



## International Covenant on Civil and Political Rights

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### Human Rights Committee

#### Concluding observations on the fifth periodic report of Austria\*

1. The Committee considered the fifth periodic report submitted by Austria (CCPR/C/AUT/5) at its 3206th and 3207th meetings (CCPR/C/SR.3206 and CCPR/C/SR.3207), held on 20 and 21 October 2015. At its 3225th meeting (CCPR/C/SR.3225), held on 3 November 2015, it adopted the following concluding observations.

##### A. Introduction

2. The Committee welcomes the submission of the fifth periodic report of Austria and the information presented therein. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's delegation on the measures that the State party has taken during the reporting period to implement the provisions of the Covenant. The Committee is grateful to the State party for its written replies (CCPR/AUT/Q/5/Add.1) to the list of issues (CCPR/C/AUT/Q/5), which were supplemented by the oral responses provided by the delegation.

##### B. Positive aspects

3. The Committee welcomes the following legislative and institutional steps taken by the State party:

(a) The adoption of a Roma strategy in 2012 and the creation of a dialogue platform to monitor its implementation;

(b) The establishment of the Vienna Anti-discrimination Office for Same-sex and Transgender Lifestyles, tasked with eliminating discrimination against lesbian, gay, bisexual, transgender and intersex persons;

(c) The amendment in 2012 of the Introductory Act to the Administrative Proceedings Laws, which broadens the scope of non-discrimination in gaining access to public places or services;

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\* Adopted by the Committee at its 115th session (19 October-6 November 2015).



(d) The adoption of the Criminal Law Amendment Act 2015, to enter into force on 1 January 2016, which broadens the scope of the prohibition of incitement to violence and hatred and bans forced marriages;

(e) The recognition of torture as a special offence in the Penal Code as of 1 January 2013;

(f) The ban of net and other cage-type beds in psychiatric and social welfare institutions as of 1 July 2015;

(g) The adoption of the Constitutional Law on the Rights of Children.

4. The Committee welcomes the ratification of the following international instruments by the State party:

(a) The International Convention for the Protection of All Persons from Enforced Disappearance in 2012;

(b) The Convention on the Rights of Persons with Disabilities in 2008;

(c) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2012.

## C. Principal matters of concern and recommendations

### Status of the Covenant

5. The Committee reiterates its concern (CCPR/C/AUT/CO/4, para. 6) that the Covenant is not directly applicable in the State party and that the courts do not interpret domestic law in the light of the Covenant. In that regard, it reiterates that a number of Covenant rights exceed the scope of the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which has been incorporated into Austrian law at the rank of constitutional law (art. 2).

**6. The State party should ensure that all rights protected under the Covenant are given full effect in domestic law and that judges and law enforcement officers receive adequate training to apply and interpret domestic law in the light of the Covenant.**

### Implementation of the views of the Committee under the Optional Protocol to the Covenant

7. The Committee recalls its previous recommendation (CCPR/C/AUT/CO/4, para. 7) and reiterates its regret at the absence of a specific mechanism to examine and give effect to its views under the Optional Protocol to the Covenant, in particular a mechanism enabling victims to obtain compensation for violations of their Covenant rights. The Committee notes with concern that, although a victim can turn to the Austrian Ombudsman Board if a satisfactory settlement cannot be reached with the relevant national body, any redress is made on an ex gratia basis only (art. 2).

**8. The State party should consider establishing an adequate mechanism to implement the Committee's views, in accordance with the right to an effective remedy, including compensation, when there has been a violation of the Covenant.**

### National human rights institution

9. The Committee welcomes the expansion of the mandate of the Austrian Ombudsman Board in July 2012 to protect and promote human rights and to monitor places of deprivation of liberty, including facilities and programmes for persons with disabilities. The Committee regrets, however, that the State party has not addressed the concern related

to the nomination of Board members by political parties represented in the Parliament (art. 2).

10. **The State party should take measures aimed at ensuring that the procedures for the selection and appointment of Austrian Ombudsman Board members ensure full transparency and political independence, with a view to bringing it in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).**

#### **Anti-discrimination framework**

11. The Committee is concerned that the multiple pieces of anti-discrimination legislation and institutions at the federal and provincial levels may negatively affect the ability of victims to claim their rights and obtain a remedy. It is also concerned that the Federal Equal Treatment Act fails to afford equal protection against all forms of discrimination and notes in particular the lack of protection against discrimination on the basis of religion and belief, age, sexual orientation and gender identity in gaining access to goods and services (arts. 2 and 26).

