



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

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COMMITTEE AGAINST TORTURE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

Conclusions and recommendations of the Committee against Torture

AUSTRIA

1. The Committee considered the third periodic report of Austria (CAT/C/34/Add.18) at its 679th and 680th meetings (CAT/C/SR.679 and 680), held on 16 and 17 November 2005, and adopted, at its 691st meeting held on 24 November 2005, the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the submission of the third periodic report of Austria, which was prepared in accordance with the Committee's guidelines. It notes, however, that the report was submitted with a three-year delay. The Committee appreciates the constructive dialogue with the high-level delegation and commends the comprehensive written responses provided to the list of issues (CAT/C/35/L/AUT), as well as the oral information provided by the State party's delegation during the consideration of the report.

B. Positive aspects

3. The Committee welcomes the assurances of the State party regarding the relationship between the observance of human rights standards and the fight against terrorism, that it will adhere strictly to the guidelines adopted in 2002 by the Council of Europe on human rights and the fight against terrorism, and that it will work during its presidency of the European Union (January-June 2006) to further strengthen the commitment towards the absolute nature of the prohibition of torture.

4. The Committee notes with satisfaction the ongoing efforts made by the State party to revise its legislation and adopt other necessary measures in order to ensure better protection of human rights and give effect to the Convention, including:

(a) The adoption of the Criminal Procedure Reform Act and the amendments to the Code of Criminal Procedure, both of which will come into effect on 1 January 2008. In particular, the Committee welcomes the new provisions regarding:

- (i) The prohibition of the use of statements that were obtained by means of torture, coercion, deception or other inadmissible methods of interrogation to the detriment of the defendant;
- (ii) The express reference to the right of the defendant to remain silent;
- (iii) The right to contact a lawyer prior to the interrogation;
- (iv) The right of the defendant to be assisted by an interpreter;
- (v) The provisions regarding the separation of remand prisoners from other prisoners;

(b) The issuing of an information sheet for detainees in 26 different languages informing them about their rights;

(c) The new measures taken to improve conditions of detention, including the establishment of “open units” in police detention centres;

(d) The new regulations on deportation procedures banning, inter alia, the use of any means blocking the respiratory system and providing for the medical examination of the alien prior to the flight, as well as for the observance of the proportionality principle in exercising measures of coercion. In particular, the Committee welcomes the involvement of relevant non-governmental organizations during the deportation process;

(e) The new measures adopted to prevent ill-treatment of persons in police custody, including the ongoing revision of the Detention Regulations with a view to introducing alternative means of restraint, as well as the introduction of human rights aspects in training programmes for law enforcement personnel;

(f) The new initiatives taken to address and prevent trafficking in human beings, in particular that victims of trafficking are regularly granted residence permits on humanitarian grounds, as well as the fact that the State party’s authorities have not restricted the definition of trafficking only to cases of sexual exploitation but include other forms of exploitation;

(g) The publication in July 2005 of the last report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the State party’s responses to it.

5. The Committee also welcomes:

(c) The signature of the Optional Protocol to the Convention in September 2003, as well as the oral assurances given by the State party's representatives that ratification is envisaged shortly;

(b) The ratification of the Rome Statute of the International Criminal Court in 2001.

C. Subjects of concern and recommendations

Definition of torture

6. Notwithstanding the State party's assertion that all acts that may be described as "torture" within the meaning of article 1 of the Convention are punishable under the Austrian Penal Code, the Committee observes that a definition of torture as provided by article 1 of the Convention is still not included in the Penal Code of the State party.

The Committee reiterates its previous recommendation (A/55/44, para. 50 (a)) that the State party should establish adequate provisions in order to legally define torture in accordance with article 1 of the Convention, and criminalize it in accordance with article 4, paragraph 2, of the Convention.

Non-refoulement

7. The Committee is concerned about information that the new Asylum Law, which entered into force in May 2004, could increase the risk of refugees being sent to supposedly safe third countries, that asylum-seekers could be deported before a decision on their appeal has been taken, and that the possibility of presenting new evidence during the hearing is limited.

Since the Constitutional Court has declared some of the Act's articles unconstitutional, the State party is requested to provide the Committee with information on the measures it intends to take to rectify this.

8. The Committee regrets the reported extraditions carried out by the State party after receiving diplomatic assurances from the requesting country.

The State party should provide the Committee with detailed information on cases of extradition or removal subject to the receipt of diplomatic assurances since 1999. Additionally, the State party should provide the Committee with detailed information on cases of denial of extradition, return or expulsion owing to the risk that the person might be subjected to torture, ill-treatment or the death penalty upon return.

9. The Committee is concerned at the limited guarantees for women asylum-seekers to be interrogated by female officers.

The State party should take the necessary measures to extend the guarantee that women asylum-seekers will be interviewed by women officers to all instances.

Prompt and impartial investigation

10. The Committee expresses concern about the lack of prompt investigation of certain cases of torture and ill-treatment committed by law enforcement officials, as well as about the penalties imposed on perpetrators, in particular with reference to the death in custody in 2003 of Mr. Cheibani Wague. With regard to this case, the Committee notes with deep concern:

(a) The delay between July 2003, when the pretrial investigation was conducted, and July 2005, when the court hearings started;

(b) The lenient sentence pronounced on 9 November 2005, taking into account that racial motives could not be excluded.

