

AUSTRIA

**NEED TO STRENGTHEN
PROTECTION AGAINST
DISCRIMINATION AND TO
ADDRESS SHORTCOMINGS IN
THE POLICE AND JUSTICE
SECTORS**

*Amnesty International
Submission to the UN Universal
Periodic Review, November
2015*

**AMNESTY
INTERNATIONAL**



CONTENTS

Executive summary	2
Follow up to the previous review	2
The national human rights framework	3
International and regional human rights standards	3
National human rights institution and national preventive mechanism	3
National human rights plan of action	4
Promotion and protection of human rights on the ground	4
Prison conditions.....	4
Ill-treatment and excessive use of force	5
Discrimination.....	6
Refugees and asylum-seekers	7
Human rights education	7
Recommendations for action by the State under review	7
Annex	11

EXECUTIVE SUMMARY

This submission was prepared for the Universal Periodic Review (UPR) of Austria taking place in November 2015. In it, Amnesty International evaluates the implementation of recommendations made in the previous UPR, noting that important recommendations have yet to be implemented.

Since the submission was first made, there have been a number of positive developments in Austria, including the establishment of a national preventive mechanism as required under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the ongoing development of a national human rights plan of action. However, there have been complaints of police ill-treatment and excessive use of force against members of ethnic minorities and a pattern of impunity for such abuses as well as shortcomings in the penal, preventive and juvenile detention systems.

Amnesty International is also concerned that Austria has not taken sufficient proactive steps to protect individuals against discrimination on the basis of religion and belief, age and sexual orientation. The asylum procedure is long and access to housing, social benefits and health care by asylum-seekers remains inadequate.

FOLLOW UP TO THE PREVIOUS REVIEW

During its first UPR in January 2011, Austria accepted a number of recommendations on ratification and withdrawal of reservations to human rights treaties.¹ Since then, Austria has ratified the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Concrete plans have been prepared to withdraw reservations to the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. However, no steps have been taken to withdraw reservations to other human rights treaties, including the International Covenant on Civil and Political Rights, the Convention on the Elimination of Racial Discrimination, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In 2012, Austria established a national preventive mechanism as required under the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and in line with accepted recommendations.² However, there are concerns regarding its independence and its insufficient focus on preventive work, as detailed below.

Austria has also amended its Penal Code in line with commitments made during its last review, including introducing new provisions on torture in 2013. However,

¹ Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Austria*, A/HRC/17/8, 18 March 2011, (A/HRC/17/8) – and its addendum, A/HRC/17/8/Add.1 – recommendations 92.1 (Ecuador), 92.2 (Costa Rica, Netherlands, Sweden, Uganda), 92.3 (Germany), 92.5 (Spain), 92.6 (Republic of Moldova, Uganda), 92.7 (France), 93.3 (Indonesia), 93.4 (Uganda), and 93.5 (Burkina Faso).

² A/HRC/17/8, recommendations 92.4 (Chile), 92.11 (Switzerland).

Austria has failed to implement recommendations to establish an independent body or mechanism to investigate alleged abuses by law-enforcement officials.³

During the 2011 review, Austria accepted a number of recommendations on anti-discrimination measures.⁴ Despite the government's commitment at the time and during the follow-up process to fill anti-discrimination protection gaps, the current Anti-Discrimination Law still does not ensure equal protection against all forms of discrimination. Similarly, no tangible progress has been made with regard to systematically collecting and publishing comprehensive and coherent statistics on racist incidents and racist misconduct by law enforcement officials.⁵

THE NATIONAL HUMAN RIGHTS FRAMEWORK

INTERNATIONAL AND REGIONAL HUMAN RIGHTS STANDARDS

Since 2008, there has been no progress towards ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.⁶ Austria has also yet to ratify the Third Optional Protocol to the Convention on the Rights of the Child, and to withdraw its reservations to the International Covenant on Civil and Political Rights, the Convention on the Elimination of Racial Discrimination and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Austria has also not ratified Protocol 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which extends the prohibition of discrimination to all rights provided for in national law. Austria has yet to accept the jurisdiction of the Committee on Social Rights, the body monitoring states' implementation of the European Social Charter.

