



International Convention for the Protection of All Persons from Enforced Disappearance

Distr.: General
18 February 2025

Original: English
English, French and Spanish only

Committee on Enforced Disappearances

Additional information submitted by Austria under article 29 (4) of the Convention*

[Date received: 26 November 2024]

* The present document is being issued without formal editing.



1. The following information refers to the recommendations of the Concluding Observations of the Committee on Enforced Disappearances on the report submitted by Austria under article 29 (1) of the Convention, CED/C/AUT/CO/1.

Additional information relating to paragraph 9 of the concluding observations (CED/C/AUT/CO/2)

2. Within the scope of preventive human rights monitoring under the OPCAT, the Austrian Ombudsman Board established, in July 2021, a federal commission tasked with nationwide monitoring of prisons, forensic centres and BMJ-funded follow-up care facilities, complementing the six regional commissions established in 2012.

3. In March 2022, the Global Alliance of National Human Rights Institutions (GANHRI) granted the Austrian Ombudsman Board “A” status as a National Human Rights Institution for five years, thus certifying it as fully compliant with the Paris Principles.

Additional information relating to paragraph 11 of the concluding observations

4. In Austria, international treaties approved by the federal parliament, such as the Convention, have the status of statutory law and become part of domestic law upon publication in the federal law gazette. Accordingly, article 1 (2) of the Convention providing that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappearance” forms part of domestic statutory law since its publication in the Federal Law Gazette in July 2012. When approving an international treaty, the federal parliament may decide that the treaty requires implementing legislation, resulting in the treaty being non-self-executing. In the case of the Convention, the federal parliament did not take such a decision. Accordingly, Austrian law already provides for the non-derogability of the prohibition of enforced disappearance under any exceptional circumstances.

5. Moreover, Austrian constitutional law does not provide for the derogation of human rights in situations of crisis such as those described in article 1 (2) of the Convention. Accordingly, in such situations Austria must not restrict or even suspend human rights guarantees relevant in the context of enforced disappearances such as the Federal Constitutional Law of 29 November 1988 on the Protection of Personal Liberty and articles 2, 3 and 5 of the European Convention on Human Rights, which also has constitutional law status in Austria.

Additional information relating to paragraph 13 of the concluding observations

6. The statutory penalty for the offence of enforced disappearance ranging from one to ten years in prison is the common statutory penalty under the Austrian Criminal Code (CC) for crimes of comparable severity. This penalty is stipulated i.a. regarding the following crimes (without considering the so-called “qualifications”, i.e. higher maximum statutory penalties under specific circumstances): assault causing death (Section 86 CC), robbery (Section 142 CC), serious sexual abuse of a person under the age of 14 (Section 206 CC) and torture (Section 312a CC).

7. This range of statutory penalty shall enable courts to make decisions which address the specific circumstances of the individual case. This also reflects the independence of the judiciary.

8. In addition, it has to be pointed out that according to Section 39a para. 2 subpara. 4 CC a penalty of imprisonment of a minimum of one year is substituted by a minimum penalty of imprisonment of two years if the perpetrator has intentionally committed an offence by using violence or making dangerous threats

(1) as an adult against a person under the age of 14;

(2) against a person with special protection needs by abusing their position of vulnerability;

(3) by using extraordinary levels of violence or committed the offence subsequently to the use of such violence;

(4) by using or threatening to use a weapon; or

(5) in planned association with at least one other person.

9. Persons with special protection needs under Section 39a para. 1 subpara. 2 CC are for instance members of minorities, homeless persons, children, elderly and persons with disabilities.

10. Hence, if the requirements of Section 39a CC are met, the minimum penalty of imprisonment for the offence of enforced disappearance according to Section 312a CC is two years.

