

Council of Europe contribution for the 23rd UPR session regarding Austria

Prevention of torture

On 11 February 2010, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published the report on its visit to Austria from 15 to 25 February 2009, together with the Austrian Government's response (both documents are attached below).

In the report, the CPT reviewed the measures taken by the Austrian authorities following the recommendations made by the Committee after previous visits. In this connection, particular attention was paid to the treatment of persons detained by the police and to the conditions of detention under which foreign nationals are held in police detention centres. The CPT also examined in detail various issues related to prisons, including the situation of juvenile prisoners. In addition, the report covers visits to a civil psychiatric hospital and – for the first time in Austria – to a social welfare institution for persons with learning disabilities.

A complete list of the CPT's recommendations, comments and requests for information is contained in Appendix I to the report.¹



Austria report
2009.pdf



Austria response
2009.pdf

Council of Europe Commissioner for Human Rights

On 11 September 2012, the Commissioner for Human Rights, Nils Muižnieks released the report on his visit to Austria from 4 to 6 June 2012.²

The Commissioner's report focuses on following major human rights issues:

- National systems for promoting and protecting human rights³
- Human rights of asylum seekers⁴
- Human rights of persons with disabilities⁵
- Women's rights⁶
- Human rights of older persons⁷.

On each of these issues the Commissioner provides specific conclusions and recommendations.⁸

Upon releasing his report, Nils Muižnieks said that "despite a well-established human rights system, Austria still needs to bridge some remaining gaps, in particular as concerns the rights of asylum-seekers, women and persons with disabilities". "Access of asylum-seekers to the labour market should be extended, including by granting young asylum-seekers permission to take up an apprenticeship and thus benefit from vocational training. The quality of free legal aid and representation could also be strengthened and made available during the entire asylum procedure and thereafter, including during deportation procedures."

Noting that the basic needs of asylum-seekers are satisfied, the Commissioner encourages the authorities to ensure adequate living conditions throughout the entire country. Increased attention

¹ pp. 63-77.

² A summary of the report appears on pp. 2-3.

³ paras. 5-13.

⁴ paras. 14-21.

⁵ paras. 22-33.

⁶ paras. 34-48.

⁷ paras. 49-56.

⁸ paras. 57-83.

should also be paid to the needs of unaccompanied and separated asylum-seeking children. "The best interests of the child should be the primary consideration in all decisions. The Austrian authorities should ensure that all unaccompanied minors are systematically and without undue delay appointed a guardian throughout their entire stay in Austria."

The current drafting of a National Action Plan for Persons with Disabilities aiming at further implementing the respective UN Convention is a welcome development. The Commissioner stresses that "it is particularly important to ensure that the applicable standards are adhered to in all Länder." The authorities should also further the system of inclusive education of persons with disabilities, reinforce measures for securing independent living and inclusion in the community as well as for providing access to the built environment and general services. The Commissioner furthermore encourages the Austrian authorities to pursue their efforts towards establishing a system of supported decision-making for persons with psychosocial or intellectual disabilities. Despite measures taken to achieve gender equality, progress appears to be rather slow. Women are still under-represented in politics and earn about 25% less than men. "Lack of quality full-time childcare and gender stereotypes remains major barriers to gender equality. These obstacles must be removed." The Commissioner is also concerned by the fact that violence against women, including spousal abuse, remains a problem in Austria, in spite of the continuous measures taken to combat this problem. "The authorities should monitor this phenomenon better and ensure continuous training of law enforcement officials to strengthen prevention, protection and prosecution."

Underpinning the necessary efforts to close these gaps is a well-functioning system for the protection and promotion of human rights. The Commissioner commends Austria's well-established system, which is being further complemented by a strengthening of the Austrian Ombudsman Board. In the field of combating discrimination, however, "there is still room for improvement: the Austrian authorities should afford the same level of protection across the different grounds of discrimination and ratify Protocol No. 12 to the European Convention on Human Rights", which provides for a general prohibition of discrimination.

The Commissioner's report on his 2012 visit to Austria appears below.



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Fight against racism and intolerance

On 2 March 2010, the European Commission against Racism and Intolerance (ECRI) published its fourth report on Austria.⁹ ECRI's Chair, Nils Muiznieks, said that while there has been progress in certain areas, the prevalence of racist discourse, the disadvantaged position of non Austrian children in education and the lack of a comprehensive integration policy remain sources of concern.

As regards positive developments, Austrian anti-discrimination legislation had been strengthened thanks to the adoption of Equal Treatment Acts in each of the nine Länder. Some of these offer broader protection against discrimination than at federal level and provide access to newly created or reinforced specialised bodies.

