



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

AUSTRIA*

**Information received from Austria on the implementation of the concluding observations
of the Human Rights Committee (CCPR/C/AUT/CO/4)**

[22 October 2008]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

1. The Human Rights Committee requested that, in connection with the review conducted on 19 October 2007 in connection with its fourth periodic report under the International Covenant on Civil and Political Rights, the Republic of Austria submit further information about the implementation of the recommendations of the Committee pursuant to recommendations 11, 12, 16 and 17 of the concluding comments.

2. The Republic of Austria would like to comment on these as follows:

Concerning the recommendations pursuant to item 11

3. The State party should take immediate and effective steps to ensure that cases of death and abuse of detainees in police custody are promptly investigated by an independent and impartial body outside the Ministry of the Interior and that sentencing practices and disciplinary sanctions for police officers are not overly lenient. It should also reinforce preventive measures, including by introducing mandatory training for police, judges and law enforcement officers on human rights and treatment of detainees and by intensifying its efforts to eliminate deficiencies within the police training system with regard to restraint methods.

4. By way of introduction, reference is made to information submitted to the Committee on 29 October 2007, in connection with the review of the fourth country report of Austria, where, inter alia, the cases of Wague and Jassay were commented specifically.

5. With regard to investigations of cases of death or abuse, it needs to be pointed out that the criminal police must report to the public prosecutor's office (by way of a report on knowledge obtained and/or an incident report). Since the amendment of the judicial procedure in criminal cases (1 January 2008), the public prosecutor's office (which is in no way dependant upon the Federal Ministry of the Interior) launches the investigating process. It must be regarded as an independent and/or impartial body.

6. Cases of death or abuse are reported immediately to a Human Rights Advisory Board, set up with the Federal Ministry of the Interior. By law, it has an independent status, in order to be able to commence an investigation of human-rights aspects. In line with the general tasks of the Human Rights Advisory Board, this investigation does not relate to the responsibilities under criminal law or service regulations of the individual persons involved in the incident. As the work of the Advisory Board is directed at prevention, it rather identifies those facts, constellations and structural problems that constitute risk factors, in order to minimize their emergence or their impact. Whenever required, working groups with inter-disciplinary know-how will be set up in this process.

7. In the cited cases, the officers involved were convicted by an independent judge in the course of criminal proceedings (see article 83 (2) of the Federal Constitution Act), and the court decision has become final and enforceable.

8. In the first-instance disciplinary proceedings before the Disciplinary Commission of the Federal Ministry of the Interior, which is again an independent body, the Deputy Disciplinary Counsel was instructed to move the dismissal of the four accused officers. As the Disciplinary Senate did not follow this motion when it pronounced its decision orally, an appeal was lodged immediately with the Higher Disciplinary Commission in the Federal Chancellor's Office, once the written decision had been served. The final decision of the independent Higher Disciplinary Commission (file number 22, 23, 24/43 – Dok/07) was issued in September 2007.

9. The Disciplinary Counsel of the Higher Disciplinary Commission appealed this decision to the Administrative Court. These proceedings are currently pending. It should be pointed out that the disciplinary senates have been endowed with the powers and the same status granted to judges.

10. Furthermore, it is mentioned that the project "The Police as a Human Rights Organization – Police.Power.People.Rights" was launched at the Federal Ministry of the Interior. It is planned to conduct a comprehensive analysis in the course of the project, involving the organizational units in the Federal Ministry of the Interior responsible for these issues, as well as to define an appropriate error and/or crisis management. The topics are:

- Stress studies of police officers concerning excessive stress
- Evaluation of the deportation practices
- Increased use of charter flights for problematic deportation cases
- Training of an additional pool of escort officers in order to support or replace the officers who have been dealing with deportations for years.

Basic and Continuing Training

11. The Federal Ministry of the Interior is taking several measures in connection with the basic and continuous training of police officers in the field of human rights, as well as in order to fight prejudices that may lead to racial discrimination. Special awareness is created among law-enforcement officers for the aforementioned phenomena, and they are offered training on these issues. In this context it should be pointed out that the structure of the human rights curriculum was drawn up in the year 2003. The topics of racism and xenophobia are taught during the basic training of law enforcement officers by explaining the legislation and the legal regulations, with the goal of linking police interventions more closely to the underlying statutory basis.

12. During the basic and continuous training, the following measures are taken and/or priorities are set. In general, the constitutional guarantees are communicated during the training, as well as the fundamental and human rights, especially in the course of law enforcement. In addition, seminars make participants even more aware of human rights issues. In the course of the basic training of law enforcement officers, several of the subjects taught deal with these issues; this knowledge is further deepened in the training of team-leading and senior police officers.

