



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

Distr.: General
20 July 2017

English only

Committee against Torture

**Concluding observations on the sixth periodic report of
Austria**

Addendum

**Information received from Austria on follow-up to the
concluding observations***

[Date received: 9 December 2016]

* The present document is being issued without formal editing.



Response by Austria to the Recommendations No. 9 (a) and 9 (b), 23, 31 and 37 as well as to the implementation of several other recommendations as requested by the Committee against Torture in its Concluding Observations (CAT/C/AUT/CO/6) adopted on 1 December 2015

With regard to paragraph 9 (a) “Presence of a lawyer during police questioning”

1. A recent amendment of Section 164 paragraph 2 of the Code of Criminal Proceedings (hereinafter CCP) lays down explicitly that if a suspect exercises the right to defence the questioning has to be delayed until the arrival of the defense lawyer unless this delay would lead to an undue prolongation of the detention. The amendment has been published in the Federal Law Gazette I No. 26/2016 on 20 May 2016 and has entered into force on 1 November 2016. Accordingly a new internal instruction has been issued by the Federal Ministry of the Interior: The police will now wait till the arrival of the suspect’s lawyer for an appropriate time in the individual case. Since the agreement with the Austrian Bar Association on the provision of a stand-by legal counselling service (Rechtsanwaltlicher Journdienst) foresees that a lawyer shall be present within three hours, the police will delay the questioning at the most for this time.

With regard to paragraph 9 (b) “Establishment of independent mechanisms to investigate allegations of torture and ill-treatment by law enforcement officials” and paragraph 37 “Prompt, thorough and impartial investigations”

2. The Federal Ministry of Justice will launch a scientific evaluation study to assess the reasons for the discrepancy between the low number of criminal convictions for torture or ill-treatment of detainees in police custody and the disproportionately high number of such allegations. The study will also make suggestions to ensure prompt, thorough and impartial investigations and documentation of such findings in accordance with the Istanbul Protocol into allegations of torture and ill-treatment of detainees. The Ministry of Justice will provide all relevant investigation files of the Vienna and Salzburg Public Prosecutor’s Office between 2012 and 2015 to an external research team which will analyse the characteristics of the scenarios and compare the different factors involved, including age, gender, affected police stations, sentences/sanctions imposed on perpetrators of such acts and the reason for such sentences/sanctions, and procedural handling of complaints.

3. This study will start shortly after the contract signing and will run for a period of one year. The results of the study will be taken into account in redrafting the decree of the Ministry of Justice on the handling of allegations of ill-treatment of detainees.

With regard to paragraph 23 “Use of detention pending deportation”

4. Since 2006, the Austrian authorities have relied less and less on pre-removal detention (8.694 in 2006 to 4.178 in 2013 and 1.924 in 2014). This trend continues in absolute numbers and in relation to the sharp rise of asylum applications in 2015, when 1.155 detentions and 548 alternative measures were imposed by the Federal Office for Immigration and Asylum (BFA). From January to September 2016 the BFA ordered detention 1.587 times, while 144 orders for alternative measures have been issued.

5. The 8th chapter of the Aliens Police Act 2005 regulates pre-expulsion detention and its alternatives: Sections 76 and 77 stipulate that detention may only be used as the last resort if alternatives, such as residing at a particular address, reporting periodically to the police office and lodging a financial deposit, would not be feasible or if they have proved to be ineffective in individual cases. Accordingly, minors under 14 years old must not be taken into detention and minors between 14 and 18 may be taken only in very extraordinary cases. The BFA is required to limit such detentions to the shortest possible duration (Section 80 Aliens Police Act). An effective remedy is provided through the possibility to challenge the arrest and detention before the Federal Administrative Court as well as regular evaluations carried out by the Federal Administrative Court automatically (Section 22a BFA-Procedures Act).