NATIONAL HUMAN RIGHTS INSTITUTION AND NATIONAL PREVENTIVE MECHANISM

The Austrian Ombudsman Board (AOB) is mandated to carry out the functions of both a national human rights institution and a national preventive mechanism. However, concerns have been raised that it may not be fully in line with the Principles relating to the Status of National Institutions (The Paris Principles). For example, in its Concluding Observations of July 2012, the Committee on the Elimination of Racial Discrimination raised concern about the independence of its board members. The Committee called on the government to ensure that their appointment fully comply with the Paris Principles, and to "adopt concrete measures to improve the status accorded to the AOB by the International Coordinating Committee under the Paris Principles and to allocate the necessary

³ A/HRC/17/8, recommendations 92.32 (Czech Republic) and 92.62 (Norway).

⁴ A/HRC/17/8 and A/HRC/17/8/Add.1, recommendations 92.24 (Burkina Faso), 93.8 (Honduras), 93.10 (Israel), 93.35 (United Kingdom), 93.36 (Islamic Republic of Iran), 93.37 (Uzbekistan), 93.38 (Norway), and 93.44 (Canada).

⁵ A/HRC/17/8 and A/HRC/17/8/Add.1, recommendations 92.51 (United Kingdom), 93.24 (Republic of Korea), 93.29 (Russian Federation), and 93.30 (Israel).

⁶ Austria rejected two recommendations to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in 2011. A/HRC/17/8 and A/HRC/17/8/Add.1, recommendations 93.1 (Ecuador), 93.2 (Portugal).

resources in order to provide the means for fulfilling its mandate.”⁷

In undertaking its mandate as the national preventive mechanism, the Ombudsman Board has carried out hundreds of visits to private and public places of detention and has observed dozens of police operations since 2013.

NATIONAL HUMAN RIGHTS PLAN OF ACTION

Amnesty International welcomes the current process to develop a national human rights plan of action by mid-2015.⁸ However, there is no allocated budget for elaborating, implementing and evaluating the plan, and the government has objected to conducting a base-line study.

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

PRISON CONDITIONS

Structural shortcomings in the penal and preventive detention systems have resulted in cases of ill-treatment and grave neglect of detainees. This has been compounded by the lack of a prompt and effective response to such incidents.

Mentally ill prisoners do not always receive adequate medical and mental health care. A taskforce on preventive detention established by the Federal Minister of Justice published its final report in January 2015, recommending concrete measures to address the growing number of people in preventive detention, as well as its increasing length and frequent imposition for minor offences.⁹

⁷ Committee on the Elimination of Racial Discrimination: *Concluding observations on the eighteenth to twentieth periodic reports of Austria, adopted by the Committee at its eighty-first session (6-13 August 2012)*, 23 October 2012, CERD/C/AUT/CO/18-20, paragraph 8. Austria accepted several recommendations on this issue in the previous review -- A/HRC/17/8 and A/HRC/17/8/Add.1 recommendations 92.19 (Jordan), 92.20 (India), 92.21 (Australia), 93.14 (Costa Rica), 93.17 (Philippines), 93.18 (Canada). By contrast, Austria rejected recommendations 93.15 (Malaysia), calling on it to consolidate existing mechanisms into a single National Human Rights Institution in accordance with the Paris Principles and seek A-status accreditation by the ICC, and 93.16 (Spain), calling on Austria to “bring its National Human Rights Institution in line with the Paris Principles”.

⁸ During the previous review, Austria rejected recommendations to establish a national action plan or national programme on human rights. A/HRC/17/8, recommendations 93.20 (Namibia) and 93.21 (Mexico).

⁹ The task force was established in June 2014 in response to media reports in May 2014 that a 74-year-old man held in preventive detention in Stein prison had been gravely neglected for years, including being deprived of medical care, resulting in negligence to such a degree that his feet already had begun to rot. *Der Standard, Skandal in Stein: Drei Beamte suspendiert*, 21 May 2014, <http://derstandard.at/2000001427195/Skandal-in-Stein-Drei-Beamte-suspendiert>, accessed on 20 March 2015 and *Bundesministerium für Justiz, Arbeitsgruppe Massnahmenvollzug, Bericht an den Bundesminister für Justiz über die erzielten Ergebnisse*, BMJ-V70301/0061-III 1/2014, Jänner 2015, <http://www.justiz.gv.at/web2013/file/2c94848a4b074c31014b3ad6caea0a71.de.0/bericht%20ag%20ma%C3%9Fnahmenvollzug.pdf>, accessed on 20 March 2015.

