

Council of Europe contribution for the 37th UPR session (2-13 November 2020) regarding Austria

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Prevention of torture (CPT)

The 'European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment' organises country visits in order to visit places of detention to assess how persons deprived of their liberty are treated. After each visit, the CPT sends a detailed report to the State concerned. This report includes the CPT's findings, and its recommendations, comments and requests for information.

Austria (September 2014) -



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CPT_Inf_2015_35_I

Council of Europe Commissioner for Human Rights

The Commissioner for Human Rights is an independent and impartial non-judicial institution established by Council of Europe to promote awareness of and respect for human rights in the 47 Council of Europe member States.

N/A

Fight against racism and intolerance (ECRI)

The European Commission against Racism and Intolerance ([ECRI](#)) is a human rights body of the Council of Europe, composed of independent experts, which monitors problems of racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as "race", national/ethnic origin, colour, citizenship, religion and language. It prepares reports and issues recommendations to member States, in which its findings, along with recommendations are published. These reports are drawn up after a contact visit to the country in question and a confidential dialogue with the national authorities. The country monitoring takes place in five-year cycles. As part of the fourth round of ECRI's monitoring work, a new process of interim follow-up has been introduced with respect to a small number of specific recommendations made in each of ECRI's country reports.

Conclusions on Austria (adopted on 21 March 2018 / published on 15 May 2018)



ECRI_2018_21_Aust

Protection of minorities

Framework Convention for the Protection of National Minorities

The monitoring procedure for this convention requires each state party to submit a report within one year following the entry into force of the Framework Convention and additional reports every five subsequent years. State reports are examined by the [Advisory Committee](#), a body composed of 18 independent experts responsible for adopting country-specific opinions. These opinions, on which States Parties have an opportunity to comment, are meant to advise the Committee of Ministers in the preparation of its resolutions, containing conclusions and recommendations to the State concerned.

The Advisory Committee on the Framework Convention has adopted the 4th opinion on Austria on 14 October 2016.



ACFC_OP_IV_2016

The [4th Resolution](#) of the Committee of Ministers on the implementation of the Framework Convention by Austria was adopted on 17 October 2017.

European Charter for Regional or Minority Languages

The [Charter's monitoring procedure](#) is based on state reports, as each State Party is required to present its first report within the year following the entry into force of the Charter with respect to the Party concerned. The subsequent reports are presented at three-yearly intervals (since 1 July 2019). A committee of independent experts examines the state's periodical report and addresses an evaluation report to the Committee of Ministers, including proposals for recommendations.

The European Charter for Regional or Minority Languages entered into force in Austria in 2001. The Austrian authorities submitted their 4th periodical report in April 2017.



MIN-LANG_2017_

The Committee of Experts carried out an on-the-spot visit in Austria in October 2017 ahead of adopting its [evaluation report](#) on Austria in November 2017 and of the Committee of Ministers adopting its [Recommendation](#) in April 2018. The 5th periodical report from the Austrian authorities is due by October 2020.

Ad hoc Committee of Experts on Roma and Traveller Issues (CAHROM)

Following the High-Level meeting, intergovernmental work on Roma issues has been upgraded: on 16 February 2011 the Ministers Deputies adopted terms of reference for a new Committee of Experts (CAHROM) to be answerable directly to the Committee of Ministers. The [terms of reference](#) - which have been renewed by the Ministers Deputies for the years 2018-2019 - place emphasis on the analysis and evaluation of the implementation of national policies and thematic exchanges of experience and good practices. European Union institutions, international organisations, the European Roma and Travellers Forum and other relevant (Roma and Traveller) organisations are associated as observers to the CAHROM.

Action against trafficking in human beings (GRETA)

The Council of Europe Convention on Action against Trafficking in Human Beings was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005, following a series of other initiatives by the Council of Europe in the field of combating trafficking in human beings. The Convention entered into force on 1 February 2008, following its 10th ratification. While building on existing international instruments, the Convention goes beyond the minimum standards agreed upon in them and strengthens the protection afforded to victims.

The Convention has a comprehensive scope of application, encompassing all forms of trafficking (whether national or transnational, linked or not linked to organised crime) and taking in all persons who are victims of trafficking (women, men or children). The forms of exploitation covered by the Convention are, at a minimum, sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs.

