



# 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

### SUMMARY RECORD OF 1891st MEETING

Held at the Palais Wilson, Geneva, on Friday 8 August 2008, at 10 a.m.

*Chairperson: Ms. DAH*

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*The meeting was called to order at 10.10 a.m.*

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION  
SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION  
(agenda item 4) (*continued*)

*Fifteenth to seventeenth periodic reports of Austria ((CERD/C/AUT/17;  
HRI/CORE/1/Add.8; list of issues and written responses, documents without  
symbol distributed at the meeting in English only)*

1. *At the invitation of the Chairperson, the Austrian delegation resumed its place at the Committee table.*
2. Ms. OHMS (Austria) said that the expressions “ethnic minority” and “national minority” used in the report were in fact two different translations of the German term *Volksgruppe*, which meant indigenous ethnic minorities or (according to the definition in the law on ethnic minorities) groups of persons of Austrian nationality established in the country for 100 years and living in certain regions, who had a mother tongue other than German and a specific culture and folklore. Migrants, for their part, were designated by the term “minorities”. In addition, Austria had no Retho-Romansh minority. The Austrian Government considered the language spoken by individuals in their day-to-day life an essential characteristic of their cultural identity, for which reason persons interviewed in the 2001 census had the option of several responses to questions about language.
3. According to official statistics, there was a clear correlation between income level and national or ethnic origin of individuals. There were differences not only between nationals and non-nationals but also among Austrians themselves, between those who were Austrian by birth and those who had acquired nationality through naturalization. Those statistics served as a guide to public policies and measures on behalf of disadvantaged groups.
4. With respect to special measures taken pursuant to paragraph 4 of the first article of the Convention, she reported that the Government was allocating €3.6 million a year to protect and promote the language and culture of Austria’s ethnic minorities. As indicated in paragraph 83 of the report (CERD/C/AUT/17), Roma were receiving additional funding of €1.1 million over 10 years, earmarked in particular to compiling the names of Roma massacred under the Nazi regime. Measures had also been taken to offer bilingual education to children of minority groups. Thanks to these efforts, the tendency of minority languages to disappear had been not only halted but also reversed.
5. She also said that ethnic minority advisory councils were fully independent of the Government: 50 per cent of their members were appointed on the recommendation of associations for the defence of minority rights, and the composition of the councils was subject to legal control. Moreover, their Chairpersons were appointed by the minorities themselves and carried decisive weight when votes were taken.
6. With respect to migrant workers, she said that support programmes specifically targeted at such persons, including training for job seekers, were financed from the State budget. In 2007, €125 million had been earmarked for programmes of this kind, benefiting 42,700 people.
7. The Constitutional Court’s decision of 2001 on topographical signage in Carinthia and subsequent judgements had been published in the *Official Journal*, thereby abrogating local laws in force at that time and reaffirming the requirement

for bilingual signs in certain districts of Carinthia and Burgenland. This was an extremely delicate issue and the Austrian Government was attempting to find a solution acceptable to all stakeholders.

8. Relations between the Austrian Government and the Muslim community, recognized in domestic law as a religious community since 1912, could be termed satisfactory. The Austrian Government attached great importance to dialogue between cultures and religions, as demonstrated in the two conferences of European imams held in Austria, one in Graz in 2003 and the other in Vienna in 2006.

9. Austrian authorities were dedicated to preserving freedom of expression and diversity in the media. As Austria was a small country and many newspapers were struggling to survive, the Government had decided to provide subsidies in order to preserve a variety of reader choice. In 2007 it had amounted to €30 million. This did not mean that the authorities interfered in the activities of the media, which had their own internal oversight body, the Press Council (*Presserat*), to enforce professional ethics among its members. There was also a judicial body with jurisdiction to receive complaints from private individuals against the press and to order payment of damages and interest to victims.

10. Contrary to what was said during the first part of the review, Austria had no pre-established policy regarding its adherence to international instruments. The fact that it had not yet ratified the International Convention on Protection of the Rights of All Migrant Workers and Members of Their Families could be because the experts responsible for examining it had not completed their work. For the time being, they still had misgivings about the possibility of Austria's adherence to that instrument.

