

AUSTRIA

SUBMISSION TO THE
UNITED NATIONS
COMMITTEE AGAINST
TORTURE

56TH SESSION, 9 NOVEMBER - 9
DECEMBER 2015

AMNESTY
INTERNATIONAL



Amnesty International Publications

First published in 2015 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

© Amnesty International Publications 2015

Index: EUR 13/2718/2015
Original Language: English
Printed by Amnesty International, International Secretariat, United Kingdom

All rights reserved. This publication is copyright, but may be reproduced by any method without fee for advocacy, campaigning and teaching purposes, but not for resale. The copyright holders request that all such use be registered with them for impact assessment purposes. For copying in any other circumstances, or for reuse in other publications, or for translation or adaptation, prior written permission must be obtained from the publishers, and a fee may be payable. To request permission, or for any other inquiries, please contact copyright@amnesty.org

Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

**AMNESTY
INTERNATIONAL**



CONTENTS

Executive summary	4
Recruitment of ethnic minority members to the police force and detention services (Article 2, LOIPR Q 4)	4
Prison conditions (Articles 2 and 11, LOIPR Q 2, 15 and 16)	6
Asylum-seekers (Article 11, LOIPR Q 9, 10, 17).....	9
Training (Article 10, LOIPR Q 12, 13, 29)	11
No accountability and lack of statistical data (Articles 12-14, LOIPR Q 18, 20, 21, 24, 29)	12
National preventive Mechanism (Articles 12 and 13, LOIPR Q 19, 29)	14
National Action Plan on Human Rights (LOIPR Q 30).....	16
Recommendations	17

EXECUTIVE SUMMARY

Amnesty International submits this briefing to the United Nations (UN) Committee against Torture (the Committee) ahead of its examination, in November 2015, of Austria's sixth periodic report (CAT/C/AUT/6) on the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention or the Convention against Torture). The document highlights Amnesty International's concerns regarding Austria's failure to fully comply with its obligations under Articles 2, 3, 10, 11, 12, 13 and 14 of the Convention.

This submission is broadly structured around thematic concerns which respond to the List of Issues Prior to Reporting. In particular, it outlines on-going concerns relating to insufficient efforts to recruit ethnic minority members to the police force and detention services; prison conditions, including pre-trial and penal detention of juveniles and preventive detention; inadequate reception conditions for asylum-seekers; and shortcomings in the provision of human rights training to police officers, judges and prosecutors. In addition, the report addresses concerns in relation to the lack of accountability and lack of statistical data on cases of abuse, possible deficiencies in the work of the national preventive mechanism (NPM) and in the process of setting up a National Plan of Action on Human Rights.

RECRUITMENT OF ETHNIC MINORITY MEMBERS TO THE POLICE FORCE AND DETENTION SERVICES (ARTICLE 2, LOIPR Q 4)

For many years, the Austrian police have failed to include members of ethnic minority communities, despite growing numbers of naturalized and second-generation immigrants. The serious under-representation of ethnic minorities in the police force has been acknowledged by the Austrian authorities, which began a recruitment drive in 2007 to encourage applications from naturalized and second-generation immigrants for the Vienna police. Amnesty International has repeatedly highlighted the very low number of police officers coming from ethnic minority communities as contributing to racially motivated police misconduct.¹ In 2010, the Committee recommended that Austria should continue its efforts to diversify the composition of its police force and correction services and to extend

¹ Amnesty International, Austria - Briefing to the UN Committee on the Elimination of Racial Discrimination, 81th session August 2012, p.8.

Amnesty International, Austria: Victim or suspect - A question of colour: Racial discrimination in the Austrian justice system, Index number: EUR 13/002/2009, 9 April 2009, p.50.

recruitment drives amongst ethnic minority communities throughout the country.² However, Amnesty International is concerned that efforts have not been sufficient and the number of officers from ethnic minority communities remains very limited.³

While the earlier project "Vienna Needs You" by the Regional Police Directorate in Vienna, aimed at searching for applicants with a migrant background for the security police, has in the meantime been adopted in Vienna as a regular policy⁴, Austrian authorities have failed to undertake similar initiatives in other parts of the country, let alone elaborate a general policy on the Austria-wide recruitment of ethnic minority members various ethnic origin to the police force.

In 2007, less than 1 percent of around 6,000 police officers in Vienna had been naturalized and second-generation immigrants.⁵ As of 1 June 2011, they represented slightly more than 2 percent of the police officers in service in Vienna and 6.4 percent of the police officers in basic vocational training in Vienna.⁶ In June 2014, the Austrian Ministry of the Interior stated that they represented 8.2 percent of police trainees and 2.5 percent of police officers in Vienna.⁷ In May 2015, the Austrian Minister of the Interior publicly stated that an estimated 7 percent of police officers in Austria had a migration background, albeit without providing concrete information on the data this estimate was based on.⁸

Amnesty International notes that there is no publicly available information allowing the assessment of the ethnic diversity of the police force at the national level and that Austria remains opposed to collecting and publishing any data concerning ethnic origin or possible migrant background.⁹

² Committee against Torture, Consideration of reports submitted by States parties under article 19 of the Convention, Concluding observations of the Committee against Torture, CAT/C/AUT/CO/4-5, 20 May 2010, para. 12.

