
amnesty international

AUSTRIA

Submission to the UN Universal Periodic Review

**Tenth session of the UPR Working Group of the
Human Rights Council**



Executive summary

In this submission, Amnesty International provides information under sections B, C and D as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*:¹

- Under section B, Amnesty International raises concern about outstanding ratifications of key international and regional human rights treaties, gaps in the constitutional and legal human rights framework, lack of implementation of UN treaty body recommendations and existing reservations on the applicability of instruments already ratified.
- Section C highlights Amnesty International's concerns over reports of ill-treatment, including the excessive use of force and firearms by the police; racism and xenophobia; and the treatment of refugees and asylum-seekers.
- In section D, Amnesty International makes a number of recommendations for action by the government.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

Austria

Amnesty International submission to the UN Universal Periodic Review

Tenth session of the UPR Working Group, January 2011

B. Normative and institutional framework of the State

International and regional human rights standards

Amnesty International welcomes the announcement by Austria of its intention to ratify the International Convention for the Protection of All Persons from Enforced Disappearance. However, noting that no concrete steps have been taken towards that end and that no timeframe has been set to put this plan into practice, the organization urges Austria to take prompt steps towards ratification and implementation of the Convention.²

Similarly, Amnesty International regards the government's stated intention to prepare for ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as an important step.³ However, the organization notes that recent negotiations about the establishment of a National Preventive Mechanism have been held behind closed doors and without civil society consultation, thus giving cause for concern that any such mechanism created on the basis of the current proposals may fall short of the criteria required by the Optional Protocol to CAT, in particular with regard to its independence and funding.

While welcoming the intensive dialogue on the ratification of the Optional Protocol to the Covenant on Economic, Social and Cultural Rights, Amnesty International regrets that the ratification process currently appears to have stalled. Austria has also yet to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

In addition, Austria has not yet ratified Protocol 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which extends the prohibition of discrimination to all rights provided for in national law, even when such rights are not protected under the Convention. Austria has signed but not ratified the Council of Europe's Revised European Social Charter, which updates and replaces the European Social Charter enshrining obligations to guarantee social and economic rights. Austria has yet to accept the jurisdiction of the Committee on Social Rights, the body monitoring states' implementation of the European Social Charter, to consider collective complaints alleging that the State has failed to implement its obligations under the Social Charter.

² "Pledges and Commitments" relating to Austria's candidature for membership in the Human Rights Council for the period 2011 to 2014, as adopted on 23 February 2010 by the Austrian government; reiterated in Austria's Opening Statement for the consideration of Austria's Fifth periodic report under Article 19 of the Convention against Torture, 5 May 2010.

³ *ibid.*

National Human Rights Institution

To date, Austria has failed to establish a National Human Rights Institution with A status in accordance with the Principles relating to the Status of National Institutions (The Paris Principles, adopted by UN General Assembly resolution 48/134 of 20 December 1993).⁴

Legal and constitutional human rights safeguards

Amnesty International welcomes the fact that, in Austria, the European Convention for the Protection of Human Rights and Fundamental Freedoms has constitutional status. Nonetheless, significant gaps remain in the protection of human rights at the constitutional level. In particular, the Constitution does not expressly enshrine guarantees of economic, social and cultural rights, the right to asylum, and children's rights. Furthermore, the constitutional provisions prohibiting discrimination are limited to citizens.

Amnesty International is concerned that due to the routine application of Art. 50 (2) lit. 3 of the Austrian Constitution,⁵ which stipulates that at the time of approval of a treaty the National Council can resolve to which extent the treaty in question shall be implemented by the issuing of laws, important human rights treaties to which Austria is a party remain un-implemented and the views and concluding observations of UN treaty bodies have no binding effect (see also the case of Paul Perterer below). In this respect, the organization urges Austria to ensure the full and effective implementation of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child.

Amnesty International welcomes Austria's intention to introduce a specific crime of torture in the penal code, thus implementing a long-standing recommendation by the Committee against Torture.⁶ Amnesty International notes in this regard that there is not a concrete timeframe for the adoption of the law.