11. Mr. BOGENSBERGER (Austria) said that, by virtue of article 3 of the law banning National Socialism, any form of participation in a racist organization, including provision of financial support to such an organization, constituted a crime punishable by 20 years' imprisonment. That law, as well as article 283 of the Penal Code, punished the most severe forms of incitement to racial hatred. Acts that did not fall within the scope of these two legal texts could be prosecuted under pertinent provisions of the Code of Administrative Procedure.

12. Article 283 of the Penal Code was not exclusive and its provisions were applicable to ethnic groups recognized as such in Austria as well as to any person subjected to hostility by reason of religion, race or nationality. Consequently, foreigners and asylum-seekers enjoyed the protection of article 283 of the Penal Code. As to the risk, mentioned by one Committee member, that this article might be applied restrictively, i.e., that acts of incitement to racial hatred would be prosecuted only if they threatened the public order, he noted that paragraph 2 of that article made no mention of disruptions to the public order and consequently that element was not essential for launching prosecution. However, the delegation took note of the concerns expressed by the Committee on this point and said that the competent authorities would take them fully into account in their re-examination of article 283, which was to be reviewed as part of the work of transposing into domestic law the Framework Decision on Combating Racism and Xenophobia. As legislative elections were scheduled for September 2008, this issue would be addressed once the new Parliament had been elected.

13. Basic training for judges and prosecutors included mandatory courses on racial discrimination and xenophobia and on the attitude to be adopted towards victims during criminal proceedings. Ongoing training for judges and prosecutors included courses in areas related to human rights, including European jurisprudence and the

role of courts in asylum procedures. The programme for training judges and prosecutors for the academic year 2008/2009 included at least six seminars on racism, designed to raise awareness of this issue among judicial personnel.

14. Consistent with the Code of Criminal Procedure and the law on victims of crime, police officers were required to advise victims promptly of their rights, including the right to legal aid, compensation and financial assistance. Victims were accorded free legal counsel before, during and after proceedings and psychosocial support services were available in all *Laender*. In 2000 there were only four services of this type in the country, compared to 27 in 2007. The psychosocial support services budget had increased from €17,000 in 2000 to €4.5 million in 2008, while the number of beneficiaries had jumped from 42 in 2000 to 20,000 in 2006 and was still rising.

15. Ms. KUSSBACH (Austria) said that the dispersal of legislation on equality of treatment (see para. 36 of the report), comprising some 20 laws, could be explained by the fact that Austria was a federal State. This made it very difficult for victims to know exactly what their rights were, and also complicated the work of lawyers and mediators. In the absence of any project to harmonize legislation in this area, the Equal Treatment Ombudsman's Office (para. 36 of the report) was taking steps to disseminate information to the public through its website and through training for personnel of the competent agencies.

16. With respect to discrimination in access to goods and services and possibilities for compensation, the Administrative Code contained provisions whereby victims of discrimination could claim compensation. In 2007, following a complaint by the non-governmental organization (NGO) *Zivilcourage und Anti Rassismus Arbeit* (ZARA), alleging discrimination in around 100 offers of employment, the Human Rights Advisory Board had recommended that the provisions of the Administrative Code should be applied more systematically and effectively, and encouraging results had already been recorded on that score.

17. Pursuant to the Equal Treatment Act, an ombudsman was to be appointed with competence not only for gender equality but also for racial discrimination in access to goods and services. That ombudsman was authorized to refer matters to the Equal Treatment Commission (para. 36 of the report) or to settle disputes through mediation.

18. When it came to compensation, she recognized that, while domestic law entitled victims of racism to sue for reparations and the Equal Treatment Act awarded compensation of €720 to the victims of racial harassment, those provisions were not being applied with sufficient frequency because victims were discouraged by the lengthy and costly nature of such proceedings. However, persons seeking to file suit and lacking the means to do so could receive financial support from the Chamber of Labour (para. 9 of the report) and certain NGOs.

19. Mr. HOLUBETZ (Austria) pointed to two improvements in the education of national minorities that had been introduced since the previous periodic report. The Corinthian law of 12 July 2001 on preschool financing (para. 77 of the report) now provided State financial support to private bilingual or multilingual nursery schools in Carinthia, home to the Slovenian minority. That same law also contained measures to guarantee the quality of bilingual education in bilingual nursery schools.