12. **The State party should consider amending the Equal Treatment Act, the Employment of Disabled Persons Act, the Equality of Disabled Persons Act and relevant provincial laws, with a view to ensuring equal substantive and procedural protection against discrimination with regard to all prohibited grounds of discrimination in the private and public sector.**

#### **Representation of women in political and public life**

13. The Committee notes with concern that, despite the measures taken by the State party to promote gender equality and increase the representation of women in publicly elected bodies, women remain underrepresented in political decision-making positions, especially at the Länder and municipal levels. The Committee notes the low representation of women in high-level and managerial positions and on boards of private enterprises (arts. 2, 3 and 26).

14. **The State party should expand its efforts to increase the participation of women in political decision-making positions, especially at the Länder and municipal levels. The State party is encouraged to further support the participation of women in high-level and managerial positions and on boards of private enterprises, including through enhanced cooperation and dialogue with partners in the private sector.**

#### **Hate speech and racial discrimination**

15. The Committee welcomes the legislative steps taken to improve the criminal-law response to hate speech and to enforce compliance with rules of conduct for the press with regard to racism, xenophobia, anti-Semitism or intolerance. It is concerned, however, about the increasing radicalization of extremist groups in the country, including members of the Muslim communities, and the resurgence of far right-wing and other groups inspired by extremist national socialist ideologies and neo-Nazism. The Committee is also concerned at the rise of advocacy of racial or religious hatred against Roma, Muslims, Jews, minorities, migrants and asylum seekers, including political hate speech, which have not been systematically countered, and advocacy of hatred against persons of a different faith by some radical Islamist preachers. The Committee is concerned that hate speech on the Internet and online forums is on the rise (arts. 2, 18, 20 and 26).

16. **The State party should strengthen its efforts to combat acts or advocacy of racial or religious hatred, including by further enhancing awareness that hate speech, racist propaganda and the incitement of violence against racial or religious groups are**

**prohibited under law, condemning such acts, in particular during election campaigns, and taking prompt action to bring those responsible to justice. The State party should also envisage adopting a national action plan against racism and pursue its efforts to harmonize the Austrian crime statistics and judicial statistics.**

#### **Intolerance and discrimination against ethnic minorities**

17. The Committee is concerned that, despite action taken by the State party, immigrants, foreigners and ethnic minorities, including the Roma minority, continue to face intolerance and discrimination. The Committee also regrets the low representation of ethnic minorities in political and public life, including in the legislative and executive bodies (arts. 2 and 26).

**18. The State party should intensify measures to ensure that immigrants, foreigners and ethnic minorities, including the Roma minority, do not suffer from discrimination. The State party should step up its efforts to encourage the participation of persons who are members of minority groups in publicly elected bodies.**

#### **Racial profiling and police misconduct**

19. The Committee appreciates the measures taken to facilitate the filing of complaints against racial profiling and police misconduct and the introduction of racial sensitivity training for police and other officials. The Committee is concerned, however, at information indicating that racial profiling and police misbehaviour on the basis of physical appearance, colour, ethnic or national origin persists in the State party (arts. 2, 7, 10 and 26).

**20. The State party should ensure that its legislation clearly prohibits racial profiling by the police and prevent investigation, arbitrary detention, searches and interrogation on the basis of physical appearance, colour or ethnic or national origin. It should continue to provide all law enforcement personnel with racial sensitivity training in order to curb racial profiling and police misbehaviour towards ethnic minorities. Law enforcement personnel who commit offences against persons belonging to ethnic minorities should be held accountable. The Austrian Ombudsman Board should take steps to raise awareness about its new competence to receive complaints and consider making use of its ex officio powers to open investigations into allegations of racial discrimination and racially motivated misconduct by the police.**

#### **Ill-treatment of persons deprived of their liberty**

21. The Committee is concerned at the low number of criminal convictions for the perpetrators of ill-treatment of detainees in police custody compared with the relatively high number of allegations. The Committee also remains concerned about the leniency of the sentences imposed in cases of ill-treatment of detainees by law enforcement officials (arts. 2, 7 and 10).

**22. The State party should undertake an independent investigation into the reasons underlying the discrepancy between the low number of criminal convictions for ill-treatment in police custody and the relatively high number of allegations. It should also ensure prompt, thorough and impartial investigations and documentation, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), into all allegations of torture and ill-treatment. Perpetrators prosecuted and convicted should be subjected to sanctions commensurate with the gravity of their acts, and victims provided with effective remedies. The State party should collect and**

make public information on the number and nature of reported incidents of torture and ill-treatment of detainees, disaggregated by age, gender and ethnic origin of victims, and on the convictions and types of sentences or sanctions imposed on perpetrators of such acts.

#### Care of vulnerable inmates

23. The Committee is concerned at deficiencies in medical and mental health care in places of detention, including for persons with intellectual or psychosocial disability and older persons in correctional institutions, which are due to shortcomings in health-care staffing levels and adequate training and have resulted in cases of neglect (art. 10).