In the past, Amnesty International has voiced concern over the impending extradition of persons from Austria to a third country on the basis of diplomatic assurances against torture.⁷ The organization very much welcomes the fact that the Austrian government appears recently to have adopted a principled position against the use of such assurances, including by emphasizing that "any concern that a person to be extradited might be subjected to torture or inhuman or degrading treatment cannot be compensated by diplomatic assurances", as set out in its response to the list of issues raised by the Committee against Torture concerning Austria's 4th and 5th periodic reports and confirmed in statements to Amnesty International from the Ministry of Foreign Affairs and the Ministry of Justice in 2009.

⁴ Committee on Economic, Social and Cultural Rights: Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant. Concluding observations of the Committee on Economic, Social and Cultural Rights, Austria, E/C.12/AUT/CO/3, 25 January 2006.

⁵ Until 2007, this was Article 50 (2). Before the constitutional amendment of 2007, Articles 50 (1) and (2) determined that "(1) Political treaties, and others in so far as their contents modify or complement existent laws, may only be concluded with the sanction of the House of Representatives. (2) At the time of giving its sanction to a treaty which falls under Paragraph (1), the House of Representatives can decide that the treaty in question shall be implemented by the issue of laws."

⁶ Conclusions and recommendations of the Committee against Torture, Austria, CAT/C/AUT/CO/3, 15 December 2005

⁷ In 2004, Russian citizen Akhmet A. was extradited to the Russian Federation and reportedly ill-treated by police following his return. The Austrian authorities appeared ready to extradite Egyptian national Muhammad 'Abd al-Rahman Bilasi-Ashri to Egypt on the basis of diplomatic assurances. The extradition proceedings were suspended in accordance with an order of Interim Measures of the European Court of Human Rights in November 2005. Muhammad 'Abd al-Rahman Bilasi-Ashri's case remains pending at the European Court of Human Rights (see Amnesty International: Dangerous Deals: Europe's reliance on 'diplomatic Assurances' against torture, 12 April 2010, AI Index: EUR 01/012/2010).

Political measures

Amnesty International regrets that, to date, Austria has shown no intention to develop a National Action Plan on Human Rights, as recommended by the Committee on Economic, Social and Cultural Rights,⁸ or a National Action Plan on Racism and Xenophobia as it had indicated in the context of the Durban process and on which the Committee on the Elimination of Racial Discrimination has requested an update in Austria's next periodic report.⁹

The organization also notes that the distribution of human rights competences between ministries as well as the role of ministerial and provincial human rights coordinators remains ambiguous. The human rights coordinators, in particular, appear to lack the political backing as well the institutional standing and resources needed to ensure the implementation of Austria's international obligations as well as the mainstreaming of human rights into all areas of Austrian federal and provincial government policy.

While government officials from time to time meet with civil society to discuss specific human rights concerns, Amnesty International notes that there is no mechanism or process in place to ensure and facilitate a regular substantive dialogue with civil society on current and structural human rights concerns.

The UPR of Austria provides an excellent opportunity to remedy human rights-related shortcomings in the country in a structured manner. Amnesty International welcomes plans announced by government officials to hold broad consultations with civil society on Austria's national report for the UPR. However, as of June 2010, the organization notes that there remains room for improvement of this consultation process, including concerning its structure, timing and inclusiveness. The organization also notes that the government has yet to establish a clear process to assess the UPR outcome document and to ensure implementation of the recommendations made to Austria in the UPR, in consultation with civil society.

