



**International Convention
on the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Seventy-third session
28 July - 15 August 2008

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION**

**Concluding observations of the Committee on the
Elimination of Racial Discrimination**

AUSTRIA

1. The Committee considered the fifteenth, sixteenth and seventeenth periodic reports of Austria submitted as one document (CERD/C/AUT/17) at its 1890th and 1891st meetings (CERD/C/SR.1890 and CERD/C/SR.1891), held on 7 and 8 August 2008. At its 1900th meeting (CERD/C/SR.1900), held on 14 August 2008, the Committee adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the combined fifteenth to seventeenth periodic reports of the State party, which were prepared in conformity with the reporting guidelines and which address the issues raised by the Committee in its previous concluding observations. It also expresses its appreciation for the frank dialogue held with the delegation and for the comprehensive and thorough written and oral responses provided to the list of issues and to the wide range of questions asked by Committee members.

B. Positive aspects

3. The Committee welcomes the adoption of amendments to the Law on Equal Treatment which brought discrimination on grounds of ethnic origin, religion or ideology within the scope of the law and established new institutions and mechanisms which examine complaints regarding alleged discrimination.

4. The Committee welcomes the 2005 Federal Basic Care and Maintenance Act, and the agreement according to article 15a of the Federal Constitution Act regarding the basic care and maintenance of asylum-seekers (Agreement on Basic Care and Maintenance) which ensure the necessary supply of services to asylum-seekers. The Committee further welcomes the agreement on this subject between the federal and the regional authorities.

5. The Committee welcomes the amendment to the Foreign Citizens Employment Act, according to which, in addition to refugees, applicants for asylum also have unrestricted access to the labour market if they have enjoyed the status of a person with a subsidiary title to protection for one year.

6. The Committee welcomes the work carried out by the Advisory Board for Human Rights in monitoring police actions and advising the Federal Minister of the Interior on human rights issues.

7. The Committee notes with appreciation the State party's recruitment campaign "Vienna needs you" aimed at diversifying the police force and increasing the percentage of police officers in Vienna with an immigrant background within the medium and long term.

8. The Committee acknowledges with appreciation good practices and measures with a view to preventing and combating racial discrimination in Austria, such as the Vienna integration and diversity policy and the project "Companies without racism".

C. Concerns and recommendations

9. While taking note of the explanations given in paragraph 85 of the State party's report according to which references to ethnic origin and the quantification of minority groups are rejected by members of national minorities due to historical trauma and personal fears, the Committee is concerned about the paucity of statistical data and the fragmentation of minorities across provinces, which leads to different treatment of members of the same minority.

The Committee recommends that, in accordance with paragraph 11 of its revised reporting guidelines (CERD/C/2007/1), the State party conduct censuses and collect data, including on the basis of the use of mother tongues, languages commonly spoken or other indicators of ethnic diversity, together with any information derived from targeted social surveys conducted on a voluntary basis, with full respect for the privacy and anonymity of the individuals concerned, in order to obtain accurate information on all ethnic groups living in the territory of the State party.

10. The Committee is concerned about the distinction between autochthonous minorities and other minority groups. The Committee is further concerned about the application of a different treatment to individuals belonging to “autochthonous national minorities” residing in the so-called “historical settlement areas”, inter alia, the Slovene minority in Carinthia and the Roma and Croat minorities in Burgenland, and individuals who do not reside in those settlement areas, such as Slovenes outside Carinthia and Roma and Croats outside Burgenland. The Committee considers that these distinctions may lead to unjustified differential treatment. (art. 1)

The Committee, in light of its general recommendation No. 14 (1993) on article 1, paragraph 1 of the Convention, recommends the State party to take measures in order to avoid unjustified differential treatment of minority groups, on the basis of their area of residence within the State party’s territory.

11. The Committee is concerned that not all the federal provinces of the State party fully implement federal laws and measures and about the differences in the extent of protection against racial discrimination between the federal provinces. (art. 2 (1))

The Committee recommends that the State party, as a federal State, take the necessary legal and political measures to ensure that all its federal provinces and local authorities observe and comply with the laws and decisions adopted to implement the provisions of the Convention.

12. While acknowledging that the State party has adopted around 30 different laws on non-discrimination covering different aspects of the Convention, the Committee is concerned about the scattered character of this legal framework and its complexity, due to the different procedures and institutions associated with each of the discrimination laws. (art. 2 (1))

The Committee recommends that the State party review the effectiveness of its current legal framework on non-discrimination with a view to initiating a harmonization process while continuing its efforts to adopt adequate and comprehensive legislative provisions for the implementation of the Convention in its entirety. The Committee further recommends that the State party invite civil society to participate in such a process.