The main added value of the Convention is its human rights perspective and focus on victim protection. Its Preamble defines trafficking in human beings as a violation of human rights and an offence to the dignity and integrity of the human being. The Convention provides for a series of rights for victims of trafficking, in particular the right to be identified as a victim, to be protected and assisted, to be given a recovery and reflection period of at least 30 days, to be granted a renewable residence permit, and to receive compensation for the damages suffered.

Another important added value of the Convention is the monitoring system set up to supervise the implementation of the obligations contained in it, which consists of two pillars: the Group of Experts on Action against Trafficking in Human Beings (GRETA) and the Committee of the Parties.

The Convention is not restricted to Council of Europe member states; non-members states and the European Union also have the possibility of becoming Party to the Convention.



Preventing and combating violence against women and domestic violence (GREVIO)

The Council of Europe Convention on preventing and combating violence against women and Domestic violence ([Istanbul Convention](#), [CETS No. 210](#)) is the most far-reaching international treaty to tackle this serious violation of human rights. It aims at zero tolerance for such violence and is a major step forward in making Europe and beyond safer. Preventing violence, protecting victims and prosecuting the perpetrators are the cornerstones of the convention. It also seeks to change the hearts and minds of individuals by calling on all members of society, in particular men and boys, to change their attitudes. In essence, it is a renewed call for greater equality between women and men, because violence against women is deeply rooted in the inequality between women and men in society and is perpetuated by a culture of intolerance and denial.

The Council of Europe Istanbul Convention provides for two types of monitoring procedures:

1. a country-by-country evaluation procedure;
2. and a special inquiry procedure in exceptional cases where action is required to prevent a serious, massive or persistent pattern of any acts of violence covered by the Convention.

[GREVIO](#), the Group of Experts on Action against violence against women and domestic violence, is the independent body responsible for monitoring the implementation of CETS No. 210. GREVIO launched its first evaluation procedure in spring 2016, after adopting a questionnaire on legislative and other measures giving effect to the Istanbul Convention.

The Convention is not restricted to Council of Europe member states; non-members states and the European Union also have the possibility of becoming Party to the Convention.

The implementation of the provisions of the Istanbul Convention by Austria was monitored in 2016 and GREVIO's first baseline evaluation report published in September 2017.



In January 2018, the Committee of the Parties to the Istanbul Convention adopted its recommendations in relation to Austria.



The Government of Austria is expected to report back to the Committee of the Parties by 30 January 2021 on the measures taken in implementation of these recommendations. All relevant information on the evaluation procedure in relation to Austria can be found [here](#).

Protection of children against sexual abuse (Lanzarote Convention)

The Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse, also known as "[the Lanzarote Convention](#)", requires criminalisation of all kinds of sexual offences against children. It sets out that states in Europe and beyond shall adopt specific legislation and take measures to prevent sexual violence, to protect child victims and to prosecute perpetrators.

The "Lanzarote Committee" (i.e. the Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse) is the body established to monitor whether Parties effectively implement the Lanzarote Convention. To do so, the Committee evaluates the information which has been provided by the national authorities and other sources in their replies to questionnaires developed by the Committee itself. This monitoring procedure is divided by rounds, each round concerning a theme.

At the end of each round, the Lanzarote Committee adopts "implementation reports" which contain its assessment of the situation with respect to the monitored Parties.

To mark the different level of action required by Parties to improve the situation, the recommendations addressed by the Lanzarote Committee to Parties in its implementation reports use the verbs to "urge", "consider" and "invite" as follows:

- "**urge**": when the situation is not in compliance with the Convention, or when, despite the existence of legal provisions and other measures, the implementation of a key obligation of the Convention is lacking;
- "**consider**": when further improvements are necessary in law or in practice to fully comply with the Convention;
- "**invite**": when one or several promising practices are highlighted to suggest enhanced protection of children.

Austria has been monitored since the beginning of the procedure and has therefore been assessed in all monitoring rounds carried out so far.