11. Furthermore, the provisions for determining the sentence have to be taken into account. According to Section 32 CC sentencing is based on the culpability of the perpetrator. In sentencing the perpetrator, the court has to take into account the aggravating (Section 33 CC) and mitigating factors (Section 34 CC), so long as these are not already elements of the offence, and give due consideration to the implications of the punishment and other anticipated consequences of the offence on the future life of the perpetrator in society. Particular consideration is to be given to the extent to which the offence reflects the perpetrator's hostile or indifferent attitude towards legally protected interests and to what extent the offence can be attributed to external factors and motives that could also prompt another person connected to the legally protected interest to commit the offence. According to Section 32 para. 3 CC, in general, the punishment for the offence will be more severe the greater the damage or harm for which the perpetrator bears responsibility or, if the perpetrator has not caused the damage or harm but is nevertheless culpable for it, the more the perpetrator has violated existing duties, the more the perpetrator has planned and prepared the offence, the more inconsiderately the perpetrator has executed the offence, and the less caution would have been needed to prevent the offence.

Additional information relating to paragraph 15 of the concluding observations

12. Please refer to the statement by Austria from 20 January 2020, CED/C/AUT/FCO/1.

Additional information relating to paragraph 17 of the concluding observations

Regarding allegations against federal police officers

13. Pursuant to an amendment of the Law on the Federal Bureau of Anti-Corruption (Gesetz über das Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung, BAK-G), published on 21 July 2023 in the Federal Law Gazette, the Investigation and complaints office for allegations of police ill-treatment – Ermittlungs- und Beschwerdestelle Misshandlungsvorwürfe (EBM) – began its work on 22 January 2024 as Department 4 of the Federal Bureau of Anti-Corruption (BAK). The amendment made the BAK exclusively competent to investigate suspicions and allegations of torture and ill-treatment committed by federal police officers.

14. According to the law, the EBM is responsible for nationwide investigations of every alleged or possible case of ill-treatment within the area of responsibility of the Federal Ministry of the Interior. Its mandate encompasses all allegations of disproportionate use of force and inhuman or degrading treatment against any official authorized to exercise command and coercive power while acting in the performance of official duties. It further includes criminal investigations in all cases of direct coercive force resulting in death and life-threatening use of arms. The EBM investigates in criminal matters under the direction of the public prosecutor. In disciplinary matters below the threshold of criminal liability, the EBM reports the results of its investigations to the responsible disciplinary supervisor.

Regarding enforced disappearance that allegedly occurred in foreign countries

15. According to Section 64 para. 1 no. 4c of the Austrian Criminal Code (CC) the application of the Austrian criminal law also extends to offences of disappearance of a person according to Section 312b CC committed abroad if:

- (a) the perpetrator or the victim is an Austrian national;
- (b) the offence has infringed on other Austrian interests; or
- (c) the perpetrator was, at the time of the offence, a foreign national who either has his or her place of habitual residence in Austria or who is present in Austria and cannot be extradited.

16. In any case of an initial suspicion of disappearance of persons, Austria, provided it has jurisdiction, is obliged to start a criminal proceeding, will take all necessary steps to clarify the offence and will make use of all possible ways of mutual legal assistance either based on a bilateral or multilateral instrument or – in absence of a treaty – based on the principle of reciprocity.

Additional information relating to paragraph 19 of the concluding observations

17. The Federal Ministry of Justice and the Federal Ministry of the Interior are not aware of any investigations against prison officers on suspicion of an offence of enforced disappearance. Due to the limited relevance of the Convention for Austria, no need is seen for a special legal provision regarding suspension.