The number of juveniles held in pre-trial and penal detention has declined considerably since 2004.¹⁰ The gradual implementation of recommendations issued in October 2013 by a taskforce on the pre-trial detention of juveniles, established by the Federal Minister of Justice, has had a positive impact.¹¹ However, alternatives to pre-trial detention are not sufficiently used. Children under the age of 18 are still held in adult prisons, and their specific needs are not adequately met.¹²

ILL-TREATMENT AND EXCESSIVE USE OF FORCE

Victims of torture and other ill-treatment experience difficulties in obtaining justice and reparation. Complaints of police ill-treatment, from members of ethnic minorities in particular, are often followed by an inadequate response by both the police and the judicial system. In its Concluding Observations of 20 May 2010, the Committee against Torture noted that there is insufficient statistical data on allegations of torture and other ill-treatment, a lack of information on the results of related investigations and a high level of impunity in cases of police brutality, including that perceived to be racially-motivated.¹³ Regrettably, since then there has been little progress in this area.

During its previous UPR, Austria accepted recommendations to improve the investigation of allegations of human rights violations, including by establishing an independent mechanism to investigate allegations of torture and other ill-treatment by law-enforcement officials and ensure justice and reparation to victims of such violations.¹⁴ Amnesty International is concerned, however, that there is still no independent mechanism to investigate allegations of serious human rights violations by law enforcement officials and with the power to order disciplinary proceedings and refer cases directly to the judicial authorities.

In January 2015, the Federal Minister of the Interior announced plans to equip police officers with body cameras to record sensitive police operations.¹⁵ However, the Minister has rejected the use of a compulsory identification system for police officers, despite the fact that investigations into allegations of police abuse often fail because it is impossible to identify the officers allegedly involved.

Furthermore, there is no provision in domestic law requiring law enforcement and

¹⁰ According to the "Security Report 2013" by the Federal Ministry of Justice (p. 95-96), the number of juveniles in detention dropped from a high of 259 juveniles in 2004 to 112 juveniles in 2013. www.bmi.gv.at/cms/BMI_Service/SB_2013/04_Justizteil_2013.pdf, accessed on 20 March 2015.

¹¹ The task force on the pre-trial detention of juveniles was established by the Ministry of Justice in response to the ill-treatment and rape of a 14-year-old boy in his cell by his cellmates, while he was held in pre-trial detention in Josefstadt prison. Der Standard, *In U-Haft missbraucht: 14-Jähriger muss nicht zu Verhandlung erscheinen*, 17 July 2013, <http://derstandard.at/1373512846497/In-U-Haft-missbraucht-14-Jaehriger-muss-nicht-zu-Verhandlung-erscheinen>, accessed on 20 March 2015.

¹² There is only one prison facility in Austria specially designed for the needs of juveniles.

¹³ Committee against Torture, *Concluding observations of the Committee against Torture - Austria*, CAT/C/AUT/CO/4-5, 20 May 2010, paragraph 19.

¹⁴ A/HRC/17/8, recommendations 92.32. (Czech Republic), 92.58 (Netherlands), 92.59 (Uzbekistan), 92.60 (Sweden), 92.61 (Sweden), 92.62 (Norway), 92.78 (United Kingdom) and 92.86 (Namibia).

¹⁵ Heute, *Body-kameras und iPads für Polizei*, 23 January 2015

<http://www.heute.at/news/politik/art23660,1118813>, accessed on 20 March 2015.

other public official to apply the standards of the UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol), nor is there much awareness of the Protocol among law enforcement officials, or law and health professionals.

DISCRIMINATION

Austria has not taken pro-active steps to close protection gaps, despite its acceptance of recommendations during the 2011 UPR to strengthen and harmonize anti-discrimination measures.¹⁶ These gaps include lack of protection against discrimination on the basis of religion and belief, age and sexual orientation in access to goods and services, as well as legal inequalities between registered same-sex partnership and marriage. A ruling by the Austrian Constitutional Court of 11 December 2014¹⁷ has removed the prohibition of adoption of unrelated children by same-sex partners, setting a deadline of 31 December 2015 for Parliament to amend the law accordingly.¹⁸

Foreign nationals and members of ethnic minorities appear to be more at risk than Austrian citizens of being suspected by police of having committed a crime.¹⁹ A task force on diversity was established by the Ministry of Justice in January 2015, which explicitly seeks to address allegations of institutional and structural racism in the judiciary.

Austria does not systematically collect and publish comprehensive and coherent statistics on racist incidents or on the government's response to such incidents.²⁰ Furthermore, there is a significant lack of information on the application in practice

¹⁶ A/HRC/17/8, recommendations 92.24 (Burkina Faso), 92.25 (Costa Rica), 92.26 (Colombia), 92.45 (Uzbekistan), 92.46 (Trinidad and Tobago), 92.52 (Canada), 92.53 (United States of America), 92.55 (Cuba), 92.89 (Bosnia and Herzegovina), 92.95 (Philippines), 93.8 (Honduras), 93.10 (Israel), 93.22 (Ecuador), 93.25 (Turkey), 93.35 (United Kingdom), 93.36 (Islamic Republic of Iran), 93.37 (Uzbekistan), 93.38 (Norway).