C. Promotion and protection of human rights on the ground

Implementation of Treaty Body recommendations

Amnesty International is concerned about Austria's refusal to fully and timely implement the views of the Human Rights Committee. On 20 August 2004, the Human Rights Committee concluded that Austria had violated Paul Perterer's right to a fair hearing when he was dismissed from the civil service and recommended that the authorities guarantee him an effective remedy, including compensation. However, as of June 2010, the authorities continue to refuse to pay him compensation, arguing that neither the International Covenant on Civil and Political Rights nor the views of the Human Rights Committee have any effect in domestic law.¹⁰

Amnesty International notes that there is no adequate mechanism or process in place to ensure and facilitate systematic follow-up to and implementation of Treaty Body recommendations, including by making all views and concluding observations concerning Austria publicly available in German and by engaging in regular substantive dialogue with civil society on their recommendations.

⁸ Concluding observations of the Committee on Economic, Social and Cultural Rights, Austria, E/C.12/AUT/CO/3, 25 January 2006.

⁹ Concluding observations of the Committee on the Elimination of Racial Discrimination, Austria, CERD/C/AUT/CO/17, 21 August 2008.

¹⁰ See: Human Rights Committee: Views under article 5, paragraph 4, of the Optional Protocol, Communication no. 1015/2001, CCPR/C/81/D/1015/2001, 20 August 2004; see also AI annual report 2006 at <https://aidoc.amnesty.org/d/d/workspace/SpacesStore/59ad70c9-d46f-11dd-8743-d305bea2b2c7/pol100012006en.pdf> and AI ICCPR memorandum 2007 http://www2.ohchr.org/english/bodies/hrc/docs/ngos/AI_austria.pdf. For the government's point of view on this point see: Human Rights Committee: Consideration of reports submitted by states parties under article 40 of the covenant, Fourth periodic report, Austria, CCPR/C/AUT/4, 20 November 2006, para. 9.

Ill-treatment and excessive use of force by the police

Amnesty International is concerned about consistent and credible reports that individuals have been subjected to ill-treatment and excessive use of force by law-enforcement officials and about difficulties encountered by victims of torture and other ill-treatment in obtaining justice and reparation.¹¹ There is currently no independent mechanism to investigate allegations of serious human rights violations by law enforcement officials, and with the power to order disciplinary proceedings and to refer cases directly to the judicial authorities.

Amnesty International is concerned that the use of charged energy devices, as currently practiced by law enforcement officials, may lead to human rights violations.¹² After a temporary prohibition on their use, in July 2009 the Ministry of Justice reauthorized the use of such devices by prison guards. In contrast with the position of the Ministry of Interior which still considers that charged energy devices are less harmful than police batons, new regulations in the Ministry of Justice define for the first time charged energy devices as potentially lethal weapons that fall under the limits on the use of firearms. Amnesty International is concerned that Austria ensure that charged energy devices are used by all law enforcement officials on the basis of the strictest standards, which must be consistent with international human rights law.

Racism and xenophobia

Amnesty International remains concerned at reports of racially motivated police misconduct in Austria, targeting foreign nationals and members of ethnic minorities. Amnesty International's research has shown that foreign nationals and members of ethnic minorities are more at risk than Austrian citizens of being suspected of having committed crimes¹³ and of being ill-treated by police. Complaints of police ill-treatment from members of ethnic minorities are often followed by an inadequate response by both the police force and the judicial system: such complaints tend not to be properly investigated, police officers are seldom prosecuted and even if they are, including in cases of serious racially motivated ill-treatment, the courts do not always impose penalties commensurate with the gravity of the offence, including its racist motivation. Amnesty International has concluded that the failure of the police and judicial organs to routinely extend the same quality of service to foreign nationals and members of ethnic minorities is the result of institutional racism.¹⁴

While the current government programme seeks to make protection against racism and xenophobia under criminal law more effective, Austria still does not collect and publish statistics on racist incidents and has not yet developed an action plan to combat racism and xenophobia. In successive reports the Council of Europe's European Committee on Racism and Intolerance has recommended that the Austrian authorities "introduce a

¹¹ See for example the case of Bakary J, a Gambian citizen, who was severely beaten and subjected to a mock execution by police officers in Vienna in 2006 and has yet to receive compensation. See AIR 2007, Austria entry.