Applied Psychology

13. The objective is to create a better understanding for the future work, as well as to analyze possible areas of tension that arise when people live together. Officers need to be reinforced in their social competences so that they are able to cope successfully with the specific challenges of

their occupation. How to conduct official interventions in relation to various groups of persons and marginalized groups is another aspect that is covered.

The situation of foreigners and contacts with foreigners

14. Officers ought to have a better understanding and appreciation of the living circumstances and situations of the foreign persons they encounter in their practical work, to act without prejudices, to handle conflict situations that result from cultural differences in a manner that is more humane and appropriate to the situation, to better understand the work of social institutions, their methods, objectives and motivations.

15. A better understanding of the culture and the living circumstances of foreigners creates trust and removes fears. It results in a clear rise in the quality of the work performed by the police and contributes essentially to a better understanding.

“People – Rights”

16. In the framework of this programme, human rights issues are discussed, creating more awareness and sensitivity for human rights. The programme has the following content: The origin and history of human rights, as well as forms of existing (and potential) human-rights violations, presentation of human-rights organizations, outline of the legal situation, as well as working on various studies and case studies, research into the sources of (wrong) self-images and (external and internal) job profiles, motivation, the main effective processes and mechanisms, social, psychological and group-dynamic aspects, especially in connection with aggression, frustration, prejudices, loyalty, authority and the use of power, elaborating preventive approaches in connection with human-rights violations. Basic and continuous training for officers working on deportation cases: in cooperation with various organizational units of the Federal Ministry of the Interior, officers who are in charge of conducting deportations are given special training (Human Rights Convention and psychological instructions).

“Anti-Defamation League”

17. In the course of efforts to fight prejudices and discrimination, a multi-year cooperation programme between the “Anti-Defamation League” (ADL) and the Federal Ministry of the Interior has been conducted already since 2001, with the title “A World of Difference”.

18. Cooperation with the ADL consists in holding 40 continuous training seminars per year of 3 x 8 hours each. This network of trainers for basic and continuous-training measures serves to create an unbiased attitude among Austrian law-enforcement officers. The programme was supplemented by a focus of language use and hate crimes.

“Xenophobia and Language Use

19. It has been arranged for the teachers of the educational departments to take part in this continuous training programme that the Federal Ministry for Education, Science and Culture launched. This is also meant to create more awareness for this subject.

20. The study course “Police interventions in a multi-cultural society” is continued: The study course “Police interventions in a multi-cultural society” is intended to give officers, who are in frequent contact with migrants in their day-to-day work, the possibility to deepen their experience, as well as their theoretical and practical knowledge and to obtain certification for this knowledge.
21. Moreover, one should mention the close cooperation with the Human Rights Advisory Board in the field of basic and continuous training. The recommendations of the Human Rights Advisory Board on the language used by law enforcement officers have also been taken up and implemented as special inputs into the existing training programmes.
22. One should also mention that the General Directorate for Public Safety and Security issued a decree on 7 August 2002 with the title “Language Used by Law-Enforcement Officers”, which refers to the applicable legal provisions. At the same time, it was pointed out that language serves a function, has importance and power, and that there may be discrimination caused by the language used.

Concerning the recommendations pursuant to item 12

23. The State party should ensure adequate medical supervision and treatment of detainees awaiting deportation who are on hunger strike. It should also conduct an independent and impartial investigation of the case of Geoffrey A. and inform the Committee about the outcome of the investigations in that case and in the case of Yankuba Ceesay.
24. It must be stated in this connection that, as a matter of principle, all detainees are given a medical check-up by a physician without undue delay, at the latest, though, within 24 hours after their admission (preventive medical check-up upon admission), concerning their physical fitness for detention (see para. 7 of the Regulation of the Federal Ministry of the Interior on the Detention of Persons by Law-Enforcement Officers and Units of the Public Security Services [AnhO], in the version of Federal Law Gazette II No. 439/2005). This means that physical fitness for detention is a condition sine qua non for the detention of persons in a police detention centre.
25. Medical attention is ensured at police detention centres, and it can be confirmed that all authorities engage in their best efforts in order to comply with human-rights requirements. Depending on their size, police detention centres have one or several general practitioners at their disposal, who spend variable numbers of hours on the treatment of detainees.
26. Physicians offer their services at certain office hours at the police detention centres. Moreover, the physicians at these centres may also be called in outside of their service hours, in case of acute medical problems during the enforcement process. The basic medical attention is provided on the basis of the family-doctor model.
27. Guidelines pertaining to the services of police physicians govern the work of these public-health officers (see item 1.10 and 1.22 of the decree, file number BMI-OA1300/0011-II/1/b/2006, dated 20 February 2006).