¹⁷ Verfassungsgerichtshof (VfGH), *Erkenntnis vom 11.12.2014, G119/2014*, https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_20141211_14G00119_00, accessed on 20 March 2015.

¹⁸ Austria rejected recommendations to treat same-sex relationships equally with opposite-sex relationships and to amend the legal status of same-sex partnerships to enable the right to adopt and have children. A/HRC/17/8, recommendations 93.49 (Netherlands) and 94.10 (United Kingdom).

¹⁹ During the last review, Austria accepted a recommendation "to take appropriate measures to prevent investigations, arbitrary detentions, searches and interrogations by judicial authorities or police agents on the basis of physical appearance, skin colour or ethnic or national origin". A/HRC/17/8, recommendation 92.68 (Ecuador). In 2012, the CERD criticized Austria's failure to provide statistical data on the ethnic composition of its population and expressed concern about reports of racial profiling and stop-and-search practices on people from ethnic minorities. It also criticized the failure to adequately prosecute and punish law enforcement officials for offences against people with migration backgrounds. Committee on the Elimination of Racial Discrimination, *Concluding observations on the eighteenth to twentieth periodic reports of Austria, adopted by the Committee at its eighty-first session (6-13 August 2012)*, 23 October 2012, CERD/C/AUT/CO/18-20.

See also Amnesty International, *Austria: Victim or suspect - A question of colour: Racial discrimination in the Austrian justice system* (Index: EUR 13/002/2009).

²⁰ Austria accepted four recommendations on this issue in the previous review -- A/HRC/17/8, recommendations, 92.51 (United Kingdom), 93.24 (Republic of Korea), 93.29 (Russian Federation) and 93.30 (Israel).

of existing reporting and investigation standards for law enforcement officials, and of legislation to combat racism, hate crime and hate speech, in particular Article 33 (1) lit. 5 and Article 283 of the Austrian Penal Code.²¹

REFUGEES AND ASYLUM-SEEKERS

The asylum procedure in Austria is long, sometimes lasting several years, and the authorities often fail to ensure effective and adequate access for asylum-seekers to independent legal advice during this process.

Asylum-seekers' access to adequate housing, social benefits and health care remains inadequate. Accommodation for some asylum-seekers is often poor and unhygienic, in a number of cases amounting to degrading treatment. There are currently no complaints mechanisms regarding the quality of their accommodation.

Two humanitarian admission programmes were launched in August 2013 and April 2014 for a total of 1,500 Syrian refugees, and Austria has committed to granting refugee status upon arrival to all those covered under the programmes. Amnesty International notes that Austria does not currently have a general refugee resettlement programme without geographic limitations, as required by the principle of international burden and responsibility sharing set out in the 1951 Refugee Convention and other standards.

HUMAN RIGHTS EDUCATION

Austria plans to extend “political education”, which includes human rights education, to all schools nation-wide, starting from the sixth grade. Amnesty International remains concerned, however, at shortfalls with regard to human rights education courses for teachers, teaching materials and teaching methods.²²

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Austria to:

International and regional human rights standards

- Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the Third Optional Protocol to the Convention on the Rights of the Child;
- Withdraw reservations to the International Covenant on Civil and Political Rights, the Convention on the Elimination of Racial Discrimination, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

²¹ In the previous review, Austria rejected a recommendation to “prepare a study on the scale of direct and indirect racial discrimination in the criminal justice system”, A/HRC/17/8, recommendation 93.45 (Russian Federation).

²² Austria accepted two recommendations to enhance the provision of human rights education and training. A/HRC/17/8, recommendations 92.33 (Philippines), 92.84 (Costa Rica).

- Ratify Protocol 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms and accept the jurisdiction of the Committee on Social Rights.

National human rights institution and national preventive mechanism

- Ensure that the national human rights institution and the national preventive mechanism, envisaged by the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, comply fully with the Paris Principles;
- Ensure that the national preventive mechanism places greater emphasis on preventive work;
- Publish a German translation of the annual reports of the national preventive mechanism to the UN Subcommittee on the Prevention of Torture.

National human rights action plan

- Establish a national human rights action plan in line with the OHCHR guidelines;²³
- Set concrete objectives in the action plan with effective measures to improve the promotion and protection of the human rights, based on thorough analysis of the current human rights situation in Austria;
- Strengthen the role of ministerial and regional human rights coordinators and ensure they have adequate resources to perform their role effectively.