The State party should:

(a) **Ensure that criminal complaints regarding torture and ill-treatment lodged against its law enforcement authorities are resolved expeditiously;**

(b) **Inform the Committee whether an appeal was lodged by the Public Prosecutor and of the result of the appeal.**

Review of interrogation rules, instructions, methods and practices

11. The Committee is concerned about the restrictions on the right of an arrested person to have counsel present during interrogation if “there is some evidence to suggest that the presence of counsel would jeopardize further investigative steps”.

The Committee urges the State party to take all necessary legal and administrative guarantees to ensure that this restriction will not be misused, that it is used only in the case of very serious crimes, and that it is always authorized by a judge.

The State party should provide in its next periodic report additional information concerning the standardization of techniques used to interrogate persons in police custody and the implementation of new techniques, particularly the use of video-recording of interrogations, which the Committee encourages the State party to continue but not as an alternative to the presence of counsel. Additionally, the Committee requests details on the measures taken to monitor and evaluate the use of the techniques referred to.

12. The Committee is particularly concerned about the inadequacy of the legal aid system.

The Committee urges the State party to implement the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment to establish a fully fledged and properly funded system of legal aid.

13. The Committee is concerned at the reported physical presence of police officers during medical examinations of persons in police custody.

The State party should take appropriate measures to ensure that police officers are not present during medical examinations of persons under police custody in order to guarantee the confidentiality of medical information, save under exceptional and justifiable circumstances (i.e. risk of physical aggression).

14. The Committee is concerned about the conditions of detention of juveniles, particularly that persons under 18 in places of detention are not always separated from adults.

The State party should:

- (a) Develop alternative measures of detention for juveniles;**
- (b) Ensure strict separation of juveniles and adults in places of detention;**
- (c) Take preventive measures to avoid physical ill-treatment of juvenile detainees, including adequate training of officers dealing with juveniles;**
- (d) Issue clear instructions from senior officers, both oral and written, that abusive conduct towards juveniles will not be tolerated.**

Prevention of acts of cruel, inhuman or degrading treatment

15. The Committee is concerned about the reported attitudes of racism and intolerance towards foreigners manifested by some law enforcement officials, such as cases of verbal abuse of Roma and people of African descent.

The State party should continue to be vigilant in ensuring that the relevant existing legal and administrative measures are strictly observed and that training curricula and administrative directives constantly communicate to staff the message that verbal and physical ill-treatment will not be tolerated and will be sanctioned accordingly, and that racial motivations will aggravate the offences.

The State party should provide the Committee with data on cases of torture and ill-treatment where the aggravating factors as stated in section 33 of the Austrian Criminal Code, including racism and xenophobia, have been invoked in the assessment of punishment of offences.

16. The Committee regrets the fact that for numerous areas covered by the Convention, the State party was unable to supply statistics, or appropriately disaggregate those supplied (e.g. by age, gender and/or ethnic group). During the current dialogue, this occurred with respect to, for example, cases of rejection of extradition requests for fear of torture, cases of expulsion of foreigners and asylum-seekers who have been returned. The State party was also unable to provide detailed information on cases of sexual violence and on investigations, prosecutions and punishment of perpetrators of such violations.

The State party should take such measures as may be necessary to ensure that its competent authorities, as well as the Committee, are fully apprised of these details when assessing the State party's compliance with its obligations under the Convention.

17. The Committee notes with concern the reported delay of Länder authorities in adapting their legislation and administrative framework to implement measures taken at the federal level with the aim of enhancing compliance with the Convention. The Committee is particularly concerned that, owing to perceived constitutional difficulties arising from the division of powers between federal and Länder authorities, comprehensive federal provisions regarding the basic needs of refugees, including health assistance, contained in the amended Federal Care Act (2005) as well as in the Agreement on Basic Support (2004) between the Federal Government and the Länder, have until now been adopted in only two Länder.

The State party should provide the Committee with information about the status of enactment of appropriate legal provisions by the Länder authorities regarding protection of the measures to meet the basic needs of refugees.

Additionally, the State party should take such measures as are appropriate to ensure that what are considered to be the basic needs of asylum-seekers are not diminished as a result of the amended Federal Care Act of 2005.

Request for information

18. **The Committee recommends that the State party submit information on the outcome of the criminal proceedings in the case of the Austrian CIVPOL officer charged with serious ill-treatment of an ethnic Albanian detainee during his service with the United Nations Mission in Kosovo, the disciplinary measures taken during the proceedings and after, as well as the compensation awarded to the alleged victim.**

19. The Committee encourages the State party to continue to contribute to the United Nations Voluntary Fund for the Victims of Torture.

20. The State party is encouraged to disseminate widely the reports submitted by Austria to the Committee and the conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations.

21. The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 7, 8, 10 (b), 12, 15 (b) and 17 (a) above.

22. The State party is invited to submit its next periodic report, which will be considered as the combined fourth and fifth report, by 31 December 2008, the due date of the fifth periodic report.