20. In the Burgenland, preschool education for German-speaking Croats and Hungarians had traditionally been provided by local municipal nursery schools. An amendment to the Burgenland preschool law of 8 July 2005 (para. 77) had increased from 9 to 12 hours the minimum weekly duration of instruction provided in Croat or

Hungarian in bilingual nursery schools. At the same time, the minimum number of pupils required to establish a bilingual preschool in the Burgenland and in Carinthia had been reduced to 7, while it stood at 10 in other regions of the country. This measure was thought to explain why the number of pupils enrolled in Carinthia and the Burgenland was above the national average.

21. Asked whether intercultural education included the learning of another language or history, he said it did and added that intercultural teaching (para. 22 of the report) was intended to ensure better mutual understanding and eliminate prejudices.

22. Mr. RUSCHER (Austria) reported that, since 2003, the Ministry of the Interior had had a specialized department for handling complaints of racist conduct and racially motivated mistreatment by public officials. That department, known as the Office of Internal Affairs, (para. 98 of the report) constituted a kind of special police unit, completely independent of the federal police force, staffed by officers who had taken specialized training.

23. The Office of Internal Affairs had registered 357 complaints in 2006 and 474 in 2007, most relating to racist insults. When reprehensible conduct was confirmed, judicial proceedings were undertaken. If the conduct were criminal, the case would be referred to the State prosecutor; otherwise, disciplinary measures would be taken against the official in question. Austria thus had an effective system of internal justice for public officials who violated established rules regarding human rights.

24. Between March 2003 and November 2005, the Ministry of the Interior had issued a number of directives to Government departments and agencies advising them that suspicion of racist behaviour or abuse by a police officer must be reported to an examining magistrate, to the Federal Office of Internal Affairs and to the Advisory Council on Human Rights (para. 99). If the suspicions were confirmed, the victims would be awarded compensation by the State.

25. The Advisory Council on Human Rights, constituted in July 1999, was an independent body responsible for reviewing, from the human rights perspective, the activities of the security forces, other authorities subordinate to the Ministry of the Interior, and administrative authorities with coercive powers.

26. The Council was preparing in-depth reports on the main human rights issues. To date it had published three reports: the first dealt with the treatment of complaints submitted by national bodies against public officials; the second with health care for persons awaiting deportation; the third addressed detention conditions in police stations, on the basis of which improvements were proposed to the Federal Ministry of the Interior. Since 1999, the Council had sent 326 recommendations to the Ministry of the Interior. Of these, 159 had been applied fully, and 106 in part.

27. The Advisory Council on Human Rights focused primarily on identifying structural defects in the work of the police and security forces and played a preventive role by formulating recommendations to improve respect for human rights. The President of the Council was appointed by the President of the Constitutional Court, and its members were eminent and wholly independent experts. The Council also had absolute authority to conduct unannounced visits in all the country's penitentiaries. Members of the Advisory Council enjoyed free access to all prisoners and could meet with them in private. In 2007, Council members had visited 567 detention sites and 130 police stations. They had also accompanied 113 police operations.

28. The Advisory Council also oversaw human rights training for police officers. A project entitled “The Police as a Human Rights Body” had been designed to provide compulsory ongoing human rights training to police officers. The project had a three-year budget of €700,000.

29. Mr. AMIR asked whether the federal Government, in its financing of press organs that published racist articles, was not thereby violating article 4 of the Convention, which expressly required States parties to criminalize all dissemination of ideas based on racial superiority or hatred and to prohibit public authorities from promoting or inciting racial discrimination.

30. He also asked whether the federal Government had informed all owners of public places that national legislation prohibited denial of access to public places on the grounds of race, ethnic origin, or skin colour.

31. Mr. CALITZAY said he was concerned at the new wave of neo-Nazi groups and of racist and xenophobic behaviour in Austria, despite the introduction of intercultural bilingual education programs, and asked what were the dominant ethnic groups in Austria before the arrival of immigrants.

