



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

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Committee on Enforced Disappearances

**Information received from Austria on follow-up to the
concluding observations on its report submitted under
article 29 (1) of the Convention***

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* The present document is being issued without formal editing.



I. Introduction

1. Austria thanks the Committee for the concluding observations of 6 July 2018. Austria has examined the recommendations contained in paragraphs 15, 21 and 25 and – in line with para 29 of the concluding observations – provides information on their implementation.

II. Follow-up information relating to paragraph 15 of the concluding observations (CED/C/AUT/CO/1)

2. The Austrian authorities have examined the recommendation with regard to the duration of the statute of limitation. They share the assessment that the extreme seriousness of the crime requires a long duration of the statute of limitation. The existing Austrian legislation on the statute of limitation is set according to the maximum sentence and stipulates therefore a long duration proportionate with the extreme seriousness of the crime (Section 57 para. 3 CC).

3. As in comparable other cases, the time limits applicable in the case of enforced disappearance range either from:

(a) 20 years for offences punishable by more than 10 years of imprisonment but that are not punishable by imprisonment for life, or

(b) 10 years for offences punishable by imprisonment for more than five years and a maximum of 10 years.

4. If the offence amounts to a crime against humanity and certain other serious crimes, no statute of limitation applies.

5. Furthermore, the statute of limitation will be extended under specific circumstances defined under the Criminal code. This is for instance the case when the victim was a minor, the period for time limitation concerning certain crimes will commence only when the victim reaches the age of 28. The statutory limitation period does also not expire any earlier than the point at which the limitation for the further offence lapses if the person has committed a further offence during the statute of limitation based on the same malicious propensity. The different circumstances under which the statute of limitation will be extended under Section 58 para. 2 and 3 of the CC were outlined in the response from Austria to the List of Issues.

6. In the context of the existing legislation, it is also provided that the time limitation commences with the cessation of the criminalized behaviour (Section 57 para. 2 CC). In the context of Section 312b CC, the criminalized conduct is the deprivation of personal liberty and the concealment of the fate or whereabouts of the missing person. Thus, e.g., the criminalized conduct would cease, if the victim is set free or if the perpetrator informs the authorities of the whereabouts of the missing person.

III. Follow-up information relating to paragraph 21 of the concluding observations

7. According to the principle of non-refoulement in Article 16(1) of the International Convention for the Protection of All Persons from Enforced Disappearance no State Party shall expel, return (“refouler”), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance.

8. Austrian legislation stipulates in its asylum and migration laws that the guarantees of Articles 2, 3 and 8 of the European Convention on Human Rights (ECHR) have to be respected on every step of the asylum and return procedure. These provisions are part of

Austrian Constitution law. If life and/or humane treatment of applicants are in danger, return decisions must therefore not be implemented.

9. Already the easiest attainable of the five offences of Article 3 ECHR, namely a suspected “degrading treatment”, prohibits the refusal (*Zurückweisung*), expulsion (*Zurückschiebung*) or removal (*Abschiebung*).

10. This is clearly stipulated in Section 8(3a) and in Section 9(1) line 3 of the Asylum Act 2005 (*Asylgesetz 2005*), as well as in Section 45a and Section 50 of the Aliens Police Act 2005 (*Fremdenpolizeigesetz 2005*). Austria has ratified the Convention on the Status of Refugees (*Genfer Flüchtlingskonvention*) and has strictly observed the prohibition of refoulement of its Article 33(1).

11. In the judiciary there are similar provisions. Section 19 of the Federal Law on Extradition and Mutual Legal Assistance (*Auslieferungs- und Rechtshilfegesetz ARHG*) provides that an extradition shall be inadmissible if there is any reason to suspect that:

(a) The criminal proceedings in the requesting State will not comply or did not comply with the principles of Articles 3 and 6 ECHR, or

(b) The punishment or preventive measure imposed by or to be expected in the requesting State would be enforced in a manner that is not consistent with the requirements of Article 3 ECHR, or

(c) The person to be extradited would be subject to persecution in the requesting State because of his/her origin, race, religion, affiliation to a specific ethnic or social group, nationality, or political opinions, or would have to expect other serious prejudices for any of these reasons (extradition asylum).

12. However, when examining the criteria for extradition, the admissibility check by the court is not limited to the core area of the fundamental rights expressly mentioned in Sections 19 and 20 of the Federal Law on Extradition and Mutual Legal Assistance (ARHG), but includes all individual rights and obstacles to an extradition which arise under Austrian (constitutional) law, taking also into account the European Convention on Human Rights, which is at the level of constitutional law in Austria.

13. The person sought may appeal the decision of the Regional Court by which extradition is declared admissible. The complaint to the Appellate Court against the decision on the admissibility of extradition has suspensive effect within the meaning of Article 13 ECHR (Section 31(6) ARHG). In principle, decisions by the Appellate Court on the admissibility of extradition are final. However, in human rights issues there is the possibility for a further appeal to the Supreme Court. The Supreme Court may provide this appeal with suspensive effect.

VI. Follow-up information relating to paragraph 25 of the concluding observations

14. Austria is currently examining the possibility to review its criminal legislation with a view to incorporating the acts described in article 25(1) of the Convention as specific offences.