



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

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COMMITTEE AGAINST TORTURE  
Thirty-fourth session  
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**List of issues to be considered during the examination of the  
third periodic report of AUSTRIA (CAT/C/34/Add.18)**

**Article 1**

1. The State party report indicates that the Austrian Criminal Code covers a wider range of criminal acts than article 1 of the Convention. Please provide additional information on the specific provisions of the Criminal Code and other relevant acts that are considered sufficient to punish those who commit torture including mental suffering, as defined in article 1 of the Convention.
2. During the dialogue between the delegation of Austria and the Committee in November 1999 extensive discussion on the definition of torture took place. At the time the representative of Austria noted that as an objective of the Committee was to fight torture at the international level, it was useful to have the notion of torture defined in a similar way in all legal systems. In light of the commitment of Austria to contribute to the prevention and eradication of torture worldwide, please tell the Committee whether any discussions at the national level were initiated.

**Article 2**

3. Please provide information on the steps the State party has taken to further guarantee the rights of persons in police custody from the very outset of detention and any restrictions that may be imposed. Please also indicate the maximum duration of the pre-trial detention.
4. Does the State party's domestic law specifically provide that no exceptional circumstances whatsoever, or an order from a superior or a public authority, may be invoked as justification of torture?

5. Please tell the Committee whether legislation prohibiting torture and cruel, inhuman or degrading treatment contains specific provisions regarding gender-based breaches of the Convention, including sexual violence. Please also describe the effective measures taken to monitor the occurrence of and to prevent such acts, and provide data, disaggregated by sex, age and ethnicity, of the victims, and information on investigation, prosecution and punishment of the perpetrators.
6. What is the situation at present with regard to the strict separation of persons under 18 years of age from adults in places of detention?
7. Have any improvements been made to the situation of financial and human resources, the lack of which is used to justify shortcomings with respect to the conditions and services provided to persons in detention?

### Article 3

8. Please inform the Committee about the specific safeguards in place as well as the practice of the State party with respect to non-refoulement to a State where there are substantial grounds for believing that a person would be in danger of being subjected to torture. Please provide examples of cases where the authorities did not proceed with extradition, return or expulsion because of the risk that the persons might be tortured.
9. With respect to the above, please tell the Committee if any exceptional grounds, such as national security concerns, may be invoked to justify refoulement. If so, please describe how this can be reconciled with article 2 (2) of the Convention.
10. Is there a list of countries designated “safe countries of origin” or “safe countries of transit”? How often is this list reviewed, by whom and how?
11. Please provide information on the Recommendations for deportations by air, and how they have been followed.
12. Please inform the Committee about the outcome of the trial of police officers in the case of Marcus Omofuma, who died of asphyxiation during deportation from Vienna to Nigeria in May 1999.
13. Please describe the treatment of asylum-seekers apprehended in the territory of the State party or those arriving at the international airports and not in possession of valid travel documents. May aliens be turned back from the border (airport) without having the possibility to request asylum? Please also comment on measures taken, if any, to address the concerns raised by the Committee on the Elimination of Discrimination against Women in 2000 related to the treatment of female asylum-seekers.
14. Please provide statistical data about the implementation of article 3 of the Convention in cases of expulsion or return (refoulement) of foreigners, indicating, in particular:
  - (a) The number of persons seeking asylum and the number of returnees, including the countries to which those persons have returned;

(b) How the probable risk of torture is assessed and the procedure for appealing the decisions;

(c) The procedure for the examination of asylum requests submitted at the border.

#### **Article 4**

15. Please provide data with respect to persons tried and convicted, including the punishments received, for the crime of torture.

#### **Article 5**

16. Please provide information on domestic legislation establishing universal jurisdiction over the crime of torture. Please also indicate whether the State party has rejected, for any reason, any requests for extradition by another State for an individual suspected of having committed torture, and thus engaging its own prosecution as a result.

#### **Article 10**

17. Please provide updated information on the instruction and training provided for law enforcement officials and other public officials with respect to human rights, and specifically the treatment of detainees and the measures for the prevention of torture and cruel, inhuman or degrading treatment or punishment. Has the Convention been made known in the course of such programmes? What monitoring and evaluation are used to assess the impact of these programmes, if any?

18. Do specific programmes exist to train medical personnel who are assigned to identify and document cases of torture and assist in the rehabilitation of victims?

#### **Article 11**

19. Please describe the procedures in place for ensuring compliance with article 11 of the Convention, and provide information on any new rules, instructions, methods and practices or arrangements for custody that may have been introduced. Please also indicate the frequency with which these are reviewed.

#### **Articles 12 and 13**

20. Please update the information contained in the State party report related to the reform of the criminal investigation procedure and on the status of the draft Criminal Procedure Reform Act.

21. Please update the data contained in the report on complaints lodged and provide information on cases investigated, describing the results of the proceedings, both at the penal and disciplinary levels.

#### **Article 14**

22. Please provide information on redress and compensation measures ordered by the courts and actually provided to victims of torture, or their families, since 2000. How many victims have been compensated despite the perpetrator not being identified? Do investigations into such cases continue until such time as the perpetrator(s) is/are identified and brought to justice?
23. Does the right to compensation depend only on the application of civil law, or can it be based on a judgement in criminal proceedings ordering compensation?
24. Please provide updated information on the outcome of the claims against the Republic of Austria in the Omofuma case, which were pending when the report was written?

#### **Article 15**

25. Please provide further information on the new legislation relating to the implementation of article 15, as discussed during the previous dialogue with the Committee.

#### **Article 16**

26. Please provide updated information on the number of persons imprisoned and the occupancy rate as compared to capacity for the period 2002-2004.
27. Please provide information on how conditions of prisons and police detention centres (jails), and services such as medical care, have been improved in response to the many recommendations made by the European Committee for the Prevention of Torture (CPT) following its third periodic visit in September 1999.
28. Please describe the measures taken to combat racism and discrimination, in particular racially motivated violence against Roma and other minority groups or foreigners, including prompt and impartial investigations into allegations of offences pursuant to articles 1 and 16 of the Convention. Please describe the final results of the survey on the existence of xenophobic tendencies within the Federal Police and the Federal Gendarmerie, which were expected in the autumn of 2000. Please also inform the Committee of any follow-up given to the recommendation of the Committee on the Elimination of Racial Discrimination that more members of minority groups be recruited into the law enforcement agencies.
29. Please provide updated information on any new legislation and/or measures adopted to prevent trafficking and to provide assistance to victims, including sensitization of law enforcement officials in contact with these victims.
30. Please provide information on any improvements made with respect to the situation of prisoners sentenced to undergo psychiatric treatment, which was also an issue of concern to the CPT.

**Other**

31. Does Austria envisage ratifying the Optional Protocol to the Convention against Torture? If so, does Austria envisage setting up or designating a national mechanism that would conduct periodic visits to places of deprivation of liberty in order to prevent torture or other cruel, inhuman or degrading treatment or punishment?

32. Is there legislation in the State party aimed at prohibiting the trade and production of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment? If so, please provide information about its contents and implementation. If not, please indicate whether the adoption of such legislation is being considered.

33. Please provide information on the legislative, administrative and other measures the Government has taken to respond to the threats of terrorism, and please describe if, and how, these measures have affected human rights safeguards in law and practice.

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