic rhetoric in politics, especially by populist parties, and against Africans, Muslims and Roma. Since the report invoked the well-established jurisprudence of the Austrian Constitutional Court concerning the implementation of the Convention at the federal level, the delegation might furnish some examples of judgements. Noting that the Associations Act prohibited the founding of associations that condoned or incited racial hatred, he would like the delegation to specify the type of associations that had been banned and indicate whether the Act could be invoked against extremist political parties.

16. The investigative powers of the Ombudsman Board appeared to be restricted to matters concerning implementation of the Optional Protocol to the Convention against Torture; in that regard, he wondered whether cases other than those involving torture were investigated. He noted with satisfaction that funding granted under the Journalism Subsidy Act could be revoked in cases where texts inciting hatred were published, and enquired whether that measure was applicable to political parties as well. If so, he would like examples of parties whose subsidies had been revoked. Observing with interest that section 33, paragraph 5 of the Criminal Code listed racist and xenophobic motives as special aggravating circumstances to be taken into account in determining the punishment, and that prosecutors were expected to report to the Federal Ministry of Justice all cases in which such an aggravating circumstance came to bear, he asked the delegation to give examples of such cases. Lastly, he would like to know more about the human rights training given to teenagers likely to become extremists.

17. **Mr. Thornberry** asked the delegation to confirm NGO claims that the word "race" had been removed from certain federal laws, and to clarify on the statement in paragraph 8 of the report that protection from discrimination on grounds of ethnicity applied to all persons who were perceived as foreign. While welcoming the affirmative action

contemplated in the Equal Treatment Act; he would like to know, whether it was obligatory if the circumstances so warranted, or optional. Lastly, did the State party still stand by its declaration interpreting article 4 of the Convention.

18. **Mr. Kut**, noting that the Federal Constitutional Law prohibited distinctions among aliens, requested clarification of the term “aliens”: should it be understood that the law made no distinction between aliens and nationals? He would also like to know which groups the State party considered at risk of racial discrimination. The adoption by the provinces of Vienna and Tyrol of their own anti-discrimination laws raised the nice question of the application of international and national legislation within a federal structure. Austria’s international obligations to provide protection against racial discrimination applied to Austria’s entire territory. Had application of the legal framework relating to discrimination — specifically the Equal Treatment Act, the Equal Treatment Commission and the Ombudsman Board — been evaluated? As for police brutality, in previous concluding observations the Committee had recommended that the State party should consider establishing an independent monitoring body to investigate complaints against the police, but the State party had not followed through. The delegation might wish to elaborate.

19. **Mr. Lindgren Alves** surprised at the absence of NGO representatives in the meeting room, asked the delegation if it suggested a lack of interest. He asked how the State party prohibited neo-Nazi activism while apparently tolerating neo-Nazi groups. He would also like clarifications of the State party’s distinction made between ethnic minorities and immigrant communities. As he understood it, ethnic minorities being completely integrated into Austrian society, racist acts were mostly directed against immigrants; therefore, which particular group was targeted in anti-discrimination legislation? He would also be grateful for details on indicators developed under the National Action Plan for Integration. Lastly, were immigrants, in order to be considered “integrated”, required to shed their culture of origin or did their learning German and adopting the basic values of Austrian society suffice?

20. **Mr. Amir** asked what measures Austria envisaged for bringing legislation on aliens into line with European standards, in particular the European Convention on the Legal Status of Migrant Workers.

21. **The Chairperson**, speaking in his capacity as a Committee member, pointed out that paragraph 6 of the report indicated that the Federal Constitutional Law on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination of 1973 prohibited any distinction among aliens that could not be justified by facts. The delegation could perhaps explain the exact meaning of the expression “factual reasons”, and why such a distinction about Austrian nationals was not also prohibited. Additional information on the number of cases in which racist or xenophobic motives had been considered aggravating circumstances in the determination of a punishment would be useful.

22. **Mr. Vázquez** asked the Austrian delegation whether it had entered reservations or made declarations with respect to any articles of the Convention.

23. **Mrs. Köck** (Austria) said that the Federal Constitutional Act of 1973 was one of the founding texts of the Austrian legal framework and that the prohibition to establish any distinctions whatsoever among aliens, was not “justified by facts”, purported to prohibit any arbitrary act. That provision, which originally referred only to Austrian nationals, had been extended to include foreigners so that they benefited from the same legal protection as nationals. All immigrants enjoyed the same rights as Austrians and equal protection under the law.

The meeting rose at 12 p.m.