28. All medical interventions and instructions – including those performed by external physicians – are documented in detail in the health files and/or the health-status sheet of every detainee.

29. Already on account of their service position, police physicians are obliged to provide the medical services to which they are assigned by the authorities. On account of their service obligations with the police authorities, they must provide their services within the scope of their abilities, based on their knowledge, know-how and experience. A police physician cannot refuse to provide medical services. Such a refusal would result in serious disciplinary consequences.

30. As a result of the problems that have emerged in connection with detainees on hunger and/or thirst strike, a broad-based discussion took place, covering medical arguments in the first place. In this context, three round-table discussions with the Human Rights Advisory Board and organizations taking care of detainees served to define innovative approaches and humane strategies. The guidelines and quality criteria concerning the diagnostics and the psychiatric assessment of detainees on hunger and/or thirst strike, in particular, have led to specific reformulations of regulations and better information.

31. However, it should also be stated that, within the scope of the Federal Ministry of the Interior, the phenomenon of hunger and/or thirst strike was observed exclusively in connection with cases governed by aliens-law provisions (the so-called “detention pending deportation”). Investigations into the motifs indicate that obtaining a discharge from detention, in the absence of physical fitness, continues to be the main motif for consistently refusing to accept food.

32. A decree of the Federal Ministry of the Interior governs in detail the approach to, and the medical treatment of persons on hunger strike (inter alia by working out parameters in consultation sessions with the Human Rights Advisory Board). For example, when a report about a hunger strike is received, the person concerned will be required to undergo a daily clinical check-up, of which all established parameters are documented on a mandatory basis. Of course, these check-ups are also performed on Saturdays, Sundays and holidays. Whenever necessary, laboratory tests will also be required (comprehensive blood analyses). Moreover, whenever there were striking psychic indications (or drug replacement therapies, etc.), instructions were also given to consult a specialist in psychiatry.

33. It must also be stated, in connection with the rebuke that the medical services offered by the authorities provide insufficient treatment of persons on hunger strike, that the detainees will frequently refuse to cooperate, in spite of being informed in objective terms of the medical consequences in connection with the need for check-ups (e.g. laboratory tests). The voluntary nature of the examinations performed is always pointed out (right to physical integrity).

34. The State party took the case of Yankuba Ceesay at the police detention centre in Linz very seriously. Relevant recommendations were taken as a starting point for engaging in comprehensive observations. An inter-disciplinary working group headed by Prof. Mörz, Senior Medical Officer of the Federal Ministry of the Interior, engaged in a comprehensive evaluation of the basic parameters.

35. Particular attention is attributed to supervising and monitoring the services provided by police physicians. Quality control measures by the Senior Medical Officer are conducted for all

medical services of the police authorities on an ongoing basis. For this purpose, an assistant to the Senior Medical Officer was appointed, who is especially assigned to this task.

Concerning the recommendations pursuant to item 16:

36. The State party should ensure that any restrictions under Section 59 (1) of the Criminal Proceedings Reform Act on the contact between an arrested or detained person and counsel are not left to the sole discretion of the police, and that the rights to talk to counsel in private and to have counsel present during interrogations are never totally denied to persons deprived of their liberty.

37. As a matter of principle, an accused person is entitled to retain the services of a legal counsel, irrespective of whether the person is at liberty or detained. This right already derives from article 6 (3) letter c of the ECHR, as well as from article 4 (7) of the Individual Freedoms' Act and was incorporated into paragraphs 178 and 179 (1) of the Code of Criminal Procedure when adopting the Criminal Proceedings Reform Act of 1993, as far as detained accused persons are concerned.

38. Every accused person should have the possibility to contact a defense counsel in due time in order to be able to discuss the substance of a case prior to any interrogation. However, especially when prosecuting very serious offences of organized crime, there are situations where the – especially urgent – risk of collusion or conspiracy (e.g. by an “encrypted” instruction to contact certain persons) cannot be prevented, also when monitoring the contacts with counsel. For the sake of effective criminal police operations, it should therefore be possible in such special cases – during a relatively short period of time, i. e. until the accused is taken to the court prison – to limit the contacts between the arrested accused and the legal counsel to the time required for granting the power of attorney and providing brief general legal advice (thus without dealing with the substance of the case) (para. 59 (1) of the Code of Criminal Procedure; see also European Court of Human Rights in the case of *MURRAY v. UK*, journal number 1996, p. 587 and following (margin note 60). While recognizing a general right of accused persons, in keeping with article 6 of the ECHR, to have a legal counsel by their side as of the beginning of the police interrogation, the European Court of Human Rights is prepared to accept certain restrictions if they are issued “for good cause”. However, a good cause no longer prevails if a restriction of the access to a legal counsel would violate the demand for fairness, when considering the proceedings from an overall perspective (see also Kühne: *Anwaltlicher Beistand und das Schweigerecht im Strafverfahren* [Assistance by Counsel and the Right to Remain Silent, European Court of Human Rights, journal number 1996, p. 571 and following).