Prison conditions

- Implement the recommendations of the Ministry of Justice task forces on juvenile detention and preventive detention;
- Move all detainees with mental illnesses to institutions that comply fully with international standards for the treatment of detained persons²⁴ as soon as possible, and ensure that they receive adequate treatment;
- Ensure that alternatives to penal detention are available for juveniles offenders, and that the detention is used only as a measure of last resort, for the shortest possible period of time and in specially designed facilities;
- Ensure that alternatives to detention are provided for all juveniles in pre-trial detention.

²³ Office of the United Nations High Commissioner for Human Rights (OHCHR), *Handbook on National Human Rights Plans of Action*, Professional Training Series No. 10, 29 August 2002

²⁴ *Standard Minimum Rules for the Treatment of Prisoners*, Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977; Committee on the Rights of Persons with Disabilities (CRPD), *Statement on article 14 of the Convention on the Rights of Persons with Disabilities*, September 2014; Council of Europe, Committee of Ministers, *Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules*, Adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies; European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), *CPT Standards*, CPT/Inf/E (2002) 1 - Rev. 2015

Ill-treatment and excessive use of force

- Ensure that all allegations of human rights violations by law enforcement officials are effectively investigated and appropriately prosecuted, and that victims have full access to reparation;
- Take concrete action to improve the investigation of alleged human rights violations by law enforcement officials, including by introducing a compulsory identification system for police officers and establishing a fully resourced independent mechanism to investigate such allegations, with the power to order disciplinary proceedings and refer cases directly to the judicial authorities;
- Ensure that all reports of torture or other ill-treatment are effectively investigated and documented in line with the Istanbul Protocol, including by fully incorporating it in domestic law and providing appropriate training to prospective and practicing law enforcement officials, as well as to law and health professionals;
- Establish an effective system to gather statistical data to monitor the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including complaints, investigations, prosecutions, convictions of cases of torture and ill-treatment, and compensation and rehabilitation provided to the victims.

Discrimination

- Ensure equal protection from all forms of discrimination, including by harmonizing and extending the scope of anti-discrimination laws to include the grounds of religion and belief, age and sexual orientation;
- Abolish all legal inequalities between registered same-sex partnership and marriage;
- Establish a comprehensive and coherent data collection system for recording and monitoring racially motivated crimes and report publicly on these issues;
- Assess the effectiveness of current legislation to combat racism, hate crime and hate speech, in particular Article 33 (1) lit. 5 and Article 283 of the Penal Code, including by carrying out an independent study on their application in practice, and make the findings public and develop follow-up measures in consultation with civil society;
- Ensure that police investigations are carried out in an impartial and non-discriminatory manner and not based on ethnic profiling.

Refugees and asylum-seekers

- Ensure prompt, fair, effective and high-quality asylum procedures, including effective and adequate access for all asylum-seekers to independent legal advice throughout the procedure and access to adequate housing, social benefits and health care;
- Ensure that the provisions of the Istanbul Protocol are applied in refugee status determination procedures, including by providing in national legislation a requirement for medico-legal reports on signs of torture and other-ill treatment;
- Establish a comprehensive refugee resettlement programme.

Human Rights Education

- Enhance the provision of Human Rights Education in schools, including by improving the quantity and quality of teaching materials and providing appropriate training for prospective and practicing teachers.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE²⁵

Austria: Victim or suspect - A question of colour: Racial discrimination in the Austrian justice system (Index: EUR 13/002/2009).

Austria: Submission to the UN Universal Periodic Review: Tenth session of the UPR Working Group of the Human Rights Council January 2011 (Index: EUR 13/002/2010).

Austria's candidacy for election to the UN Human Rights Council: Open letter (Index: EUR 13/002/2011).

Austria: Human Rights Council adopts Universal Periodic Review outcome on Austria: Amnesty International Oral Statement (Index: EUR 13/001/2011).

Austria: Briefing to the UN Committee on the Elimination of Racial Discrimination (Index: EUR 13/001/2012).

Austria: UPR Midterm review – A work in progress (Index: EUR 13/001/2013).

Austria: Reform needed after European Court adoption victory for lesbian couple, 19 February 2013.

Annual Report 2014/2015: Austria (Index: POL 10/0001/2015). p. 64-65

²⁵ All of these documents are available on Amnesty International's website:
<https://www.amnesty.org/en/countries/europe-and-central-asia/austria/>