The authorities had pursued their efforts to provide the police and the judiciary with training on criminal legislation against racism and xenophobia. Steps had been taken to recruit police officers with an immigrant background, which is encouraging.

⁹ A summary of the report can be found on pp. 7-10.

Measures had been adopted at local level to facilitate immigrants' integration. German language support had been provided to children with an immigrant background. In addition, access to employment had been facilitated for persons arriving in Austria for the purpose of family reunification.

At the same time, racism in public discourse remained a worrying issue, in the absence of an adequate response by the authorities. Far-right political parties had openly exploited prejudice against minorities, immigrants, refugees, asylum seekers, Jews and Muslims and their statements had not been always condemned by mainstream political parties in a sufficiently strong manner. In addition, some media had contributed to creating an atmosphere of hostility against members of minority groups and asylum seekers. Austria did not have an effective press self-regulatory body, the Press Council having stopped functioning since 2002.

Non-Austrian children still found themselves in a disadvantaged position in the education system and their over-representation in schools for pupils with special needs is a problem. There continued to be major disparities between citizens and non-citizens in the field of labour. Discriminatory practices in the field of housing and employment, for example advertisements, were still common and had not been adequately addressed.

There was still no comprehensive integration policy at federal level and the obligation to fulfil an "integration contract" in order to obtain a residence permit was too coercive and did not include enough incentives to promote integration. Austria's family reunification policy was on the whole too restrictive and the quota system for family reunification inappropriate.

Although it was well-developed, Austrian legislation in the field of discrimination remained highly fragmented and complex; this undermines its effectiveness. The Commission for Equal Treatment and the Ombudspersons for Equal Treatment lacked the structural independence required to command full public confidence. The same was true for the Bureau for Internal Affairs which deals, among other matters, with allegations of ill-treatment by the police.

The report contained findings and recommendations regarding the following issues:

- Existence and implementation of legal provisions¹⁰
- Discrimination in various fields including education, employment, housing and goods and services intended for the public¹¹
- Racism in public discourse¹²
- Racist violence¹³
- Vulnerable/target groups including black persons, Muslims, Jews, Roma, other, national minorities: migrants and asylum seekers¹⁴
- Antisemitism¹⁵
- Conduct of law enforcement officials¹⁶
- Monitoring racism and racial discrimination, awareness-raising and cooperation with NGOs¹⁷

In its report, ECRI made a number of recommendations, three of which require priority implementation and would be revisited by ECRI in two years' time:

¹⁰ paras. 1-41.

¹¹ paras. 42-70.

¹² paras. 71-87.

¹³ paras. 88-89.

¹⁴ paras. 90-131.

¹⁵ paras. 132-133

¹⁶ paras. 134-148.

¹⁷ paras. 149-152.

- Provide the Ombudspersons for Equal Treatment with sufficient financial and human resources, the guarantees that make them fully independent and the power to apply to the courts;
- Promote, without encroaching on the principle of media independence, the reestablishment of a regulatory mechanism for the press that would ensure respect of ethical standards;
- Improve the response to allegations of racist or racially discriminatory behaviour by the police, by measures such as establishing an independent body with powers to investigate individual complaints.

Subsequently, on 19 February 2013, ECRI adopted conclusions on the implementation of these recommendations for which priority follow-up was requested.

ECRI's report on Austria, including Government observations, and the conclusions on the implementation of the recommendations subject to interim follow-up, are attached below.



Report gov
comments.pdf



Interim follow up.pdf

Protection of minorities

Framework Convention for the Protection of National Minorities

On 13 June 2012, the Committee of Ministers adopted a resolution on the protection of national minorities in Austria (attached below). The resolution contains conclusions and recommendations, highlighting positive developments¹⁸ but also mentioning issues of concern¹⁹. Moreover, it mentions a number of areas where further measures are needed to advance the implementation of the Framework Convention for the Protection of National Minorities.

In addition to the measures to be taken to implement the detailed recommendations contained in Sections I²⁰ and II²¹ of the Advisory Committee's opinion, the authorities are invited to take the following measures to improve further the implementation of the Framework Convention.

Issues for immediate action²²

- take resolute steps towards amending the national minority legislation with a view to ensuring consistent and inclusive protection of national minority rights throughout Austria; ensure comprehensive and effective consultation with national minority representatives before adopting any amendments to relevant legislation;
- ensure effective and consistent enjoyment throughout Austria of the linguistic rights of persons belonging to national minorities in line with Articles 10 and 11 of the Framework Convention and relevant Constitutional Court decisions; ensure that due flexibility is introduced when applying thresholds in relevant national legislation to avoid arbitrary distinctions being made;
- review the current system for the appointment and composition of the advisory councils for national minorities to ensure that they are representative of the views and concerns of persons belonging to national minorities; substantially broaden the competencies of the councils and ensure that they are effectively consulted on all issues that affect them and have an impact on the relevant decision making.