With regard to paragraph 31 “The use of electrical discharge weapons in prison settings”

6. The Taser X 26 is a service weapon pursuant to Section 105 (2) Correction Services Act — (hereinafter StVG) and its use is subject to the principle of proportionality (Section 105 (4) StVG). When triggering the impact inherent to such weapon in distance mode or supplementary distance mode, the provisions of Section 105 (6) StVG (use of deadly force) shall be applied *mutatis mutandis*. Section 182 (3a) CCP applies for remand detainees. The use of such weapon in contact mode, in addition to its use in situations where the use of deadly force is permissible, is also permissible for the purpose of imposing constraints against resistance. In such cases, the Taser X 26 may only be applied to the limbs, however.

7. Pursuant to Section 105 (3) StVG, any authorisation to trigger the impact inherent to such weapon (order to use a weapon) is incumbent upon the prison director. If such decision by the prison director cannot be made in time or during night watch of inspection services and if there is imminent danger, the decision authorisation rests with the highest ranking prison staff member present.

8. As it cannot be excluded that the proportional and appropriate use of the Taser can become unavoidably necessary to protect the life and health of a person in prison the State Party sees no reason to abolish or change the above mentioned provisions, which proved their value over the years in practical application. As tested in several independent scientific studies the Taser is clearly less risky than alternative options such as firearms for cases where the use of deadly force is indicated.

9. With regard to other recommendations Austria is pleased to provide the following follow-up information:

With regard to paragraph 12 “Austrian Ombudsman Board”

10. Since the establishment of the Austrian Ombudsman Board in 1977, its members are appointed by Parliament based on Article 148g paragraph 2 of the Austrian Federal Constitution (*Bundes-Verfassungsgesetz — B-VG*). According to this provision, the three strongest political parties represented in Parliament each have the right to nominate one member of the Austrian Ombudsman Board.

11. There are no restrictions as to who can be nominated. It is the responsibility of the parties to conduct a selection procedure and to propose a suitable candidate. Based on this nomination process a joint proposal for the composition of the Austrian Ombudsman Board is submitted to the plenum of the Parliament for a vote. If this joint proposal does not correspond with the opinion of (the absolute majority of) the members of the Parliament or if a nominee does not enjoy the Parliament’s confidence, the Parliament is authorized to reject the proposal. In such a case a new proposal should be presented to the Parliament for a vote. This open process of appointment does not contain any binding specifications or restrictions.

12. It should be emphasized that the voters determine which of the parties represented in Parliament become the three strongest and are consequently entitled to nominate a candidate. Currently these three parties represent more than 77% of the entire Parliament. This ensures a pluralistic composition of the Austrian Ombudsman Board.

13. By international comparison the elements that speak for the high independence of the Austrian Ombudsman Board *inter alia* are: the fact that the members are elected by Parliament for a fixed six-year term, they are taking an oath of office conducted by the Federal President and they cannot be dismissed, recalled or removed from office. In exercising their duties they are impartial and are not bound by any instructions. A more than one-time re-election, the exercising of an additional profession and the membership in the federal or regional government, or in a general representative body or in the European Parliament is not permitted. All these points clearly show the high degree of independence of the Austrian Ombudsman and underline that the criticism of the appointment procedure does not withstand an international comparison.

14. The constitutional amendments in 2012 extended the mandate of the Austrian Ombudsman Board considerably and also introduced a provision requiring all members of

the Austrian Ombudsman Board to not only have knowledge of the organization and functioning of the administration, but also on human rights.

With regard to paragraph 18/19 “Composition of the police force and correction services”

15. Based on the study of the Institute for the Sociology of Law and Criminology (IRKS), which identifies reasons for the lack of female prison personnel, a working group will be established for the purpose of implementing the recommendations made in the study, so that specific measures can be taken.

16. To increase publicity the website of the Ministry of Justice now features a career portal, on which jobs in correction services are advertised in the same manner as in newspaper ads. Additionally there is also increased presence at job fairs.

17. As regards the objective to increase ethnic diversification, cooperation with the Austrian Integration Fund has been established which offers preparatory classes.

With regard to paragraph 24/25 “Training”

18. Further to information already provided, Austria would like to add that at the beginning of basic training, in the introductory section, human rights and the protection systems for human rights are dealt with intensively.