32. Mr. de GOUTTES, referring to paragraphs 49 and 50 of the report dealing with legal aid available from NGOs to the victims of racism and racial discrimination, asked what were the conditions that an NGO must meet in order to make itself a party to a complaint, whether all NGOs could claim that status, and what role they played during proceedings.

33. He asked the Austrian delegation to indicate whether the country had introduced a system for reversing the burden of proof in civil matters for victims of racism and racial discrimination in cases covered by labour law, stressing that such a system was of great help to victims who often found it difficult to prove racial motivation in cases of this kind. He wondered whether Austrian legislation authorized “testing”, a method intended to reveal whether the owners of restaurants or discotheques were refusing access to persons because of their race or ethnic origin.

34. Mr. AVTONOMOV asked the delegation whether the University of Graz, as part of its project to transcribe the Romany language, might be interested in Russia’s efforts to codify written Romany through preparation of grammars and teaching manuals presenting linguistic principles common to different dialects spoken by Roma.

35. Mr. LAHIRI was pleased that statistics were being collected on ethnic groups present in Austria for more than a century. This, he said, would provide a clearer idea of their diversity, the inequities they suffered (especially in terms of employment) and the remedies that might be offered (for example, financial assistance), and he asked that those statistics be included in the next periodic report of Austria. He wondered what was being done about ethnic groups that had arrived more recently, and he assumed that such a methodical country as Austria would be gathering statistics on them as well, on their situation with respect to employment, education and housing, and on any instances of police brutality against them.

36. Finally, he questioned the rationale followed in granting Muslims the status of a community in 1912 but dividing it into several groups such as “Indian Muslims” and “African Muslims”, a distinction clearly based not on religion but on ethnic or racial origin.

37. Mr. PETER welcomed the new image that Austria was acquiring and the new mentality that was emerging in the country with respect to tolerance and respect for others. He noted with satisfaction the values and principles set forth in a brochure

addressed to police forces, urging trust and understanding of others, insisting that security and assistance knew no borders, that police were there to protect all and that cultural diversity was an element of wealth. He hoped that this brochure would be publicly distributed.

38. He also welcomed the work of the Advisory Council of Human Rights, whose recommendations were apparently being given much broader application than those of similar bodies in other countries.

39. He wondered whether the Equal Treatment Ombudsman's office considered itself sufficiently independent and endowed with the means necessary to take action, and whether sporting and cultural initiatives were being taken to integrate persons of foreign origin into the native Austrian population.

*The meeting was suspended at 11:50 a.m. and resumed at 12:05 p.m.*

40. Ms. OHMS (Austria) said there was no censorship in her country; State financing for newspapers and publications had the sole objective of preventing concentration of the written press in the hands of one or two all-powerful groups, as had been the case in the past. Financing was restricted to newspapers with a nationwide circulation of more than 10,000. Smaller dailies and publications that might drift into racism were not eligible for funding, except for a few specialized publications that were carefully vetted from this angle.

41. In providing financial support to certain newspapers, the Government also helped to improve the quality of information, to finance the training of a new generation of journalists and foreign correspondents, and to expand press readership in the schools.

42. The country's national minorities included the Slovenian minority in Carinthia and Styria, the Croat minority in Burgenland, the Hungarian minority in Burgenland and Vienna, the Czech and Slovak minorities in Vienna, and the Roma minority in Burgenland. For the principal immigrant groups in Austria, she referred Committee members to the pertinent portion of the written responses to the list of issues.

43. She said that research on the Romany language, undertaken at the University of Graz in Styria, was continuing, but she did not know whether researchers from the University had made contact with their Russian counterparts.

44. She went on to say that Austria had no statistical data on indigenous national minorities disaggregated by social criteria. She could only give the Committee statistics establishing a distinction between nationals and non-nationals, and information on persons who had acquired Austrian nationality by birth and other routes.

45. Mr. RUSCHER (Austria) noted that the Austrian federation comprised the federal Government and the nine *Laender* (provinces). All had their own legislation and law enforcement bodies. The federal Constitution, however, defined exclusive responsibilities of the federal Government and those of the *Laender*. Legislation regarding racial discrimination was the exclusive preserve of the federal Government, and federal courts had sole jurisdiction in this field.