¹⁸ Part 1.a) of the resolution.

¹⁹ Part 1.b) of the resolution.

²⁰ paras. 6 - 22 of the third Opinion of the Advisory Committee on the Framework Convention on Austria.

²¹ paras. 23 - 144 *ibid*

²² The recommendations below are listed in the order of the corresponding articles of the Framework Convention.

Further recommendations²³

- design, implement and regularly monitor, in close consultation and co-operation with Roma representatives, comprehensive long-term programmes to promote the effective equality and participation of persons belonging to the Roma minority in all spheres of public life;
- increase the financial support aimed at the preservation and development of national minority culture, language and identity and review the payment modalities to ensure that longer-term initiatives can be planned and implemented effectively;
- reinforce ongoing efforts to address racism and xenophobia in society, including by strongly condemning all manifestations of intolerance and populism in the political arena and the media, and continue to raise awareness on the available legal remedies; strengthen the capacity of the Ombudspersons for Equal Treatment and the Equality Commission to more effectively combat discrimination in society;
- enhance the presence of minority languages in radio and TV broadcasts as well as print media and consider making available special press subsidies for minority languages;
- ensure that national minority history and culture, including their positive contributions to Austrian society, are adequately reflected in school curricula and history textbooks, and that tolerance and mutual understanding between different groups in society is further promoted in all education institutions;
- consider all options to increase the availability of bilingual education beyond primary school as an essential tool to preserve the presence of minority languages in Austria.

The Committee of Ministers' resolution is largely based on the corresponding third Opinion of the Advisory Committee on the Framework Convention on Austria²⁴. The concluding remarks, contained in Section III²⁵, served as the basis for the Committee of Ministers' Resolution. The Opinion of the Advisory Committee is also attached below.



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European Charter for Regional or Minority Languages

On 28 November 2012, the Committee of Ministers made public the third report on the application of the European Charter for Regional or Minority Languages by Austria. The report drawn up by the Committee of Independent Experts, which monitors the application of the Charter, is contained in the attachment below.

On the basis of this report, the Committee of Ministers in its Recommendation on the application of the European Charter for Regional or Minority Languages by Austria recommends the authorities to:

- adopt a structured policy for the protection and promotion of all Part II languages, especially in Vienna, and create favourable conditions for their use in public life;
- include in the general curricula an adequate presentation of the history and the culture which is reflected by the regional or minority languages in Austria;
- ensure that the increasing demand for education in or teaching of Burgenland-Croatian, Slovenian and Hungarian is met with an adequate number of qualified teachers;
- ensure that the Burgenland-Croatian, Slovenian and Hungarian languages are used before the relevant judicial and administrative authorities in practice;
- secure adequate funding for newspapers in Burgenland-Croatian, Slovenian and Hungarian;
- clarify the status of the Romani language outside Burgenland.

²³ *Idem*.

²⁴ A summary of the report can be found on pp. 1 - 2.

²⁵ paras. 145- 161.



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Action against trafficking in human beings

On 15 September 2011, the Group of Experts on Action against Trafficking in Human Beings (GRETA) published its first evaluation report on Austria²⁶, together with the comments of the Austrian Government. The attachment below contains both these documents.

In its concluding remarks²⁷ GRETA welcomes the measures taken by the Austrian authorities which favour the prevention of trafficking in human beings (THB) both in Austria and abroad. It takes note of the fact that the Austrian authorities consider THB as a serious violation of human rights and human dignity. As co-ordination is essential to an effective action against THB, GRETA also welcomes the existence of the Task Force and the National Coordinator as these entities play a role which could yet be reinforced in some aspects, in the success of the Austrian government's efforts against THB. The agreement concluded between the Austrian Government and LEFÖ-IBF in the field of assistance to adult women victims of THB constitutes a good practice, and the co-operation between the authorities and civil society in the field of prevention of THB and protection of its victims should be maintained and strengthened.

However, GRETA considers that to reinforce the human rights-based approach to the action against THB, the Austrian authorities should extend the measures taken in order to protect all categories of victims of THB, regardless of the form of exploitation. In this context, more attention should be paid to the needs of child and male adult victims. It is also essential to address the particularly vulnerable situation of victims of THB residing illegally in Austria. This implies that the authorities should make further efforts to protect the rights of foreign nationals concerning the identification procedure, the granting of a recovery and reflexion period as well as a residence permit, and the implementation of repatriation and return programmes. This also entails that the Austrian authorities should continue to co-operate with countries of origin and other countries of destination and/or transit in order to find the best arrangements for assisting victims of THB.