19. In the fundament section of basic training trainees have to complete a mandatory two-day human rights training.

20. Since 2012 correction services staff are made aware of the provisions of the Convention during human rights trainings.

21. During training of intervention groups, one day is dedicated to human rights.

With regard to paragraph 26/27 “Conditions of detention”

22. As regards recommendation 27 (a) the State Party would like to inform the Committee that through the 2015 Amendment to the Juvenile Court Act, which entered into force on 1 January 2016 (Federal Law Gazette I No. 154/2015), these recommendations are complied with. Measures are taken in this context, which clearly indicate that remand detention for juveniles (and young adults) must only be ultima ratio. The following measures to avoid or shorten custodial treatment are foreseen:

(a) In criminal proceedings, where the district court would be competent for the main trial, the imposition of remand detention upon juveniles and young adults is inadmissible;

(b) The provisions about conditional obligatory arrest or remand detention for juveniles and young adults are not applicable, either;

(c) In deviation to proceedings against adults (and to the system based on the Juvenile Court Act until 31 December 2015), all preconditions for imposing remand detention, i.e. all reasons for detention must be present;

(d) By introducing the social network conference an essential contribution is made to use alternatives to avoid custodial treatment. Remand detention conferences and the release conferences have been introduced equally for juveniles and young adults. During a remand detention conference, the court imposing remand detention may instruct the head of a probation service unit to organise a social network conference, thus creating decision criteria for checking subsidiarity and proportionality and actively working towards remand detention to be cancelled without applying more lenient measures. The release conference may be initiated by the prison director in order to have probation services assess the requirements for conditional release and to have measures taken aimed at preventing the convicted person to again commit punishable actions;

(e) With accused juveniles, in deviation from the general system, regular monitoring of remand detention is foreseen. Even after indictment an assessment has to be

provided at regular intervals to examine whether the requirements for remand detention continue to exist;

(f) When the accused is ordered to stay in a socio-therapeutic residential community, the State will bear the costs, thus preventing this detention avoiding alternative to fail for cost reasons;

(g) The juvenile court assistance, the nation-wide expansion of which was concluded in 2015, guarantees that all cases in which remand detention is imposed upon juveniles or young adults qualify for detention decision aid provided by the juvenile court assistance to the respective judge deciding upon detention. The juvenile court assistance shall indicate in its report, whether alternatives to remand detention are available in their opinion.

23. As regards Recommendation 27 (b) please see above paragraph 19 and 24.

24. With regard to Recommendation 27 (c) it must be mentioned that the 2015 Amendment to the Juvenile Court Act reduces the maximum duration of home detention for juveniles from two weeks to one week thereby complying with the recommendation made by the Committee.

With regard to paragraph 29 “Health care in prisons”

25. Concerning Recommendation 29 (a): Providing adequate medical and psychiatric care constitutes the major scope of activities of the medical superintendence. At the same time, a system of indicators for measuring the service time of medical staff has been developed.

26. Concerning Recommendation 29 (c): The presence of prison guards during medical examinations depends on the requirements of the physician and the medical specialty to be examined. Thus, in the opinion of the medical superintendence, gynaecological examinations must always be conducted in the presence of medical personnel only. General medical check-ups following fights are mostly conducted in the presence of prison guards to avoid putting the medical staff in danger.

27. The involvement of correction services in medical care of prisoners has several aspects, and all medical doctors working in the justice system are free to decide upon the extent of such involvement. In addition to providing administrative tasks, the security aspect is an essential factor to decide whether and how many prison guards are deployed in the medical area.