The first monitoring round was on the "Protection of children against sexual exploitation and sexual abuse in the circle of trust". In this round, and within the first implementation report (the [legal framework](#)), the Lanzarote Committee:

- **Urges** Austria to take the necessary legislative or other measures to set up or designate mechanisms for data collection or focal points at national or local level and in collaboration with civil society, for the purpose of observing and evaluating in terms of quantitative data collection the phenomenon of the sexual exploitation and sexual abuse of children in general and child sexual abuse committed in the circle of trust, in particular (R13).
- **Considers** that Austria must set up a national or local system for recording case-based data for child sexual abuse in the circle of trust cases in the various sectors liable to come into contact with children victims in such instances; such administrative data collection systems should be implemented allowing to compare and cross-check the data thus collected at national level and avoid duplication (R15).
- **Considers** that when sexual abuse is inflicted by someone in the child's circle of trust, the child victim is in a particularly delicate situation of having to report a crime made by someone who he or she trusted, respected and possibly loved. This situation which can create a serious disturbance on the child's family life and overall wellbeing, needs to be addressed specifically (R22).
- **Considers** that information and advice should be provided to child victims in a manner adapted to their age and maturity, in a language they understand and which is gender and cultural sensitive (R23).

- **Considers** that Austria should address and encourage as much as possible the co-ordination and collaboration of the different players who intervene for and with the child victim during criminal proceedings. This comprehensive and interdisciplinary approach offers extra support to the child victim and in some cases, the possibility for intervention not to be delayed and appropriate support to be provided immediately after the disclosure (R24).
- **Considers** that, in the context of sexual abuse in the circle of trust, the removal of the victim from his or her family environment should be foreseen as a last resort procedure, which should be clearly defined, setting out the conditions for and duration of the removal (R27).
- **Considers** that interventions and measures which are taken in the context of domestic violence operate on a different *modus operandi* to those established in child sexual abuse cases. An explicit mention of sexual abuse should therefore be included in all protection measures with regard to domestic violence (R28).
- **Urges**, if it has not yet done so, Austria to take the necessary legislative or other measures to ensure that the persons who are close to the victim may benefit, where appropriate, from therapeutic assistance, notably emergency psychological care (R30).

Within the second implementation report (the [strategies](#)), the Lanzarote Committee:

- **Considers** that Austria should further encourage the participation of children, according to their evolving capacity, in the development and the implementation of state policies, programmes or other initiatives concerning the fight against sexual abuse of children in the circle of trust specifically (R1).
- **Considers** that Austria should cooperate with civil society organizations engaged in assistance to victims and provide, by means of legislative or other measures, in accordance with the conditions provided for by internal law, the possibility to assist and/or support the victims with their consent during criminal proceedings concerning the offences established in accordance with this Convention (R3).
- **Considers** that awareness raising actions targeting children should be age appropriate and make use of interactive methods as well as of information and communication technologies (R8).
- **Considers** that awareness raising actions focused on the risks and realities of sexually abused children in the circle of trust should be continuous and systematic. Austria should envisage including these activities in its national action plans for children's rights (R9).
- **Considers** that Austria should further involve parents (and adults exercising parental responsibilities) in the provision of information given to children on sexual abuse, including in the circle of trust (R13).
- **Considers** that, if it is not doing so yet, Austria should provide specific regular training about child sexual abuse in the circle of trust for professionals working within the police, prosecution, child protection and health services (R14).
- **Considers** that, if it is not doing so yet, Austria should allocate adequate financial resources to the training of persons, units and services in charge of investigations as defined by Article 34§1 of the Lanzarote Convention (R15).
- **Urges** Austria to extend mandatory screening to the recruitment of all professionals (public or private) in regular contact with children (R19).

The second monitoring round is underway. It is on "The protection of children against sexual exploitation and sexual abuse facilitated by information and communication technologies (ICTs)" and

focuses more specifically on self-generated sexually explicit images. The information submitted by Austria in the context of the 2nd monitoring round is available [here](#). The implementation report with respect to this theme should be adopted by the end of 2020.

As to the urgent monitoring round on “Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse”, Austria has taken satisfactory action with respect to the 5 urgent recommendations addressed to it. The Lanzarote Committee is now assessing its compliance with the 10 following “**consider** recommendations”, requesting that Austria:

- put in place effective mechanisms for data collection with a specific focus on children affected by the refugee crisis who are victims or presumed victims of sexual exploitation and sexual abuse and review the possible removal of obstacles to the collection of such data, in particular, where they exist, legal restrictions to do so, with due respect for the requirements of personal data protection (R7).
- while providing adequate protection to child victims irrespective of where the exploitation/abuse occurred, should do their utmost to be able to distinguish between sexual exploitation and sexual abuse occurring prior to the entry of the child victim on their territories and after the entry (R11).
- fulfil obligations to prosecute the offenders and to provide international co-operation between the Parties in instances where the offence occurred prior to arrival on the territory for the purpose of investigation and prosecution (R12).
- encourage the co-ordination and collaboration of the different actors who intervene for and with children affected by the refugee crisis to ensure that preventive measures in regards to protection from sexual exploitation and sexual abuse are in place and protective measures are taken as speedily as possible (R13).
- provides information and advice concerning prevention of and protection from sexual exploitation and sexual abuse to children affected by the refugee crisis in a manner adapted to their age and maturity, in a language they understand, and which is sensitive to gender and culture (reiteration of 1st implementation report, Recommendation R23) (R15).
- exchange information on awareness raising activities which specifically focus on the risks faced by children affected by the refugee crisis with respect to sexual exploitation and sexual abuse (R17).
- ensure that its specific recommendations on the child friendly handling of proceedings involving children victims of sexual abuse be implemented also in the context of proceedings involving children affected by the refugee crisis (R31).
- encourage and support the setting up of specific information services such as telephone or Internet helplines to child victims of sexual exploitation and sexual abuse affected by the refugee crisis as well as persons wishing to help them to provide advice in a language which is understandable to them (R32).
- agree on common strategies/procedures to effectively deal with the phenomenon of cross-border missing children (R35).
- reinforce or put in place a coordinated approach between the different agencies in charge in order to facilitate the prevention and protection of children affected by the refugee crisis from sexual exploitation and sexual abuse (R37).

The 'Group of States against Corruption' ([GRECO](#)) monitors all its 50 members through a peer review evaluation procedure within thematic evaluation rounds. The evaluation reports contain recommendations aimed at furthering the necessary legislative, institutional and practical reforms. Subsequently, the implementation of those recommendations is examined in the framework of a "compliance procedure", assessing whether they have been implemented satisfactorily, partly or have not been implemented 18 months after the adoption of the evaluation report.

Fourth Evaluation Round: "Corruption prevention in respect of members of parliament, judges and prosecutors".

The latest compliance report was published in July 2019:



With respect to members of parliament, the results are clearly disappointing. Some (partial) progress is observed in the legislative consultation processes for the elaboration of governmental and parliamentary drafts, which also entail some new initiatives in favour of increased transparency. Also, rules of conduct are being drafted and confidential councillors are to be established in the near future. The early elections held in the autumn of 2017, which resulted in a significantly different parliamentary composition have, no doubt, delayed the reforms recommended in the Evaluation Report concerning rules of conduct, lobbying, the declaration of interests and assets and supervisory mechanisms, for instance. GRECO encourages the Austrian parliament, and its specially established working group responsible for implementing the recommendations to intensify their efforts.

As far as judges and prosecutors are concerned, GRECO is pleased to see that a number of changes are in the process of elaboration. For instance, the work programme of the current government for 2017-2022 aims at strengthening transparency and objectivity in the selection of judges and amendments to the Federal Service Act for Judges and Public Prosecutors have been prepared to this end, and to improve the appraisal system as well as the rules on incompatibilities with functions in the executive and legislative branches of power. A working group chaired by the head of the Compliance Department of the Federal Ministry of Constitution, Reforms, Deregulation and Justice is working on additional rules of conduct and guidelines for all justice officials/employees, including judges and prosecutors. There are also ambitious plans for the introduction of a Compliance Management System. However, no improvements have been finalised up until now and several intended reforms and improvements are still at an early stage. For the time being, the only recommendation fully addressed is the result of assurances provided by Austria concerning the publicity of administrative court hearings.

GRECO concludes that the current very low level of compliance with the recommendations is "globally unsatisfactory" in the meaning of Rule 31, paragraph 8.3 of the Rules of Procedure. GRECO therefore decides to apply Rule 32, paragraph 2 (i) concerning members found not to be in compliance with the recommendations contained in the mutual evaluation report, and asks the Head of delegation of Austria to provide a report on the progress in implementing the outstanding recommendations (i.e. recommendations i to xii and xiv to xix as soon as possible, however – at the latest – by 31 December 2019).