As far as effective investigation and prosecution of traffickers is concerned, the Austrian authorities should review the existing criminal law provisions and practice in light of a victim-centred approach. To guarantee the human rights of the victims, the traffickers must be duly prosecuted and punished and all victims should be fully protected and assisted before, during and after the criminal proceedings. Effective access to compensation and legal redress for victims of THB should be a priority for the Austrian authorities.

In order to guarantee that the human rights-based and victim-centred approach lies at the heart of the Austrian authorities' action against THB, it is also important that all relevant officials and other actors in the fight against THB are sensitised to the fact that THB is a serious form of human rights violation and that its victims need to be duly protected. The human rights dimension to action against THB should be reflected in all relevant training, education and awareness-raising activities carried out by the Austrian authorities.

In its report, GRETA provides a complete list of proposals to the Austrian authorities.²⁸



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²⁶ A summary of the report can be found on p. 7.

²⁷ paras. 159-163.

²⁸ Appendix I.

Preventing and combating violence against women and domestic violence

Austria has ratified the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. It will be covered by the monitoring procedure to be put in place following the entry into force of the Convention on 1 August 2014.

Fighting corruption

First and Second Evaluation Rounds

On 19 February 2013, the Group of States against Corruption (GRECO) published its Addendum to the Compliance Report on Austria within the First and Second Evaluation Rounds covering for the first Round two distinct themes “independence, specialisation and means available to national bodies engaged in the prevention and fight against corruption” and “extent and scope of immunities”, and for the second Round covering three distinct themes “proceeds of corruption”, “public administration and corruption” and “legal persons and corruption”. In its Addendum GRECO concludes that Austria has implemented satisfactorily or dealt with in a satisfactory manner 16 recommendations out of the 24 recommendations contained in the First and Second Round Evaluation Reports.²⁹ Austria has made further important progress in several areas, such as the establishment of the “Public Prosecution Office for Economic Crime and Corruption”, the introduction of a new regulatory framework at federal level for the protection of whistleblowers and for the movement of federal staff to the private sector, as well as legal amendments aimed at enhancing transparency of stock corporations and foundations. While several improvements mainly concern the federal level and need to be followed by corresponding measures at *Länder* level, GRECO notes that the *Länder* have been invited to take action on their part, as recommended, and are currently engaged in a promising reform process. That said, GRECO regrets that in various areas the progress achieved so far, if any, is only partial and more determined action is needed to carry through the reforms planned or initiated – for example, as regards the Co-ordinating Body on Combating Corruption which still lacks a precise mandate and adequate resources, the increase in human resources available to economic crime units of the police and the regime of parliamentary immunity. GRECO therefore urges the authorities to step up their efforts in order to effectively address the outstanding recommendations. The Addendum to the First and Second Compliance Reports on Austria is attached below.



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Third Evaluation Round

On 24 February 2015, GRECO published its First Compliance Report on Austria within the Third Evaluation Round covering two distinct themes, namely “incriminations” and “transparency of party funding”. In its report GRECO concludes that Austria has implemented satisfactorily 12 of the 21 recommendations contained in the Third Round Evaluation Report.³⁰ Of the nine remaining recommendations, seven have been partly implemented and two have not been implemented.

With regard to incriminations, GRECO welcomes that Austria has ratified the Criminal Law Convention on Corruption in 2012 and its additional Protocol in 2013. As a result, various amendments have been made to align the national criminal legislation with these legal instruments, including as regards the incriminations of active and passive bribery involving a

²⁹ Conclusions in Section III of the addendum, paras. 74-77.

³⁰ Conclusions in Section III of the report, paras. 118-123.

public official or a member of an elected assembly and the offence of illicit intervention (trading in influence). The level of sanctions for private sector bribery was increased and the effective regret mechanism of Section 307C of the Penal Code was abolished. Austria has also extended its rules on jurisdiction and has thus improved its capacity to prosecute cross-border bribery and trading in influence. Further consideration needs to be given to the issue of non-material undue advantages to ensure that all cases of bribery and trading in influence are adequately dealt with and additional measures need to be taken to ensure that the prosecution of acts of bribery leads in practice to a penal response which reflects the need of an effective anti-corruption policy.