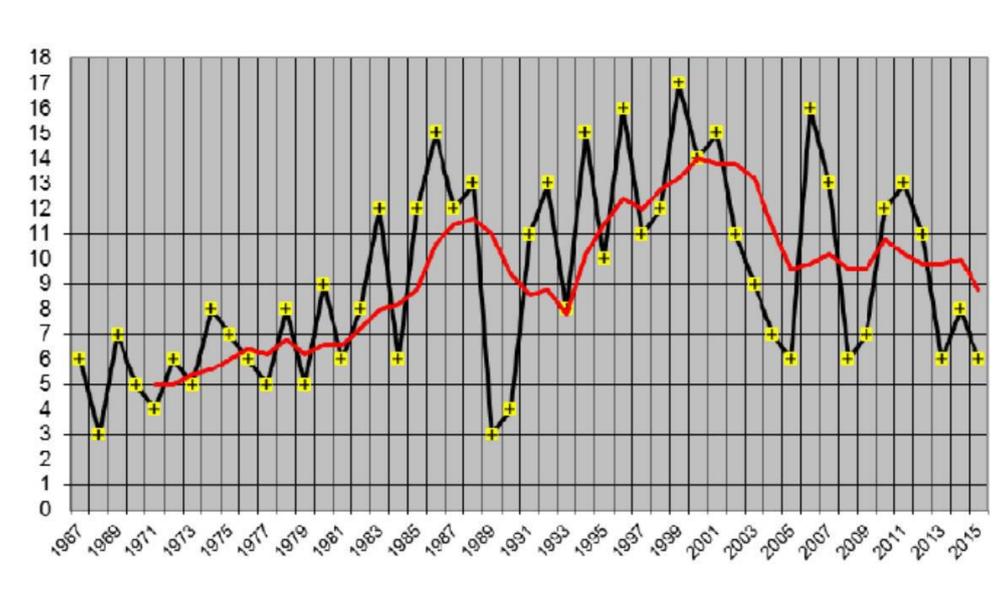
With regard to paragraph 33 “Deaths in custody”

28. The professional unit for suicide prevention in the administration of custodial sentences and measures of involuntary forensic placement was established in 2011 taking into account good practises from Germany.

29. The current 5th annual report covering the year 2015 shows positive developments. Although every suicide must be considered as one too many, the number of six suicide cases in 2015 can be counted as very low.

30. This is particularly true for the group of sentenced prisoners with only one suicide case, and for the group of remand prisoners with only two suicide cases in 2015. The much higher suicide rate with forensic prisoners under Section 21 (2) Criminal Code (three suicide cases) on the one hand indicates the special risk potential of this group, and on the other hand points to the structural and organisational problems of involuntary forensic placement of the criminally insane, which have been mentioned several times in the past. The 2015 suicide rate for the entire group of sentenced and forensic prisoners was the lowest in more than 20 years.

Suicide cases in Austrian prisons 1967-2015



Group	Suicide rate (referring to 100,000 persons)
Sentenced prisoners	16.3
Remand prisoners	106.7
Forensic prisoners	352.4
Total prisoners	56.3
Male Austrian population	24.0
Austrian population	15.0

31. A condensed presentation of individual suicide cases in 2015 can be found in the Annex.

With regard to paragraph 40/41 “Restraint measures”

32. The non-profit association VertretungsNetz – Sachwalterschaft, Patientenanzwaltschaft, Bewohnervertretung (VSP) provided the possibility for establishments, which fall under the Nursing Home Residence Act, Federal Law Gazette I No. 11/2004, to report restrictions on liberty via a WEB-application with effect from 1 January 2016. In this application all reports of measures restricting liberty of the aforementioned establishments including its manner, duration and suspension are registered. Therefore the establishments, which fulfil their reporting obligation in this way are able to retrieve these data immediately with regard to a respective resident. Regarding the registration of restrictions on liberty, which take place in psychiatric hospitals and departments of psychiatry, it is envisaged to establish explicit legal rules.