Disciplinary law for civil servants

18. Division 8 (Sections 91 to 135) of the (Federal) Civil Servants Employment Act 1979 (Beamten-Dienstrechtsgesetz 1979 – BDG 1979), Federal Law Gazette No. 333/1979, contains provisions on (federal) disciplinary law. The last major amendment to disciplinary law (in particular changes to the organisational structure) was made with the amendment Federal Law Gazette No. 58/2019:

- Any civil servant who culpably violates her or his duties is accountable on the behalf of disciplinary law;
- In general Section 20 para. 1 BDG 1979 stipulates, that the employment relationship is terminated, among others, by dismissal (which can be a disciplinary measure under Section 92 para. 1 item 4 BDG 1979) or by a loss of office in accordance with Section 27 para. 1 of the Criminal Code (CC);
- Section 27 para. 1 CC stipulates, that a civil servant shall be deprived of his office if she or he is sentenced by a court to a term of imprisonment, if this term imposed exceeds one year. According to the fact, that enforced disappearance is a crime to Section 312b CC, and this provision provides for a penalty of one to ten years, in any case, a conviction usually results in the loss of office;
- According to Section 112 para. 1 BDG 1979 (which is also binding for the Austrian police force as well as for prison officers) the employing authority body must order the provisional suspension of a civil servant:
 - If she or he is remanded in custody; or
 - If she or he has been legally charged with an offence listed in Section 20 para. 1 item 3a BDG 1979; or
 - If the reputation of the office or essential interests of the (civil) service would be jeopardised by her or his continued service due to the nature of the breaches of duty she or he is accused of;
- The accusation of such a serious crime would in any case lead to an endangering of the reputation of the office or would contradict essential interests of the (civil) service, so that a suspension seems very likely;

- Please see also Section 34 para. 2 and 3 of the Contract Staff Act of 1948 (Vertragsbedienstetengesetz 1948 – VBG), Federal Law Gazette No. 86/1948.

Disciplinary law for soldiers

19. Temporary suspension of military personnel is regulated in Section 40 of the Austrian Military Disciplinary Code, which stipulates that any soldier has to be temporarily suspended from duties in the event of pre-trial detention of that soldier or if the reputation of the function or essential official interests are jeopardized. If a military agent is suspected of having committed an offence of enforced disappearance, pre-trial detention will be imposed if the requirements pursuant to Section 173 of the Austrian Code of Criminal Procedure are met. Additionally, such an allegation would certainly endanger the reputation of the function or essential official interests, meaning that the military agent in question will be preliminary suspended from his duties on the basis of Section 40 of the Austrian Military Disciplinary Code. Therefore, the main purpose of article 12 (4) of the Convention – to prevent influence on the progress of an investigation through a suspect – is sufficiently upheld for all military agents through the existing provisions of the Austrian Military Disciplinary Code.

Additional information relating to paragraph 21 of the concluding observations

20. Articles 2 and 3 of the European Convention on Human Rights, which has constitutional law status in Austria, absolutely prohibit any return of an individual who would face a real risk of treatment contrary to either of those provisions.

21. According to the case-law of the European Court of Human Rights, a State's responsibility under article 3 will be engaged when any expulsion is made where substantial grounds have been shown for believing that the person concerned faces a real risk of torture or inhuman or degrading treatment. In evaluating whether an individual concerned faces a real risk of torture or inhuman or degrading treatment in the receiving State account is also taken of whether in the receiving State exists a practice of enforced disappearances (cf. M.D. and others v. Russia, 14 September 2021, appl. no. 71321/17) or whether single disappearances have occurred in a context relevant for the individual to be returned (s. M.A. and others v. Bulgaria, 20 February 2020, appl. no. 5115/18). Accordingly, Austria is under a constitutional law duty to not return an individual who would face a real risk of being subject to enforced disappearance in the receiving State.

Additional information relating to paragraph 23 of the concluding observations

Regarding organs of the public security service

22. In connection with the restriction of a person's personal freedom, starting with the pronouncement of arrest by an organ of the public security service, through short-term detention at a police station to detention in a detention room of a security authority, the curriculum for basic police training as well as the curriculum for middle management provides for an interdisciplinary examination of the rights of detained persons. In the subjects of human rights and security policing, students acquire the legal, tactical and operational skills that ensure detainees are treated in accordance with human rights. Central to this are the principles of the Security Police Act and the Code of Criminal Procedure (in particular the rights of detainees), the provisions of the detention order and the necessary use of coercive force in accordance with the law on the use of weapons. In the subject "Modular skills training", the principles previously covered in theory are practiced several times in the context of scenarios (e.g. arrest). The necessary education and information on the guarantees of the International Convention for the Protection of All Persons from Enforced Disappearance are covered in these contexts as well in accordance with art. 23.