46. With respect to denial of access to public places (bars, restaurants etc.) on racist grounds, the Austrian delegation said that the Ministry of the Interior did not have the power to order the posting of signs guaranteeing universal access to a public place managed by a private owner. Nevertheless, all owners of public places must comply with federal law. He was pleased that the Committee had responded favourably to the project entitled "The Police as a human rights organ", for this

reflected the new image that Austria wanted to give the police. It was important for Austrian institutions to adapt to society as it evolved, including the noticeable recent increase in the number of migrants and foreigners in the country.

47. Mr. HOLUBETZ (Austria) said that, in contrast to the 1980s, when Austria had a policy of assimilating immigrants, priority was currently given to an integration policy that relied heavily on intercultural education. All pupils must learn to respect other cultures and religions and most teachers were zealous and diligent in instilling principles of tolerance and acceptance of differences. There were many initiatives to encourage, in particular, the integration of foreigners in the fields of culture and sports, for example through the staging of plays in German, Serbo-Croatian and one of the Roma languages, the distribution of free tickets to museums, the programme known as “Dance for Tolerance”, sponsored by the municipality of Vienna or the work of the “Cultural Contacts” Association, which was seeking to forge stronger ties between foreigners and Austrians.

48. Mr. BOGENSBERGER (Austria) said that, for the legal protection of victims in criminal cases, the Ministry of Justice was signing framework contracts with outside support services to provide victims with the assistance of a lawyer. Under article 66 (2) of the Code of Criminal Procedure, legal assistance included both legal advice and representation before the courts.

49. Ms. KUSSBACH (Austria) said that the Equal Treatment Act was a federal law that offered complaint mechanisms to all, Austrians and foreigners alike, and that it was fully consistent with international human rights instruments. Its implementation had however encountered some problems, in particular the absence of regional offices of the Equal Treatment Commission and the Equal Treatment Ombudsman’s Office, and funding shortages that precluded direct assistance to victims. On the other hand, as in other countries, victims must be represented by a lawyer in civil cases. To date, there had been only one court decision involving racial discrimination, in Vienna. The victim had been awarded €800 compensation.

50. Article 26 of the Equal Treatment Act allowed for reversing the burden of proof in cases of discrimination, although it did not go as far as European legislation in this respect. The practice of “testing” was not banned in Austria, and it seemed that NGOs were making use of it. However, the delegation had no specific information on the question. In general terms, the ombudsman’s office was seeking to play a more independent role in pursuit of its mission, whereby it would no longer report to the Federal Chancellor and the Minister for Women. It would like to have more resources, as its current staff comprised only three lawyers and a part-time secretary, and they operated only out of Vienna. It would also like its powers expanded so it could initiate administrative procedures. At present, it could refer cases to civil courts if the Equal Treatment Commission declined jurisdiction.

51. Mr. DIACONU (Rapporteur for Austria) congratulated the Austrian delegation for answering all the questions put by Committee members; this allowed the Committee to form a better idea of the situation in Austria with respect to racism and discrimination. It was clear, he said, that Austria had the political will to change mentalities and work for greater respect of cultural and religious identities. As to the negative points, the Rapporteur observed that Austria retained a somewhat paternalistic attitude towards its minorities. It was not so much a question of recognizing all minorities in the country but rather of granting specific rights, at least, to all individual members of those minorities so that they could integrate themselves fully into society. The Rapporteur noted, for example, that the delegation often referred to a minority or a region or a *Land*, as if the State party wished to



minimize the importance of minorities by giving them purely regional stations. Among other recommendations, the State party should, in his view, adopt special measures for minorities, strengthen the powers and increase the resources of the Ombudsman's Office and involve NGOs more closely in preparing policies to combat discrimination and racism.

52. The CHAIRPERSON welcomed the frank and constructive dialogue between Committee members and Austria and said she was particularly impressed by the interest that the Austrian delegation had shown in the Committee's concerns. She indicated that the Committee had completed the first part of its review of the fifteenth to seventeenth periodic reports of Austria.

53. *The Austrian delegation withdrew.*

*The meeting rose at 1 p.m.*