13. The Committee welcomes the establishment in 2005 of the Ombudsperson for Equal Treatment irrespective of ethnic affiliation, religion or belief, age or sexual orientation in employment, and the Ombudsperson for Equal Treatment irrespective of ethnic affiliation in other areas. However, the Committee is concerned about the limited resources, as well as his/her limited competence to participate in court proceedings.

The Committee recommends that the State party take appropriate measures to provide the Ombudspersons with the human and financial resources required to adequately advise and support victims of discrimination, and to grant them competence to initiate and participate in court proceedings as a third party.

14. The Committee regrets the delay in the implementation of the decision of the Constitutional Court of 13 December 2001 regarding bilingual (Slovene/German) topographical signs in Carinthia, and the corresponding delay in guaranteeing the full protection of the rights of the Slovene minority. (art. 2 (1))

The Committee urges the State party to accelerate its search for an appropriate solution to the implementation of the decision of 2001 of the Constitutional Court. The Committee requests the State party to provide information in its next periodic report on progress made in implementing this decision.

15. While welcoming the fact that the State party is in the process of reviewing its Criminal Code, especially section 283 related to the offence of incitement to racial discrimination, the Committee expresses its concern about the restrictive nature of its provisions, which are limited to acts that endanger public order and which are committed against individuals who are members of ethnic groups. (art. 4)

The Committee encourages the State party to complete the review of its Criminal Code and to extend the scope of section 283 to cover all acts of racial discrimination against persons belonging to all vulnerable groups, including ethnic minorities, migrants, asylum-seekers and foreigners, without limiting them to public order, in order to give full effect to provisions of article 4 of the Convention.

16. The Committee is concerned about reported instances of hate speech by politicians, targeting migrants, asylum-seekers, refugees, persons of African origin and members of minorities. (art. 4 (c))

The Committee recalls that the exercise of the right to freedom of expression carries special duties and responsibilities, including the obligation not to disseminate racist ideas. It recommends that the State party take resolute action to counter any tendency, especially from politicians, to target, stigmatize, stereotype or profile people on the basis of race, colour, descent and national or ethnic origin, or to use racist propaganda in politics.

17. The Committee is concerned about reported cases of ill-treatment which have led to death, or physical abuse committed by the police against asylum-seekers and about the long periods of detention of those whose application was rejected and who are awaiting deportation. (art. 5 (b))

The Committee recommends that the State party take the necessary measures to treat asylum-seekers humanely and to take appropriate measures to reduce as much as possible the period of detention of asylum-seekers whose application was rejected and who are awaiting deportation.

18. While taking note of the decree of the Federal Minister of the Interior (2002) concerning the use of non-discriminatory language and expressions by law enforcement officers in their work activities, especially when interacting with persons of foreign origin, and the inclusion of human rights in the training curricula of police officers, the Committee is concerned about

reported cases of ill-treatment, arbitrary controls and verbal abuse by the police against non-citizens, notably asylum-seekers, persons of African descent and Roma. (art. 5 (b))

In light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee strongly recommends that the State party take the necessary steps to prevent questioning, arrests, searches and interrogations which are based on physical appearance, colour or membership of a racial or ethnic group, or any profiling. The Committee further urges the State party to severely punish acts of ill-treatment committed by law enforcement officials against non-citizens.

19. The Committee takes note of reports according to which efficient means of control, monitoring and management to prevent abuses by the police against non-citizens, asylum-seekers and persons of African origin are not yet in place in the State party (art. 5 (b)).

The Committee adheres to the recommendation made to the State party to consider the establishment of a fully independent monitoring body with powers to investigate complaints about police misconduct.

20. The Committee notes that the number of individuals belonging to national minorities is much lower than the number of immigrants living in Austria and that of nationals of the State party with an immigrant background. The Committee also notes that the rights enshrined in the Convention are applicable to all persons of a different race or ethnic or national origin and regrets the lack of information concerning their situation, including with regard to their economic, social and cultural rights. (art. 5 (e))

The Committee recommends that, in accordance with its revised reporting guidelines (CERD/C/2007/1), the State party provide detailed information in its next periodic report on the economic, social and cultural rights of immigrants and nationals with an immigrant background, notably in relation to their rights to work, access to social security, access to education and cultural rights.

21. The Committee is concerned that in the State party the acts of racial discrimination in every day life in fields such as employment, housing, education and access to public places are only considered minor offences in Austrian law. (art. 5 (e))

The Committee recommends that the State party review its legislation on racial discrimination, so as to ensure the adequate protection against discrimination in practice of persons belonging to vulnerable groups, such as ethnic minorities, immigrants and asylum-seekers, according to article 5 of the Convention. The Committee also recommends that the State party consider adopting special measures in favour of such groups with the aim of guaranteeing them the full and equal enjoyment of their human rights and fundamental freedoms, in accordance with article 2, paragraph 2, of the Convention.