³ Amnesty International, Austria - Briefing to the UN Committee on the Elimination of Racial Discrimination, 81th session August 2012, p.8.

Amnesty International, Austria: Victim or suspect - A question of colour: Racial discrimination in the Austrian justice system, Index number: EUR 13/002/2009, 9 April 2009, p.46.

Der Standard, Wiener Polizei startet Migranten-Rekrutierung, 23. November 2007

Der Standard, "Ich hatte beide Rollen inne", 17. April 2008.

⁴ Committee against Torture, Response of Austria to the list of issues adopted by the Committee at its forty-ninth session (29 October–23 November 2012) with regard to the consideration of the sixth periodic report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/C/AUT/6, Date received: 22 July 2014, para 16.

⁵ Ibid.

⁶ Leitner, Katharina, ÖIF-Dossier N° 21: Personen mit Migrationshintergrund in der Polizei: Ländervergleich Deutschland, Großbritannien, Niederlande, Österreich und Schweden, December 2011 http://web.integrationsfonds.at/oeif_dossiers/personen_mit_migrationshintergrund_in_der_polizei, accessed on 10 August 2015.

Der Standard, Karriere bei der Wiener Polizei: "Wir sind nicht päpstlicher als der Papst", 23 April 2013.

⁷ Ministry of the Interior, Response to interpellation, 1260/AB vom 26.06.2014 zu 1360/J (XXV.GP), p.7.

⁸ Budgetausschuss berät über Kapitel Innere Sicherheit, Parlamentskorrespondenz Nr. 438 vom 16.05.2014.

⁹ CAT/C/AUT/6, para 15; Budgetausschuss berät über Kapitel Innere Sicherheit,

In view of an overall share of people with a migration background living in Austria (20.4 percent) and in Vienna (40.7 percent) in 2014¹⁰, Amnesty International considers the measures taken by Austria so far to increase the share of police officers with a migration background to be insufficient.

Amnesty International also notes with concern that, with regard to the penal service system, Austria's Response of July 2014 to the Committee's List of Issues does not mention any measures to improve the ethnic diversity of its prison guard personnel.¹¹

PRISON CONDITIONS (ARTICLES 2 AND 11, LOIPR Q 2, 15 AND 16)

Amnesty International is concerned about structural shortcomings in the criminal justice detention system, including in relation to the detention of juveniles as well as the so-called “preventive” detention of mentally ill offenders in accordance with Art. 21 Penal Code (Maßnahmenvollzug).¹²

The number of juveniles held in criminal justice related detention has declined in recent years. According to the Federal Ministry of Justice, the number of juveniles in detention

Parlamentskorrespondenz Nr. 438 vom 16.05.2014; Der Standard, Rassismus bei Polizei: Rückendeckung für den Whistleblower, 23 July 2014.

¹⁰ Statistik Austria, Bevölkerung nach Staatsangehörigkeit und Geburtsland, http://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/bevoelkerung/bevoelkerungsstruktur/bevoelkerung_nach_staatsangehoerigkeit_geburtsland/index.html

Statistik Austria, Bevölkerung in Privathaushalten nach Migrationshintergrund, http://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/bevoelkerung/bevoelkerungsstruktur/bevoelkerung_nach_migrationshintergrund/index.html

Statistik Austria, Bevölkerung mit Migrationshintergrund nach Bundesländern (Jahresdurchschnitt 2014) http://www.statistik.at/web_de/statistiken/menschen_und_gesellschaft/bevoelkerung/bevoelkerungsstruktur/bevoelkerung_nach_migrationshintergrund/033241.html, accessed on 10 August 2015.

¹¹ CAT/C/AUT/6, Question 4.

¹² According to the Austrian Ministry of Justice, the “Austrian legal system distinguishes three types of imprisonment imposed by criminal courts, namely pre-trial detention, penal service and preventive measures in connection with detention.” Preventive measures “are determined by the particular danger posed by the offender. They are also used whenever they serve to obtain better results with regard to re-socialising the offender and protecting society, or when no punishment can be administered in the absence of guilt (e.g. for lack of criminal responsibility). The most important of these measures is the placement of persons in institutions for mentally disturbed offenders. This measure is imposed for an unlimited period. The court must examine, at least on an annual basis, whether such placement is still necessary. Preventive measures are administered in prisons, specialised departments or in certain public psychiatric hospitals.” Ministry of Justice, The Austrian Judicial System, 1 October 2014, p.16, https://www.justiz.gv.at/web2013/file/8ab4ac8322985dd501229ce2e2d80091.de.0/broschuere_oesterr_justiz_en_download.pdf, accessed on 25 August 2015.

dropped from a high of 259 juveniles in 2004 to 112 juveniles in 2013.¹³ As of 1 September 2014, there were 99 juveniles in detention in Austria.¹⁴ However, that figure rose again to 142 by 1 April 2015, including 71 juveniles in pre-trial detention.¹⁵