39. After having been taken to the court prison – i. e. 48 hours after the arrest – accused persons already enjoy every right to speak to their counsel freely.

40. Moreover, while the importance of access to legal advice – also at the beginning of proceedings – needs to be recognized, it must be indicated at the same time, though, that accused persons and their counsels are not entitled to continuously interrupt the course of interrogations. Accused persons should therefore have a legal title to consult with their defense counsels prior to an interrogation; yet, it should continue to be possible to keep them from discussing their answers to every single question in the course of an interrogation.

41. In the course of transposing the EU repatriation directive, the right of persons detained pending deportation to obtain individual legal advice / to retain a legal counsel will be introduced into proceedings that end the stay of a person on Austrian soil. This will follow the model of the refugee advisor which already exists under the Asylum Act. Persons, who have both legal and linguistic qualifications, will provide the counseling and represent these clients. In case of need, the legal advice / legal representation will be free of charge for the detained person.

Concerning the recommendations pursuant to item 17

42. The State party should review its detention policy with regard to asylum seekers, in particular traumatized persons, give priority to alternative forms of accommodation for asylum seekers, and take immediate and effective measures to ensure that all asylum seekers who are detained pending deportation are held in centres specifically designed for that purpose, preferably in open stations, offering material conditions and a regime appropriate to their legal status, occupational activities, the right to receive visits, and full access to free and qualified legal counseling and adequate medical services.

43. The preventive measure of detention pending deportation is a very delicate issue and should only be used as a last resort. In keeping with supreme-court case law, detention pending deportation – especially when of “Dublin relevance” – is admissible only in very specific individual cases.

44. After the entry into force of the aliens’ law package, the number of cases and their evolution has shown a clear downward trend, after going up initially. For example, 285 aliens were accommodated under more lenient conditions in 2008, and 7,463 persons were kept in detention pending deportation. The new legislative basis and the Aliens’ Police Act of 2005 resulted in a rise of the detainees pending deportation to 8,694, as compared to 927 aliens who were granted more lenient measures. The increase of more lenient measures is therefore clearly on the rise. The further developments in 2007/2008 show a clear decrease in the number of cases in which detention pending deportation was imposed. Once again, the number of cases increased, in which more lenient measures were awarded. By way of summary, it can be pointed out that the measured and sensitive application of detention pending deportation after reviewing and/or assessing each individual case can be documented accordingly.

45. Moreover, it is seen as an important step that a new detention centre is being established in Austria. The current police enforcement systems (police detention centres) have developed over the years. In general, they are only suited to a limited extent to ensuring a modern enforcement of detention pending deportation. It is now necessary to cope with the resulting challenges in an optimum fashion in order to put measures taken by the aliens’ registration service on a new basis.

46. On the basis of international experience with special facilities for the enforcement of measures imposed by the aliens’ registration service, the new building of a “Center for Third-Party Nationals due for Repatriation” at Leoben, which will accommodate 250 aliens, will provide the requisite conditions and will facilitate respect for human dignity (especially with regard to language and culture), the greatest possible consideration for the detainees, as well as their autonomy concerning everyday routines, at a much higher level than is currently possible in the existing police detention centers. Detention pending deportation is to be adapted to general

living conditions to the extent possible. Restrictions are to be imposed only to the extent that these are necessary in order to achieve the objective of detention prior to repatriation.

47. At present the procedures required under building regulations are under way, and the competition on the construction of the centre and the awarding of the overall contract, on the basis of an existing plan regarding facilities and functions, is being prepared.

48. At the same time, the project "Open Stations" is being continued, and the police detention centres are being refurbished and upgraded continuously.

49. The everyday routines at police detention centres have been given a structure. Detainees have access to unrestricted communication, regular outdoor exercise and sports, as well as libraries and/or foreign-language literature collections, as well as creative and cultural activities. One should mention, in particular, appropriate activities and regular workshops with the permanent and mother-tongue staff of centres for detention pending deportation.