22. The Committee is concerned about reports according to which minority groups encounter difficulties in preserving, using and developing their languages. (art. 5 (e) (vi))

The Committee urges the State party to take effective measures to preserve minorities' languages and culture by, inter alia, encouraging and promoting the use of their mother tongues in the fields of education, public administration and legal proceedings, in the media and through their participation in public life, in accordance with article 7 of the State Treaty of Vienna (1955).

In this context, the Committee recommends that the State party review the relevant laws and provisions regarding Autochthonous National Minorities Advisory Councils and their structure, in order to ensure that national minority members of these Councils are freely elected by their respective minority and also to ensure that these Councils represent a real dialogue partner for the different bodies of the State party.

23. The Committee is concerned about the frequent denial of access to places intended for use by the general public to persons of African and Latin-American origin, and to Roma. The Committee is further concerned about the lack of measures by the police and about the lack of public reaction on this issue in the State party. (art. 5 (e) (f))

The Committee recommends that the State party take effective measures to ensure that individuals belonging to groups covered by the Convention enjoy and exercise equal rights to access any place or service intended for the use of the general public. The Committee further requests that the State party provide information on such measures.

24. The Committee notes that the State party's new Law on Equal Treatment improves the avenues of redress. However, the Committee is concerned that due to the complexity of the complaints mechanisms and of the legal framework, it may be difficult for the victims of racial discrimination to have access to the relevant procedures. (art. 6)

The Committee recommends that the State party take steps to simplify the procedures in such cases, to extend the national provisions on the regulation of the burden of proof in civil matters in accordance with the Convention, to ensure that the complaints against racial discrimination are processed free of charge, and to offer legal assistance to persons who need it.

25. The Committee notes that the small number of court cases on racial discrimination, might be misleading as to the prevalence of racial discrimination problems in the State party. (art. 6)

The Committee, recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, reminds the State party that the absence or small number of complaints, prosecutions and convictions relating to acts of racial discrimination should not be viewed as necessarily positive. The State party should inquire whether

this situation may be the result of inadequate information provided to victims concerning their rights, or victims' fear of social censure or reprisals, or their fear of the cost and complexity of the judicial process due to limited resources, or lack of trust in the police and judicial authorities, or the insufficient level of awareness by the authorities of offences involving racism. The State party, on the basis of such review should take all necessary measures to ensure that alleged victims of racial discrimination have access to effective remedies.

26. The Committee notes that the State party has adopted measures to combat racism, stereotyping and racial prejudice in the media, such as the incorporation into the Federal Act for Austrian Broadcasting of provisions prohibiting racial incitement. However, the Committee is concerned that some media contribute to the creation of an atmosphere of hostility and rejection towards non-citizens in the State party. (art. 7)

The Committee recommends that the State party take action to develop educational and media training campaigns to educate the public about the life, society and culture of groups protected under the Convention, including ethnic minorities, migrants and persons of African origin, and the importance of building an inclusive society while respecting the human rights and cultural identity of all groups. The Committee also encourages the State party to work towards the reactivation of the mechanism of self-regulation of print media through the Austrian Press Council, which, according to information received from the State party, is currently inactive.

27. The Committee encourages the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

28. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/CONF.189/12, chapter I), when implementing the Convention in its domestic legal order, particularly as regards articles 2 to 7 of the Convention. The Committee takes note of the State party's intention to adopt a National Action Plan against Racism and recommends the State party to take into account all the above recommendations on its elaboration and to include in its next periodic report specific information on such a plan and other measures taken to implement the Durban Declaration. The Committee also encourages the State party to increase its efforts to actively participate in the Preparatory Committee for the Durban Review Conference, as well as in the Durban Review Conference in 2009.

29. The Committee reiterates its appeal to the State party to ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in resolution 47/111. In this connection, the Committee cites General Assembly resolution 61/148, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

30. The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and national languages.

31. The Committee recommends that the State party consult widely with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.

32. The Committee invites the State party to submit its common core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.4).

33. In accordance with article 9, paragraph 1, of the Convention and article 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 14, 17, and 23 above.

34. The Committee recommends that the State party submit its eighteenth, nineteenth and twentieth periodic reports, in a single document, due on 8 June 2011, taking into account the guidelines for the CERD-specific document (CERD/C/2007/1), as adopted by the Committee at its seventy-first session, and that the report be an update document and address all points raised in the present concluding observations.