33. A concrete timetable for the creation of such rules is yet to be found.

With regard to Paragraph 42 “Trafficking in human beings”

34. With regard to criminal proceedings, victims of human trafficking have effective access to free legal assistance and psychological support. According to Section 66 (2) CCP, a person who might have been a victim of violence or a dangerous threat or whose sexual integrity might have been violated or whose personal dependence might have been abused by a criminal offence (Section 65 (1) (a) CCP) is entitled to obtain psychosocial and legal assistance upon request to the extent necessary to safeguard his/her procedural rights in greatest possible consideration of his/her personal involvement. Psychosocial assistance encompasses the victim’s preparation with regard to the criminal proceedings and the related emotional burden, and to accompany him or her to hearings as a witness. Legal

assistance comprises legal advice and the victim's legal representation during the criminal proceedings, both provided by a lawyer. Victims are granted psychosocial and legal assistance according to their individual need, as it is regularly the case with victims of human trafficking. Victims whose sexual integrity might have been violated and who are under 14 years old are granted psychosocial assistance in any case.

35. Section 10 (3) CCP as well as Section 161 (1) CCP and Section 162 CCP incorporate provisions on the protection of the identity of the victim as witness in criminal proceedings. Section 10 (3) CCP obliges all authorities or other entities or persons acting in the criminal proceeding to respect the victim's highly private matters. According to Section 161 (1) CCP a witness has to be asked about personal data in a very discreet way if any other person is present. According to Section 162 CCP a witness may be granted anonymity providing deposition if it is to be feared that the witness or a third person would be exposed to a danger for life, health, physical integrity or freedom by the disclosure of the identity. According to Section 229 (1) (3) CCP the public may be excluded from the trial in order to protect a witness giving an anonymous deposition in respect of Section 162 CCP.

36. Since 1 June 2016 victims of human trafficking can be granted the status of a victim with specific protection needs (Section 66a CCP). Victims with specific protection needs have special rights during the criminal proceeding, e.g. the right to be interviewed, if possible, by a person of the same sex, to be notified ex officio of the release or escape of the suspect or accused person from pre-trial detention. Furthermore all victims with specific protection needs have the right to be interviewed at court without the suspect or accused person being in the same room. In this case the participation at the interrogation of other participants in the proceeding may be limited by the use of technical means of audio and visual transmission for following the interrogation and the right to ask questions being exercised without being present at the interrogation (Sections 165, 250 (3) CCP).

37. Improving access of victims to compensations is one of the objectives of the National Action Plan to combat Human Trafficking 2015-2017. The imposition of more property related orders in criminal proceedings is supposed to increase the funds available to compensate crime victims, which will finally lead to an increase of actual compensations. Some measures have been taken in recent years to increase the imposition of such orders and to increase the efficiency in this area.

38. In addition to the legal measures taken, a guideline "Property Related Orders" was created which provides a useful tool supporting the daily work of experts from criminal police, public prosecution and the courts. Moreover, special units for property related measures have been created with larger public prosecutor's offices in a trial run.

39. As from 1 January 2015, freezing or seizing assets to secure claims under private law is not only permissible concerning physical objects belonging to the victim, but also concerning, for instance, bank deposits of the accused.

40. In this context, NGOs have reported successes in practical application of these measures. The penalties imposed by the courts for human trafficking pursuant to Section 104a Criminal Code range from six months to five years, or in serious cases and in cases of child trafficking from one to ten years. The level of sanctions actually imposed depends upon the prevailing aggravating and extenuating grounds. During the years 2014 and 2015 predominantly unconditional prison terms of several years have been imposed.

41. The BFA has issued a binding internal decree foreseeing a recovery and reflection period of a minimum of 30 days for all presumed victims of human trafficking regardless of their nationality. During this period no measure putting an end to the person's residence in Austria must be taken. The full range of assistance and protection without any conditions is available to all presumed victims. Thus, it is not conditional on the victim's cooperation and it is offered before formal statements are made to investigators.

42. A special residence permit for victims of trafficking is provided (Section 57 Asylum Act) once the obligatory positive police assessment is obtained by the BFA.

43. The main victim support organisation for women and girls from the age of 15, LEFÖ-IBF, covers the whole of Austria, ensuring the same standards in victim protection. The services of LEFÖ-IBF are subject to public control as to the fulfilment of quality

standards. Another victim support organisation for male victims of trafficking, MEN VIA, was established in 2014. The Federal Ministry of Labour, Social Affairs and Consumer Protection increased the financial support for MEN VIA in the year 2015/2016.