Regarding medical personnel

23. For medical personnel that works in the relevant setting further training can be offered concerning the provisions of the Convention. Medical staff are obliged to undergo a certain amount of further trainings.

Regarding military law enforcement personnel

24. In order to ensure the required awareness on the topic of enforced disappearance for personnel of the Austrian Armed Forces, the topic is dealt with together with human trafficking, protection of civilians and child protection across all training centres of the Austrian Armed Forces (namely the National Defence Academy, the Theresian Military Academy, the NCO Academy and various specialized colleges).

Regarding judges, public prosecutors and other court officials

25. In Austria, a variety of measures provide for human rights training for judges and public prosecutors. Every future judge and public prosecutor attends a specific seminar on fundamental rights as part of the mandatory four-year initial training period ("Curriculum Grundrechte"). The three-day training deals with the most important sources of fundamental and human rights, and has a particular focus on enabling candidate judges to use their legal knowledge in practice. Furthermore - since 2009 - the Federal Ministry of Justice organises in cooperation with the Research Centre for Post-War Justice a specialized course offering basic and human rights education and basic knowledge of the more recent history of justice in the 19th and 20th centuries as well as an in-depth treatment and sensitisation to the topics of anti-Semitism, racism and National Socialism, the war in Yugoslavia and its consequences also hate, bullying and incitement to hatred ("Curriculum Justiz- und Zeitgeschichte"). Since 2017, all candidate judges must complete this multi-day training that comprises also a visit to the Mauthausen concentration camp and 'Am Spiegelgrund' memorial sites. Since 2023, the one-day event "Place of Crime - Place of Remembrance - Place of Learning: Excursion to the Mauthausen Concentration Camp Memorial" addresses civil servants, contract staff and prison staff. In addition, a new two-day seminar especially for judges and public prosecutors with an excursion to the Hartheim Castle learning and memorial site and the Gusen and Mauthausen concentration camp memorials was introduced in fall 2024.

Regarding prison staff

26. Prison staff have to attend seminars on human rights issues from their basic training onwards and further seminars are offered for management positions in particular (e.g. seminars on fundamental and human rights, equal treatment, anti-discrimination, intercultural competence or professional ethics).

Additional information relating to paragraph 25 of the concluding observations

27. As explained in detail in the first report of Austria, Art. 25 para. 1 lit b is comprehensively implemented in national law through Section 223 Austrian Criminal Code (CC) (counterfeiting legal documents), Section 224 CC (counterfeiting specially protected documents), and Section 229 CC (suppression of legal documents).

28. Art. 25 Abs. 1 lit a of the Convention is transposed into national law by Section 195 CC (abduction of a child under 16), Section 99 CC (deprivation of liberty), Section 100 (kidnapping of a mentally impaired or vulnerable person), Section 101 CC (kidnapping of a person under the age of 14), and Section 302 CC (misuse of official authority).