In its final report of October 2013, a task force on the pre-trial detention of juveniles, established by the Ministry of Justice¹⁶, made 35 recommendations and underlined the need for reform, inter alia, by stating that the number of juveniles in detention in Germany, Switzerland, Denmark, Sweden, Norway, Belgium, the Czech Republic, France, Romania, Slovenia and Poland was much lower than in Austria.¹⁷ In June 2015, the Ministry of Justice reported that eight out of the 35 task force's recommendations had been implemented, four were in the process of being implemented, while 19 were being considered.¹⁸

However, Amnesty International regrets that despite the Ministry of Justice's consideration of the Task Force recommendation concerning assisted-living communities and alternatives to pre-trial detention as having been implemented, these alternatives are not sufficiently used and many juveniles continue to be held in pre-trial detention. In this context, the organisation reiterates that governments must provide juveniles with alternatives to detention whenever possible and that, if necessary, the detention of juveniles must be used only as a measure of last resort, for the shortest possible period of time and in specially designed facilities. Therefore, Amnesty International is concerned that alternatives to the detention of juveniles are not provided to a sufficient degree and that there is only one prison facility in Austria specially designed for juveniles.¹⁹ This leads to the detention of children under the

¹³ Ministry of Justice, Sicherheitsbericht 2013, p. 95-96, www.bmi.gv.at/cms/BMI_Service/SB_2013/04_Justizteil_2013.pdf, accessed on 20 March 2015.

¹⁴ Ministry of Justice, Brandstetter präsentiert Sicherheitsbericht 2014 im heutigen Ministerrat, 14 July 2015, <https://www.justiz.gv.at/web2013/html/default/2c94848a4e87e708014e8c2709cb0018.de.html>, accessed on 25 August 2015.

¹⁵ Nationaler Aktionsplan Menschenrechte – Maßnahmen, as of June 2015, p.23 http://volksanwaltschaft.gv.at/downloads/7etun/NAP_Ma%C3%9Fnahmen.pdf, accessed on 25 August 2015.

¹⁶ The official name of the Task Force was “Runder Tisch Untersuchungshaft für Jugendliche – Vermeidung, Verkürzung, Vollziehung”. It 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.

¹⁷ Ministry of Justice, Untersuchungshaft für Jugendliche - Vermeidung, Verkürzung, Vollziehung, Abschlussbericht des Runden Tisches, October 2013, <https://www.justiz.gv.at/web2013/html/default/2c948486422806360142c82f9ac124b8.de.html>; Ministry of Justice, Sicherheitsbericht 2014, p. 74-77, https://www.justiz.gv.at/web2013/file/2c94848525f84a630132fdbd2cc85c91.de_0/sicherheitsbericht2014.pdf, accessed on 25 August 2015.

¹⁸ Nationaler Aktionsplan Menschenrechte – Maßnahmen, as of June 2015, p.22. http://volksanwaltschaft.gv.at/downloads/7etun/NAP_Ma%C3%9Fnahmen.pdf, accessed on 25 August 2015.

¹⁹ Ministry of Justice, Justizanstalt Gerasdorf <https://www.justiz.gv.at/web2013/html/default/2c94848542ec498101446d3e5e584a01.de.html>, accessed on 25 August 2015.

age of 18 in prisons for adults in the various regions of Austria, including Vienna, where their specific needs, including increased protection from risks of sexual violence, reduced length of lock-up periods and provision of special activities, are not adequately met.

Amnesty International emphasizes that the speedy implementation of those Task Force recommendations which are still under consideration would constitute a first step in the right direction, especially with regard to the establishment of an additional separate detention facility for juveniles aimed at improving their detention conditions and facilitate their rehabilitation; the introduction of new statistics on violence amongst inmates; an obligatory review of remand in pre-trial detention; the elimination of mandatory pre-trial detention for juveniles; and effective access to legal counsel starting from the moment of detention.²⁰

The organization is also concerned that mentally ill people detained in prisons do not receive adequate medical and mental health care. In May 2014, it emerged that a mentally ill 74-year-old man held in preventive detention in Stein prison had been gravely neglected for years, including being deprived of medical care.²¹ Subsequently, the Federal Minister of Justice announced that the planned reform of the preventive detention system would be accelerated and established a task force in June 2014. In its final report published in January 2015, the task force made 92 recommendations.²² In March 2015, criminal proceedings against four officials suspected of involvement in the above-mentioned case of neglect at Stein prison were closed with no prosecutions being brought against those suspected of having been involved in the case. Related disciplinary proceedings were also dropped in June 2015. According to a Ministry of Justice's statement, the case was the result of a failure not of individual officials but rather of the system, which was currently under reform.²³

On 1 July 2015, a General Directorate for Penal Detention and Preventive Detention was established within the Ministry of Justice as well as a "clearing centre" within the new General Directorate responsible for dealing with criminally liable offenders with serious mental health problems (geistige oder seelische Abartigkeit von höherem Grad) held in accordance with Art. 21 (2) Penal Code, i.e. in cases where a causal connection between the offender's mental disorder and the offence committed has been established.²⁴

²⁰ Ministry of Justice, Untersuchungshaft für Jugendliche - Vermeidung, Verkürzung, Vollziehung, Abschlussbericht des Runden Tisches, October 2013
<https://www.justiz.gv.at/web2013/html/default/2c948486422806360142c82f9ac124b8.de.html>;
Nationaler Aktionsplan Menschenrechte – Maßnahmen, as of June 2015, p.22,
http://volksanwaltschaft.gv.at/downloads/7etun/NAP_Ma%C3%9Fnahmen.pdf, accessed on 25 August 2015.