¹² See the case of Ruslan A. in the Austria entry of the Amnesty International Report 2008: In July 2008 Chechen asylum-seeker Ruslan A. was detained at a police station to secure his deportation to Poland, as he had applied for asylum in Poland prior to his arrival in Austria. Ruslan A. feared that if deported to Poland he would be at risk from members of Russian intelligence agents active there. He was severely traumatized by his experiences in Chechnya (see AI AIR 2008) and threatened to commit suicide unless he could see his psychotherapist. A short time later, masked special police officers shot him with a charged energy device from outside his cell, following which he was taken to hospital. On 28 July 2008 the Asylum Court overruled the decision to deport him and his family to Poland, and ruled that Austria had to consider his asylum request. An appeal of the subsequent negative determination remained pending before the Asylum Court in June 2010.

¹³ For example, Amnesty International was concerned about reports that in mid-2009 police in Vienna engaged in ethnic profiling of persons of Georgian and Moldovan origin. Police entered all Georgian and Moldovan households in Vienna and interviewed the residents, with the unstated aim of finding out whether they possessed stolen goods or burglary tools. The persons interviewed were selected solely on the basis of their ethnic origin, without any existing evidence to substantiate suspicion.

¹⁴ For more information, see also *Austria: Victim or suspect - A question of colour: Racial discrimination in the Austrian justice system*, AI Index: EUR 13/002/2009, 9 April 2009

comprehensive and coherent data collection system that would make it possible to assess the situation with regard to the different minority groups in Austria and to discrimination".¹⁵

Refugees and asylum-seekers

Amnesty International considers that the Austrian Aliens Law 2005, as amended in 2010, which enables the authorities to routinely detain asylum-seekers after their arrival regardless of their age, physical health or family relations, violates the rights to personal liberty and to privacy and family-life. The new provisions, which came into force on 1 January 2010, considerably increased the number of cases where asylum-seekers can be detained, in contravention of international human rights standards. Amnesty International is also concerned that asylum-seekers may not have adequate access to legal advice, following the termination by the Ministry of Interior of the contracts of almost all independent NGOs providing legal advice to asylum-seekers. Amnesty International considers that this may hamper the chances of asylum-seekers to obtain asylum or international protection and to effectively challenge the reasons for their detention and deportation.¹⁶

Moreover, Amnesty International is concerned about amendments to the asylum law adopted in 2009 which strip asylum-seekers of the possibility to challenge second-instance decisions on international protection before the Administrative Court. Since such a high court appeal is possible against all other second-instance administrative decisions, including fines for traffic offences, Amnesty International considers that the denial of this right to asylum-seekers is discriminatory. In addition, given that before the entry into force of the revised law some 13-20 per cent of asylum decisions of the second instance were overturned by the Administrative Court, the amendment unduly restricts access to legal protection for people who are already in a particularly vulnerable (and potentially life-threatening) situation.

D. Recommendations for action by the State under review

Amnesty International calls on the government:

International and regional human rights standards

- To immediately ratify the International Convention for the Protection of All Persons from Enforced Disappearance and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- To immediately ratify Protocol 12 to the European Convention on Human Rights and the Revised European Social Charter, and to authorize the European Committee on Social Rights to consider collective complaints about implementation of this treaty by Austria;
- To step up efforts to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- To ensure that the National Preventive Mechanism to be established meets all the criteria required by the Optional Protocol to the Convention against Torture, in particular with regard to its independence and funding and to ensure that the establishment of the mechanism is done in consultation with civil society.

¹⁵ ECRI, Report on Austria, fourth monitoring cycle, adopted 15 Dec 2009, published 2 March 2010, p. 10, available at <http://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Austria/AUT-CbC-IV-2010-002-ENG.pdf>

¹⁶ See UNHCR report – only available in German:

http://www.unhcr.ch/fileadmin/unhcr_data/pdfs/rechtsinformationen/5_Oesterreich/2_A-Stellungnahmen/UNHCR-Monitoring-der-Schubhaftsituation-von-Asylsuchenden.pdf

National Human Rights Institution

- To establish a National Human Rights Institution with A status in accordance with the Paris Principles.