29. Under Section 195 para. 1 CC, any person who abducts or conceals a child under the age of 16 from their parent or legal guardian or who entices or aids the child to abscond or hide from their parent or legal guardian is liable to imprisonment for up to one year or a fine not exceeding 720 penalty units. According to Section 195 para. 2 CC, the offender is liable to imprisonment for up to three years if the offence involves a minor under the age of 14. The offender can be any person who does not have the custody rights over the child. Child Custody Law determines who has the right of custody. In the case of conjugal children, this is generally the right of both parents; for non-conjugal children, the law primarily grants these

rights to the mother. Section 195 CC protects minors under the age of 16. Deprivation within the meaning of Section 195 CC means that the minor is removed from the sphere of influence of the legal guardian (or the person entrusted by the legal guardian with the upbringing, care and custody), making it impossible (or very difficult) for the legal guardian to contact the minor under the age of 16 at any time and to exercise his or her educational and protective rights in an appropriate manner. This does not depend on a specific minimum duration of the deprivation (legal rule by the Austrian Supreme Court, RIS-Justiz RS0095059). Thus, the offence can already be fulfilled by the absence of the minor from the parental home without leaving the place of residence for only a few days (SSt 58/29). Furthermore, it is irrelevant whether the offender acts on his or her own initiative or at the inducement of the minor (legal rule by the Austrian Supreme Court, RIS-Justiz RS0095041). Concealment is characterised by the fact that the perpetrator secures, maintains or deepens the unlawful situation brought about either by his or her influence or, without his or her intervention, by the voluntary escape of the minor, thereby making it impossible for the legal guardian to exercise his or her custody rights over the minor (*Tipold in Leukauf/Steininger*, StGB⁴ § 195 Rz 7 (as of 1.10.2016, rdb.at)). For this purpose, it is sufficient that the minor under the age of 16 is provided with food or accommodation (Austrian Supreme Court 13 Os 92/80). The offender induces a person under the age of 16 to evade his or her parent or legal guardian, or to remain hidden from them, by influencing his or her will in any way in order to bring about this decision (*Markel in Höpfel/Ratz*, WK² StGB § 195 Rz 18 (as of 1.12.2018, rdb.at)).

30. The general provision of child abduction under Section 195 CC covers the unlawful abduction of children who have previously been victims of enforced disappearance or whose father, mother or legal guardian is subjected to enforced disappearance, as well as children who were born during the captivity of a mother subjected to enforced disappearance, and thus all cases provided for in Art. 25 para. 1 lit a of the Convention.

31. In the event of the victim's lack of consent or if the consent is legally insignificant, Section 195 CC is superseded by Sections 99, 100, and 101 CC.

32. Under Section 99 para. 1 CC, any person who unlawfully detains another or deprives another of his or her personal liberty is liable to imprisonment for up to three years. Anyone who maintains the deprivation of liberty for more than one month, or who deprives another of his or her liberty in a way that is particularly tormenting for the other person, or under circumstances that involve particularly serious detriments for the other person, is liable to imprisonment for one to 10 years (Section 99 para. 2 CC).

33. Any person who kidnaps a mentally impaired or vulnerable person or a minor for the purpose of sexual exploitation by the perpetrator or by a third person is liable to imprisonment for six months to five years (Sections 100 and 101 CC).

34. Pursuant to Section 313 CC the maximum penalty provided for i.a. in Sections 195, 99, 100 and 101 CC may be exceeded by 50% (i.e. 150% in total) if the offence is committed by a government official who is abusing an opportunity provided to him or her in his or her official capacity.

35. If the offender is an official who knowingly misuses his or her authority to execute official duties, criminal liability under Section 302 CC (misuse of official authority) may be considered.

36. Pursuant to Section 302 CC, a government official who knowingly misuses the person's authority to execute official duties as an organ and in the name of the Republic of Austria, a State, a municipalities association, a municipality, or another entity under public law intending thereby to violate the rights of another is liable to imprisonment for six months to five years. A person who is an official is to be understood functionally; it is solely the exercise of a function in the name and with the will of the entity under public law that is decisive. Included are e.g. prison guards (Austrian Supreme Court 17 Os 11/13s), members of the Federal Army (Austrian Supreme Court 17 Os 27/15x) as well as persons vested with public authority such as probation officers (Austrian Supreme Court 16 Os 41/89).

37. All the offences listed are prosecuted ex officio by the law enforcement authorities.