²¹ 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.

²² Arbeitsgruppe Massnahmenvollzug, Bericht an den Bundesminister für Justiz über die erzielten Ergebnisse, BMJ-V70301/0061-III 1/2014, January 2015,
<https://www.justiz.gv.at/web2013/html/default/2c94848a4b074c31014b3ad6caea0a71.de.html>,
accessed on 20 March 2015.

²³ Orf.at, Verwahrloster Häftling: Auch Disziplinarverfahren eingestellt, 5 June 2015,
<http://orf.at/stories/2282398>, accessed on 10 September 2015.

²⁴ Ministry of Justice, Justizminister Brandstetter führt moderne Strukturen im Straf- und

On 16 July 2015, in a case against Austria the European Court of Human Rights found that a 16-month-delay in dealing with an application for release from a psychiatric institution constituted a breach of the requirement of a speedy review and therefore had been in breach of his human rights.²⁵

Notwithstanding some reforms being under way, on 21 August 2015, the Ministry of Justice stated that that it was not yet possible to assess when a noticeable and sustainable positive change in the preventive detention system could be expected.²⁶

ASYLUM-SEEKERS (ARTICLE 11, LOIPR Q 9, 10, 17)

As a result of numerous international crises, increasing numbers of asylum-seekers continue to arrive in Austria. The number of asylum applications rose from 17,503 in 2013 to 28,027 in 2014 and 28,311 in the first half of 2015 alone.²⁷

Amnesty International is concerned that the asylum procedure in Austria remains long, often lasting several years, and that the authorities continue to fail to ensure effective and adequate access for all asylum-seekers to independent legal advice throughout the procedure.

Following reports, inter alia, by the UN High Commissioner for Refugees²⁸, denouncing the inadequacy of reception conditions and of the provision of essential services in the overcrowded Traiskirchen asylum-seekers' centre, including lack of adequate accommodation and of medical care and insufficient protection of children below 18 years of age, Amnesty International conducted a research visit to the centre on 6 August 2015.

Maßnahmenvollzug ein, 2 July 2015,

<https://www.justiz.gv.at/web2013/html/default/2c94848a4d8f40ea014e4ddf17e62dd3.de.html>,
accessed on 25 August 2015.

²⁵ European Court of Human Rights, Press Release: Courts were obliged to review lawfulness of convict's confinement in mental institution although it could only be replaced by ordinary imprisonment, Kuttner v. Austria (application no. 7997/08), ECHR 248 (2015), 16 July 2015.

²⁶ Ministry of Justice, Response to interpellation, 5505/AB vom 21.08.2015 zu 5586/J, p.5
http://www.parlament.gv.at/PAKT/VHG/XXV/AB/AB_05505/imfname_459230.pdf, accessed on 3
September 2015.

²⁷ Ministry of the Interior: Asylum Statistics

http://www.bmi.gv.at/cms/BMI_Asywesen/statistik/files/Asylstatistik_Jahresstatistik_2013.pdf
http://www.bmi.gv.at/cms/BMI_Asywesen/statistik/files/2014/Asylstatistik_Dezember_2014.pdf
http://www.bmi.gv.at/cms/BMI_Asywesen/statistik/files/Asylstatistik_Jahresstatistik_2013.pdf

²⁸ On 29 July 2015, the UNHCR urged the authorities to stop transferring additional asylum seekers to the Traiskirchen asylum-seekers' centre, calling the situation intolerable, dangerous and degrading.
<http://www.unhcr.at/presse/pressemitteilungen/artikel/daa75e69c2cb7c397532a5e2b42a3e00/unhcr-appelliert-keine-weiteren-asylsuchenden-mehr-nach-traiski.html>

On the basis of its observations and interviews with some 30 asylum-seekers as well as employees at the Traiskirchen asylum-seekers' centre, officials from the Austrian Ministry of the Interior and the Mayor of Traiskirchen, in August 2015 Amnesty International expressed concern that the situation of many asylum-seekers held at the centre at the time may have amounted to inhuman and degrading treatment.²⁹

According to the Ministry of the Interior, the Traiskirchen centre, designed to accommodate 1,800 people³⁰, was hosting 4,500 people at the end of July 2015. Tents were set up to accommodate some 480 asylum-seekers, while up to 2,000 asylum-seekers were left without any shelter at all. To alleviate the overcrowding, on 5 August, the authorities imposed a freeze on further arrivals. When Amnesty International visited the centre the next day, 4,093 people were still hosted there, including 2,303 children under the age of 18, with 1,506 people sleeping outdoors on the ground without any shelter, including 528 unaccompanied children and families with children. No one in the centre had a clear overview of how many people were still in need of shelter and beds, in order to be able to ensure that their most essential needs could be adequately met.³¹ On 19 August 2015, the number of asylum-seekers held in Traiskirchen had dropped to 3,611.³² On 18 September, 3,332 asylum-seekers, including 1,291 unaccompanied children, were accommodated in Traiskirchen and the adjoining area of the Security Academy (SIAK). 1,216 people, including 315 unaccompanied children, were without shelter.³³