**24. The State party should extend and develop the health-care system and ensure regular medical examinations of inmates, paying particularly attention to vulnerable groups, such as disabled or older offenders.**

#### Trafficking in human beings

25. While welcoming legislative and other measures adopted to combat trafficking in human beings, the Committee remains concerned at the insufficient identification of victims trafficked for labour exploitation and the absence of a comprehensive nationwide identification and referral system or comprehensive and coherent data collection system for victims of trafficking (arts. 8 and 24).

**26. The State party should continue its efforts to combat trafficking in human beings, including through international cooperation efforts. It should consider the establishment of a comprehensive nationwide identification and referral system and increase steps taken for the identification and effective protection of victims of trafficking for the purposes of labour exploitation. The State party should, as soon as possible, implement nationwide the national referral mechanism for child trafficking victims and ensure that the handbook for identification of child trafficking victims is completed and conveyed to the local and Länder authorities. Finally, it should develop a comprehensive and coherent data collection system on trafficking in human beings to appropriately identify, monitor and evaluate the State's policies.**

#### Asylum seekers and refugees

27. While welcoming the Act Amending the Aliens Act 2015, which is aimed at harmonizing the reception and support of asylum seekers throughout the country, the Committee remains concerned about shortcomings in legal counselling and representation throughout the asylum procedure and that legal counsellors are not necessarily trained lawyers. The Committee is also concerned that legal counsellors representing unaccompanied minors, who are not yet assigned to a provincial reception facility, do not need to have any training or skills in counselling children or determining their best interests. The Committee is further concerned that, under article 7 of the new Constitutional Law on the Rights of Children, consideration of the best interest of the child may be restricted in some circumstances, including in asylum-related matters (arts. 13, 24).

**28. The State party should ensure that legal aid and representation of adequate quality are systematically made accessible throughout the entire asylum procedure. It should also ensure that unaccompanied minors are systematically and without undue delay appointed a guardian trained in child counselling, from the outset and throughout their entire stay in the State party. Finally, the best interest of the child should be given primary consideration by all relevant State authorities throughout the asylum procedure.**

**Detention of asylum seekers and refugees**

29. While welcoming the decrease in the number of detentions pending deportation and the application of an “open door” regime of detention, the Committee is concerned that, under the revised Aliens Police Act (2015), children over the age of 14 can be detained for up to two months (arts. 9 and 24).

30. **The State party should pursue its efforts to ensure that detention pending deportation is applied only after due consideration of less invasive means, with special regard being given to the needs of particularly vulnerable persons, and that individuals detained for immigration-related reasons are held in facilities specifically designed for that purpose. The State party should review its detention policy with regard to children over the age of 14 years to ensure that children are not deprived of their liberty except as a measure of last resort and for the shortest appropriate period of time.**

**Freedom of conscience and religious belief**

31. The Committee is concerned that some provisions of the 2015 Amendments to the Law on the Recognition of Islamic Religious Communities may be discriminatory and unduly restrict the enjoyment of the right to freedom of religion in community with others, as well as the rights to association and assembly (arts. 18, 22 and 26).

32. **The State party should re-examine the Amendments to the Law on the Recognition of Islamic Religious Communities and the Basic Law, with a view to guaranteeing the non-discriminatory enjoyment of the right to freedom of religion and belief and freedom to manifest a religion or belief, either individually or in community with others, in public, in worship, observance, practice or teaching. The State party should refrain from imposing any restriction on the rights to freedom of religion and association unless they fulfil the conditions set out in articles 18 (3) and 22 (2) of the Covenant.**

33. The Committee notes that the length of the civilian alternative service to military service for conscientious objectors is longer than military service and may be punitively long if not based on reasonable and objective grounds (arts. 18 and 26).

34. **The State party is encouraged to ensure that the length of service alternative to military service required for conscientious objectors is not punitive in nature.**

**D. Dissemination of information relating to the Covenant**

35. **The State party should widely disseminate the Covenant, its two Optional Protocols, its fifth periodic report, the written replies to the Committee’s list of issues and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public and minority and marginalized groups. The State party should ensure that the report and the present concluding observations are translated into the official languages of the State party.**

36. **In accordance with rule 71, paragraph 5, of the Committee’s rules of procedure, the State party should provide, within one year of the adoption of the present concluding observations, information on its implementation of the Committee’s recommendations made in paragraphs 20 (racial profiling and police misconduct), 22 (ill-treatment of persons deprived of their liberty) and 30 (detention of asylum seekers and refugees) above.**

37. The Committee requests the State party to submit its next periodic report by 6 November 2021 and to include in that report specific up-to-date information on the implementation of the recommendations made in the present concluding observations and on the Covenant as a whole. The Committee also requests the State party, in preparing the report, to broadly consult civil society and non-governmental organizations operating in the country, as well as minority and marginalized groups. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words.

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