Execution of judgments and decisions of the European Court of Human Rights

Statistical data

On 31 December 2019, there were 17 cases (19 cases on 31 December 2018) against Austria pending before the Committee of Ministers for supervision of their execution. Among these cases, 6 cases were “leading cases” evidencing more or less important general problems (10 leading cases on 31 December 2018). In 2019, the CM was seized by 2 new leading cases (1 new leading case in 2018) and the amount of just satisfaction awarded was € 45,881 (€ 73,180 awarded in 2018). In 2019, 8 cases were closed by the adoption of a Final Resolution (18 cases closed in 2018).

Main cases / groups of cases under the Committee of Ministers’ supervision

The main cases presently under the Committee of Minister’s supervision cover notably the issues presented below. For fuller overview of the situation see the Country Factsheets (available on the website of the Department for the Execution of Judgments of the European Court of Human Rights)



EJCHR Factsheet

and in the Committee of Ministers’ Annual Reports on its supervision activity.



Supervision exec

More detailed information on the status of execution in individual cases can be found through [Hudoc-EXEC](#)

- **Denial of the right to change the name on a university diploma certificate following the granting by the municipal authorities of the applicant’s request to have his name changed**

P.R., Application no. 200/15, judgment final on 21/11/2019, standard supervision

- **Failure of the domestic courts to examine in a comprehensive manner questions both of legal standing and on the merits of a claim in defamation proceedings initiated by a Holocaust survivor against a right-wing periodical**

Lewit, Application no. 4782/18, judgment final on 20/11/2019, standard supervision

- **Shortcomings in the conduct of return proceedings of wrongfully removed children**

Sévère, Application no. 53661/15, judgment final on 21/12/2017, standard supervision

- **Prolonged failure of the authorities to grant legal personality to a religious group; discrimination as a result of inconsistencies in the application, on different religious communities, of the requirement of a ten-year qualifying period for eligibility to register as a**

religious society

Religionsgemeinschaft Der Zeugen Jehovas and Others, Application no. 40825/98, judgment final on 31/10/2008, standard supervision

Important cases closed recently

In 2019, the Committee of Ministers ended its supervision of a case relating to access to and efficient functioning of justice, in particular as regards the lack of an oral hearing in disciplinary proceedings initiated by the Disciplinary Council of the Bar Association against a practising lawyer, resulting in the withdrawal of his right to represent before several courts in criminal law cases as an interim measure (Helmut Blum, Application no. 33060/10, judgment final on 30/01/2017, see [Final Resolution](#)).

The Committee of Ministers furthermore ended its supervision of a case relating to protection of private life and of property, notably in respect of the disproportionate interference with a legally incapacitated person's right to respect for her home due to the judicial sale of her apartment in enforcement proceedings without sufficient procedural safeguards (Zehentner, Application no. 20082/02, judgment final on 16/10/2009, see [Final Resolution](#)).

In 2018, the Committee of Ministers ended its supervision of a case relating to ill-treatment and expulsion as well as the lack of effective remedy in this respect, notably as concerned the lacking suspensive effect of a Sudanese national's second asylum application in relation to a transfer order to Hungary under the EU Dublin II Regulation (Mohammed, Application no. 2283/12, judgment final on 06/09/2013, see [Final Resolution](#)).

The Committee of Ministers furthermore ended its supervision of a case relating to the lack of effective protection of the right to family life in the context of return proceedings under the Brussels Ila Regulation following the removal of the applicant's child from Italy to Austria; and to the lack of appropriate means at the authorities' disposal to ensure the re-establishment of contact between the applicant father and his daughter (M.A., Application no. 4097/13, judgment final on 15/04/2015, see [Final Resolution](#)).

Social and Economic Rights (ECSR)

The European Committee of Social Rights (ECSR) monitors compliance with the [European Social Charter](#) under two procedures: the national periodic reporting system and the collective complaints procedure. Following a decision taken by the Committee of Ministers in 2006, the provisions of the Charter have been divided into four thematic groups. States present a report on the provisions relating to one of the four thematic groups on an annual basis. Consequently each provision of the Charter is reported on once every four years.

Venice Commission

The [European Commission for Democracy through Law](#) (Venice Commission) is the Council of Europe's advisory body on constitutional matters. It provides States and international organisations working with it (EU, OSCE/ODIHR) with legal advice in the form of opinions.

n/a for the European Commission for Democracy through law for the period 2015-2019.