Access to adequate sanitary facilities was limited. Adequate access to food was hampered by long waiting times. Access to medical care was also insufficient, as asylum-seekers often had to wait for long periods, thus increasing the risk of medical problems deteriorating. These shortcomings were mainly due to insufficient personnel and other resources as well as lack of organisation.³⁴

Amnesty International found that asylum-seekers it spoke to did not have clear information about their status, their situation and what was going to happen to them next. Many of them were therefore highly uncertain and anxious.³⁵

The situation of unaccompanied children was particularly concerning, as measures to ensure their protection were inadequate. For instance, they were not promptly provided with a legal guardian and promptly accommodated in separate facilities suited to unaccompanied children. They mostly seemed to have been left to themselves and were not given sufficient

²⁹ Amnesty International, *Quo Vadis Austria? Die Situation in Traiskirchen darf nicht die Zukunft der Flüchtlingsbetreuung in Österreich werden*, 14 August 2015.

³⁰ According to the Mayor of Traiskirchen, the centre is supposed to accommodate only 1,400 asylum-seekers. *ibid.*

³¹ *ibid.*

³² *Der Standard*, *Heimlicher Staatsbesuch in Traiskirchen*, 19 August 2015.

<http://derstandard.at/2000020979173/Heimlicher-Staatsbesuch-in-Traiskirchen>, accessed on 20 August 2015.

³³ Ministry of the Interior, *Response to Amnesty International: Aktualisierte Zahlen der in der Betreuungsstelle Ost in Traiskirchen aufhältigen grundversorgten hilfs- und schutzbedürftigen Fremden*, GZ: BMI-FW1620/2417-III/5/2015, 21 September 2015.

³⁴ Amnesty International, *Quo Vadis Austria?*

³⁵ *ibid.*

care and assistance.³⁶

On 31 July 2015, the government presented a five-point programme, which proposed legal amendments; financial measures, such as plans to increase the per diem rates for the provision of care to unaccompanied asylum-seeker children who are covered by the federal government's basic care programme (Grundversorgung); and short-term measures to alleviate overcrowding in the Traiskirchen asylum-seekers' centre.³⁷ On 1 October 2015, a special constitutional law entered into force that allows the federal government to provide timely and adequate accommodation for asylum-seekers, if the provincial governments (Länder) fail to take action. The law will remain in force until 31 December 2018.³⁸

Amnesty International considers the proposals and measures taken to be a first step in the right direction, but has not yet been able to observe fundamental changes in the situation on the ground. Amnesty International will closely monitor the situation and calls on Austria to uphold its international obligations regarding asylum-seekers.

TRAINING (ARTICLE 10, LOIPR Q 12, 13, 29)

Amnesty International welcomes efforts to provide human rights training to police officers, judges and prosecutors. However, the bulk of systematic and obligatory human rights-related training activities are aimed at prospective officers and officials, while training offers aimed at long-serving and senior officers and officials are few and mostly voluntary.

Amnesty International also points to the general lack of awareness concerning the Istanbul Protocol³⁹ among law enforcement officials and law and health professionals. The organization considers the measures laid out in Austria's Response to the List of Issues of July 2014, i.e., two advanced medical education classes concerning preventing and solving incidences of torture and participation of NPM commission members in a European Commission-funded project, inadequate.⁴⁰

³⁶ *ibid.*

³⁷ *ibid.*

³⁸ Bundesverfassungsgesetz über die Unterbringung und Aufteilung von hilfs- und schutzbedürftigen Fremden.

³⁹ Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

⁴⁰ CAT/C/AUT/6, paragraph 50-51.

NO ACCOUNTABILITY AND LACK OF STATISTICAL DATA (ARTICLES 12-14, LOIPR Q 18, 20, 21, 24, 29)

Amnesty International is concerned about difficulties encountered by victims of torture and other ill-treatment in obtaining justice and reparation and that 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.

Amnesty International regrets that “no evaluation of specific data is available for criminal justice proceedings in cases of ill-treatment” and that the provision of “statistical data also about criminological phenomena such as crimes motivated by racism and xenophobia or cases of torture and ill-treatment [...] can be realised only in the long term”.⁴¹ Furthermore, despite the establishment in 2013 of a joint Ministry of Justice and Ministry of the Interior working group to improve the data basis for judicial criminal statistics⁴², no tangible progress has been made with regard to systematically collecting and publishing comprehensive and coherent statistics on racially motivated incidents and misconduct by law enforcement officials, including allegations of racially motivated ill-treatment.

The response by both the police and the judicial system to allegations of police misconduct remains inadequate. For instance, in its Sixth periodic report, under the header “Judiciary”, Austria refers to a total of 1,950 cases of “Accusations of ill-treatment against security police officers and similar cases of suspicion” which were handled by public prosecutors and reported to the Ministry of Justice for the years 2010-2012. In the same period, only five criminal proceedings/indictments, two charges withdrawn before main trial, three acquittals and no conviction were reported, i.e. a criminal proceedings/indictment rate of 0.26 percent and a conviction rate of 0 percent.⁴³ Similarly, under the header “Police Forces”, Austria reports 1,394 accusations of torture or other ill-treatment raised against police officers in Austria in the period 2010 to 2013, which resulted in two convictions, i.e. a conviction rate of 0.14 percent, and two acquittals, with 23 proceedings still pending in courts, as of July 2014.⁴⁴ In 2014, out of 250 complaints against officers of the Vienna police alleged misconduct none led to a criminal conviction.⁴⁵

By comparison, in 2013, the overall rate of criminal charges and indictments initiated by

⁴¹ CAT/C/AUT/6, paragraph 106.