With regard to political financing, GRECO is pleased to see that Austria has come a long way since the on-site visit, and has adopted in 2012 a new Political Parties Act which aims at increasing the transparency in this crucial area. Austria has now country wide rules which regulate the sources of income of political parties and (other) campaign participants, which require the disclosure of financial statements and the subsequent supervision by the Austrian Court of Audit (ACA), with possibilities to impose penalties in case of breach to the rules. The public will have access to these statements since they will be made available on the parties' and ACA's website. This legislation became fully effective in the beginning of 2013 and for obvious reasons, practice with the new arrangements is limited. GRECO has nonetheless identified areas where additional progress will be needed without awaiting for the first financial statements to be examined by the ACA towards the end of 2014 or the beginning of 2015. For the time being, some recommendations have been fully addressed. At the same time, a majority of recommendations have received a partial follow-up, for instance concerning the applicable accounting and book-keeping standards, the consolidation of accounts, the availability of financial information to the general public in a timely manner, the range of penalties applicable in case of infringements. Of particular importance is the new control mechanism, which raises several questions as to its consistency and effectiveness, in particular due to the absence of real control powers granted to the ACA.

The First Compliance Report on the Third Evaluation Round is attached below.



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Social and economic rights

Austria ratified the European Social Charter on 29/10/1969 and the Revised European Social Charter on 20/05/2011, accepting 76 of the Revised Charter's 98 paragraphs.

Austria has signed, but not yet ratified, the Additional Protocol of 1995 providing for a system of collective complaints.

Cases of non-compliance

Thematic Group 1 "Employment, training and equal opportunities"

► Article 1§2 – Right to work – Freely undertaken work (non-discrimination, prohibition of forced labour, other aspects)

During the reference period Article 8§2 of the Aliens Employment Act legislation required employers to make foreign workers redundant first when reducing manpower or to avoid having to reduce the working hours of all employees.

(Conclusions XX-1 (2012), p. 10)

► Article 10§1 – Right to vocational training – Promotion of technical and vocational training; access to higher technical and university education

Nationals of other States Parties who are not nationals of the European Economic Area and are lawfully resident or regularly working in Austria are granted access to university education only subject to the availability of places.

(Conclusions XX-1 (2012), p. 17)

► Article 10§4 – Right to vocational training – Encouragement for the full utilisation of available facilities

Equal treatment of nationals of other States Parties lawfully resident or regularly working in Austria is not guaranteed with regard to fees and to financial assistance for training.

(Conclusions XX-1 (2012), p. 21)

Thematic Group 2: “Health, social security and social protection”

► Article 3§2 – Right to safe and healthy working conditions – Safety and health regulations – Self-employed Workers are not sufficiently covered by occupational health and safety regulations.

(Conclusions 2013, p. 9)

► Article 12§4 – Right to social security of persons moving between States

1. Equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties;

2. Equal treatment with regard to access to family allowances is not guaranteed to nationals of all other States Parties.

(Conclusions 2013, p. 30)

► Article 13§1 – Right to social and medical assistance – Adequate assistance for every person in need

Granting of social assistance benefits to non-EU/EEA national, who are legally residing in Austria, is subject to an excessive length of residence condition.

(Conclusions 2013, p. 33)

Thematic Group 3: “Labour rights”

► Article 2§4 – Right to just conditions of work – Elimination of risks in dangerous or unhealthy occupations

Public-sector employees at federal level performing dangerous or unhealthy work are not entitled to appropriate compensation measures such as reduced working hours or additional paid leave.

(Conclusions 2014, p. 8)

► Article 4§1 – Right to a fair remuneration – Decent remuneration

It has not been established that the lowest wage paid is sufficient to ensure a decent standard of living.

(Conclusions 2014, p. 14)

► Article 28 – Right of workers’ representatives to protection in the undertaking and facilities to be accorded to them

The period during which the protection is granted to a workers’ representative beyond his/her mandate is not reasonable.

(Conclusions (2014, p. 29)

Thematic Group 4: “Children, families and migrants”

► Article 19§6 – Right of migrant workers and their families to protection and assistance – Family reunion

Austrian law and practice do not provide for family reunion up to the age of twenty-one for the children of all migrant workers who are nationals of States Parties of the Charter which are not party to the European Economic Area Agreement.

In the framework of the 'quota system', a waiting period which can last up to three years is excessive;
the exclusion of social assistance benefits from the calculation of the worker's income is likely to hinder family reunion rather than facilitate it;
The 'Integration Agreement' requirements are likely to hinder family reunion rather than facilitate it.
(Conclusions XIX-4 (2011), pp. 23-24)

Please find attached below Conclusions XIX-4 (2011), XX-1 (2012), 2013 and 2014 regarding Austria as well as the country fact sheet.



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