Legal and constitutional human rights safeguards

- To give full and effective implementation to all human rights enshrined in treaties to which Austria is a party, including economic, social and cultural rights; the right to asylum; children's rights and the prohibition of discrimination of all persons, including non-citizens;
- To ensure the full and effective implementation of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child;
- To set a narrow timeframe for criminalizing in domestic law the crime of torture in accordance with Article 1 and Article 4, paragraph 2, of the UN Convention against Torture, as recommended by the UN Committee against Torture;
- To continue to ensure that no person is removed to a place where there are serious grounds to believe that they would face a real risk of torture or other ill-treatment or other serious human rights violations and to encourage other governments not to seek or rely on diplomatic assurances.

Political measures

- To start developing a National Action Plan on Human Rights as well as a National Action Plan on Racism and Xenophobia, in close consultation with civil society;
- To strengthen the role of ministerial and provincial human rights coordinators and to ensure they have adequate resources to perform their role effectively;
- To establish, in consultation with civil society, a mechanism or process to ensure and facilitate regular substantive dialogue with civil society on current and structural human rights concerns;
- To intensify efforts to consult with civil society in the preparation of the national report for the UPR and to establish, in consultation with civil society, a clear process to assess the UPR outcome document and to ensure implementation of the recommendations made to Austria in the UPR.

Implementation of Treaty Body recommendations

- To implement the views by the Human Rights of Committee of 20 August 2004, including by ensuring an effective remedy and compensation for Paul Perterer;
- To establish, in consultation with civil society, an adequate mechanism or process to ensure and facilitate systematic follow-up to and implementation of Treaty Body recommendations, including by making all views and concluding observations concerning Austria publicly available in German and by engaging in a regular substantive dialogue with civil society on these recommendations.

Ill-treatment and excessive use of force and firearms by the police

- To give careful consideration to the creation of a fully resourced independent mechanism to investigate allegations of serious human rights violations by law enforcement officials, with the power to order disciplinary proceedings and to refer cases directly to the judicial authorities;
- To ensure that that all law enforcement officials use charged energy devices on the basis of the strictest standards, which must be consistent with international human rights law.

Racism and xenophobia

- To introduce a comprehensive and coherent data collection system for recording and monitoring racist crime in Austria;
- To train the police and the judiciary in how to address complaints of racially motivated crimes;
- To take steps to ensure that all allegations of racist misconduct by law enforcement officials are effectively investigated and appropriately punished.

Refugees and asylum seekers

- To ensure that asylum-seekers can challenge second-instance decisions on international protection before the Administrative Court, by re-integrating the Asylum Court into the Administrative Court system, thus allowing appeals against decision of the Asylum Court to the Administrative Court;
- To ensure effective and adequate access of all asylum-seekers to independent legal advice.

Appendix: Amnesty International documents for further reference¹⁷

- Austria: Victim or suspect - A question of colour: Racial discrimination in the Austrian justice system, Amnesty International, 9 April 2009, AI Index: EUR 13/002/2009
- Greece: The Dublin II trap: Transfers of asylum-seekers to Greece, Amnesty International, 22 March 2010, AI Index: EUR 25/001/2010 [pages 8, 22, 37]
- Dangerous Deals: Europe's reliance on 'diplomatic Assurances' against torture, 12 April 2010, AI Index: EUR 01/012/2010 [page 18]
- Amnesty International Report 2010: The State of the World's Human Rights, POL 10/001/2010 [page 68]
- Amnesty International Report 2009: The State of the World's Human Rights, POL 10/001/2009 [page 70]
- Amnesty International Report 2008: The State of the World's Human Rights, POL 10/001/2008 [page 57]
- Amnesty International Report 2007: The State of the World's Human Rights, POL 10/001/2007 [page 70]

¹⁷ All of these documents are available on Amnesty International's website: <http://www.amnesty.org/en/region/austria>