⁴² CAT/C/AUT/6, paragraph 106, 108.

⁴³ CAT/C/AUT/6, paragraph 108-109.

⁴⁴ CAT/C/AUT/6, paragraph 115.

⁴⁵ Der Standard, Vorwurf der Polizeigewalt in Wien: Sektionschef kritisiert Exekutive, 11 March 2015, <http://derstandard.at/2000012792486/Vorwurf-der-Polizeigewalt-in-WienSektionschef-kritisiert-Polizei>
Der Standard, Amnesty-Chef: "Polizisten werden im Bereitschaftsdienst versaut", 13 March 2015, <http://derstandard.at/2000012907972/Amnesty-Chef-Polizisten-werden-in-Bereitschaftsdienst-versaut>, accessed on 25 August 2015.

public prosecutors for all other offences was 27.1 percent, while the overall conviction rate was 57.1 percent for all 61,580 cases settled by Austrian courts in 2013.⁴⁶

The failure of the Austrian criminal justice system to respond adequately to allegations of torture and other ill-treatment by police is further highlighted by the fact that while 54 defamation cases relating to accusations of ill-treatment raised against law enforcement officers were reported in 2010-2012, 15 criminal proceedings/indictments, one charge withdrawn before main trial, nine acquittals and six convictions, were recorded in the same period, i.e. a criminal proceedings/indictment rate of 27.8 percent and a conviction rate of 40 percent.⁴⁷

Regrettably, Austria also failed to take adequate measures to follow up on allegations of abuse outside the criminal justice system. Out of the 1,394 accusations of torture or other ill-treatment raised against police officers in Austria in 2010-2013, in “no case administrative or disciplinary sanctions had to be imposed” and four cases were pending with the disciplinary commission of the Federal Ministry of the Interior by July 2014.⁴⁸ There is no more recent information on these cases available.

Amnesty International thus reiterates its concern that there is no independent mechanism to investigate allegations of serious human rights violations by law enforcement officials, and with the power to order disciplinary proceedings and to refer cases directly to judicial authorities. Amnesty International believes that specialized independent police complaints mechanisms provide a particularly effective system of investigating and responding to allegations of police ill-treatment.⁴⁹

In January 2015, the Federal Minister of the Interior announced plans to equip police officers with body worn cameras to be able to record sensitive police operations. In August 2015, the Ministry of the Interior confirmed that a test run with body cameras was planned in Vienna and other yet unspecified locations in Austria for the beginning of 2016. However, the organization regrets that, so far, the Minister of the Interior has maintained her rejection of a compulsory identification system for police officers.⁵⁰ Amnesty International notes that investigations into allegations of police abuse often fail because it is impossible to identify the officers who allegedly committed abuses.

Amnesty International also highlights that domestic law does not effectively incorporate the standards of the United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) and that these standards are not applied in practice.

⁴⁶ Ministry of Justice, Security Report 2013, p.14, 20.

⁴⁷ CAT/C/AUT/6, paragraph 110.

⁴⁸ CAT/C/AUT/6, paragraph 115.

⁴⁹ also see Amnesty International, Austria: Victim or suspect - A question of colour: Racial discrimination in the Austrian justice system, Index number: EUR 13/002/2009, 9 April 2009, p.23; ZARA, Rassismus Report 2013, p.11.

⁵⁰ Der Standard, Dringliche Anfrage im Nationalrat: Mikl-Leitner verteidigt Exekutive, 26 March 2015, <http://derstandard.at/2000013502569/Dringliche-Anfrage-im-Nationalrat-Mikl-Leitner-verteidigt-Exekutive>, accessed on 25 August 2015; wien.orf.at, Körperkameras für Polizei: Test ab Anfang 2016, 17 August 2015 <http://wien.orf.at/news/stories/2726835>, accessed on 25 August 2015.

NATIONAL PREVENTIVE MECHANISM (ARTICLES 12 AND 13, LOIPR Q 19, 29)

Amnesty International welcomes Austria's ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT) and the establishment of a national preventive mechanism (NPM) under the OP-CAT in 2012.

The Austrian Ombudsman Board (AOB) is mandated to carry out the functions of both a national human rights institution (NHRI) and a National Preventive Mechanism (NPM). In its Concluding Observations of July 2012, the Committee on the Elimination of Racial Discrimination raised concerns about the independence of the AOB's board members and called on the government to ensure that their appointment fully complied with the Principles relating to the Status of National Institutions (The Paris Principles) and the Guidelines on National Preventive Mechanisms.⁵¹ Once established, the NPM set up its own Human Rights Advisory Council (HRAC), comprised of representatives of the Federal Chancellery and several Ministries, as well as human rights organisations, including Amnesty International. The HRAC's main purpose is to assist the NPM in fulfilling its mandate by, inter alia, advising on the wording of recommendations, helping to define investigative priorities, set up investigative standards and provide guidelines for the assessment of whether the recommendations issued by the NPM are in line with predefined human rights standards.⁵²

Amnesty International welcomes that the NPM has carried out hundreds of visits to private and public places of detention and has observed dozens of police operations, amounting to a total of 1,090 "monitoring and control activities" between 2012 and 2014.⁵³ So far,

⁵¹ 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. Guidelines on National Preventive Mechanisms, CAT/OP/12/5.

⁵² Austrian Ombudsman Board, NPM Report 2012, p.33-34.

⁵³ Austrian Ombudsman Board, Report of the Austrian Ombudsman Board on the National Preventive Mechanism 2012, May 2013.

http://volksanwaltschaft.gv.at/downloads/b7cuj/Report%20of%20the%20AOB%20on%20the%20activities%20of%20the%20NPM_2012.pdf

Report of the Austrian Ombudsman Board and its Commissions on the National Preventive Mechanism 2013, May 2014.

http://volksanwaltschaft.gv.at/downloads/48h64/Austria_Report%20on%20Activities%20of%20NPM_2013.pdf

Annual Report on the activities of the Austrian National Preventive Mechanism (NPM) 2014, International Version, Protection & Promotion of Human Rights, June 2015.

however, there is no easily accessible overview of how the NPM responds to and follows up on its visits and observations as well as on the level of implementation of its recommendations by the authorities. According to a May 2015 study commissioned by the European Commission, there is also no prioritization of recommendations, which – given the large number of the NPM's activities – may hamper the effectiveness of the NPM's preventive work. Moreover, while civil society experts are part of the NPM's commissions they are not involved in official communication with the authorities and are largely excluded from follow-up measures taken by the AOB.⁵⁴

Recently, there has been criticism of shortcomings and possible political interference in the work of the NPM. In an open letter of 1 April 2015, the HRAC distanced itself from the AOB's decision to replace the heads of three of the six NPM's commissions with individuals with no specific human rights background, arguing that its concerns had been ignored by the AOB and that the AOB had breached the law, which requires candidates to have relevant expertise.⁵⁵

Amnesty International is concerned at the lack of transparency regarding the NPM's decision-making and prioritization as well as its insufficient focus on follow-up and preventive work.

<http://volksanwaltschaft.gv.at/downloads/76su3/Report%20on%20the%20activities%20of%20the%20NPM%20-%202014.pdf>, accessed on 25 August 2015.

⁵⁴ Ludwig Boltzmann Institute of Human Rights and Human Rights Implementation Centre of the University of Bristol, Enhancing impact of national preventive mechanisms. Strengthening the follow-up on NPM recommendations in the EU: Strategic development, current practices and the way forward, May 2015, p.39, 71, 73.

http://www.univie.ac.at/bimtor/dateien/NPM_Study_final.pdf, accessed on 25 August 2015

⁵⁵ Offener Brief an die Volksanwälte: Mitglieder des Menschenrechtsbeirats distanzieren sich von Bestellvorgängen, 1 April 2015, http://www.ots.at/presseaussendung/OTS_20150401_OTS0081/offener-brief-an-die-volksanwaelte-mitglieder-des-menschenrechtsbeirats-distanzieren-sich-von-bestellvorgaengen;

Der Standard, Menschenrechtsbeirat sauer: Folterexperte Nowak übergangen, 1 April 2015,

<http://derstandard.at/2000013736656/Menschenrechtsbeirat-sauer-Folterexperte-Manfred-Nowak-uebergangen>, accessed on 25 August 2015;

Falter, Der blaue Volksanwalt gegen den Folterinspektor, No. 25/15, 16 June 2015, p.14; Der Standard, Experten: Volksanwaltschaft schützt Polizei, 17 August 2015

<http://derstandard.at/2000017590802/Experten-Kritik-Volksanwaltschaft-schuetzt-Polizei>, accessed on 25 August 2015,

Bundesgesetz zur Durchführung des Fakultativprotokolls vom 18. Dezember 2002 zum Übereinkommen der Vereinten Nationen gegen Folter und andere grausame, unmenschliche oder erniedrigende Behandlung oder Strafe – OPCAT-Durchführungsgesetz, Art. 12 (1): „Jede Kommission wird von einer auf dem Gebiet der Menschenrechte anerkannten Persönlichkeit geleitet.“

<http://volksanwaltschaft.gv.at/downloads/alaha/OPCAT%2520Durchf%25C3%25BChrungsgesetz.pdf>, accessed on 25 August 2015.

NATIONAL ACTION PLAN ON HUMAN RIGHTS (LOIPR Q 30)

Amnesty International welcomes Austria's efforts to develop a national human rights plan of action by the end of 2015. However, the organization regrets that the process for establishing the plan is not in line with the standards laid out by the Office of the High Commissioner for Human Rights in its 2002 Handbook on National Human Rights Plans of Action.⁵⁶

As of 15 June 2015, the government's project proposals for its National Human Rights Plan of Action only insufficiently addressed obligations under the Convention against Torture. The whole 43-page document did not contain a reference to torture, ill-treatment and abuse and only five out of a total of 37 projects touched upon issues which have been raised by the Committee in its List of Issues of January 2013. These include a high-level conference on "Childhood free from corporal punishment – changing policies and legislation"; the improvement of data quality – data harmonisation between the Ministries of Justice and the Interior; the reform of preventive detention; the pre-trial detention of juveniles – avoidance, reduction, enforcement; and "competence trainers for basic police training".⁵⁷

Overall, the Plan appears to be mostly a compilation of already planned activities, rather than a concerted effort to systematically and comprehensively address Austria's most pressing human rights concerns. Amnesty International also reiterates its concern that there is no allocated budget for elaborating, implementing and evaluating the Plan, and to the fact that the government has objected to conducting a base-line study.⁵⁸

⁵⁶ 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.

⁵⁷ Nationaler Aktionsplan Menschenrechte – Maßnahmen, as of 15 June 2015.

⁵⁸ Amnesty International, 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 (Index: EUR 13/2189/2015), 31 July 2015.

RECOMMENDATIONS

Amnesty International calls on the government of Austria to:

Recruitment of persons belonging to ethnic minorities to the police force and detention services (Article 2, Question 4 of the list of issues)

- Ensure that the membership of the police and penal service systems reflects the cultural and ethnic diversity of the population, including by introducing staff recruitment, progression and retention targets and by continuing and extending recruitment drives amongst ethnic minority communities across all of Austria.

Prison conditions (Articles 2 and 11, Questions 2, 15 and 16 of the List of Issues)

- Implement the recommendations of the Task Force on the pre-trial detention of juveniles and regularly provide updates on their state of implementation. In particular, ensure prompt and effective access to legal counsel for all juvenile criminal suspects, the provision of alternatives to detention for all juveniles in pre-trial detention and the detention of convicted juvenile offenders only in specially designed facilities, as a measure of last resort and for the shortest possible period of time.
- Ensure that the treatment of detainees with mental illnesses complies fully with international standards, including by implementing the recommendations of the task force on preventive detention and regularly providing updates on their state of implementation.⁵⁹ In particular, ensure adequate medical and mental health care for all people in preventive detention, the administration of preventive detention for persons held on the basis of Art. 21 Penal Code in therapeutic centres only, and take concrete measures to reduce the use of preventive detention and the number of people in the preventive detention system.

Asylum-seekers (Articles 3 and 11, Questions 8, 9 and 10, 17)

- Ensure prompt, fair, effective and high-quality asylum procedures and effective and adequate access for all asylum-seekers to independent legal advice throughout the procedure.
- Ensure asylum-seekers' access to adequate housing, social benefits and health care in line with relevant international standards, including in the Traiskirchen asylum-seekers' centre.
- Ensure that the needs of vulnerable groups of asylum-seekers such as torture survivors, people with serious medical conditions, pregnant women, elderly people and children are adequately met.

⁵⁹ 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.

- Ensure that unaccompanied children, in particular, are immediately provided with adequate accommodation, care and a legal guardian who acts in their best interest and keeps them informed about their asylum procedure.
- Ensure that the provincial governments fulfil their obligation to promptly and comprehensively provide accommodation.

Training (Article 10, Questions 12 and 13, 29)

- Ensure that all police officers, judges and prosecutors, in particular senior officers and officials, undergo compulsory, systematic and comprehensive human rights training.
- Increase awareness of the Istanbul Protocol, including by providing related training nationwide to law enforcement officials and law and health professionals.

No accountability and lack of statistical data (Articles 12-14, Questions 18, 20, 21, 24, 29)

- Ensure that allegations of human rights violations by law enforcement officials, including racially motivated misconduct, are effectively investigated, including *ex officio*, and lead to proper accountability, including criminal and disciplinary sanctions.
- Introduce a compulsory identification system for police officers and establish a fully resourced independent mechanism to investigate such allegations, with the power to order disciplinary proceedings and to refer cases directly to the competent judicial authorities.
- Ensure that all allegations and evidence of torture or other ill-treatment are effectively investigated and documented in line with the Istanbul Protocol, the requirements of which should be properly incorporated in domestic law and applied in practice.
- Establish an effective system to gather all statistical data relevant to the monitoring of the implementation of the Convention Against Torture, including complaints, investigations, prosecutions, convictions, and compensation and rehabilitation provided to the victims.

National preventive mechanism (Articles 12 and 13, Questions 19, 29)

- Ensure that the national human rights institution and the national preventive mechanism comply fully with the Paris Principles and the Guidelines on National Preventive Mechanisms, including by changing the selection process to ensure the independence and comprehensive human rights expertise of the members of the Austrian Ombudsman Board and the heads of the NPM's monitoring commissions.
- Increase the effectiveness, transparency and preventive focus of its work, including by prioritizing recommendations, systematically linking commission visits with follow-up to their findings, regularly publishing reports on commission visits and issuing guidelines to prevent torture and other ill-treatment.

National Action Plan on Human Rights (Question 30)

- Establish a national human rights action plan in line with the OHCHR guidelines.⁶⁰ The Plan should include concrete objectives and effective measures to improve the promotion and protection of human rights, based on a thorough analysis of the current human rights situation in Austria.

⁶⁰ 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

AMNESTY
INTERNATIONAL



www.amnesty.org