

AUSTRIA

CAT A/44/46 (1989)

202. The Committee considered the initial report of Austria (CAT/C/5/Add.10) at its 18th and 19th meetings, held on 24 April 1989 (CAT/C/SR.18-19).

203. The representative of the State party introduced the report and said that, in Austria, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment had been incorporated into domestic law. He further informed the Committee that Austria had ratified the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, formulated within the Council of Europe. That Convention would enter into force for Austria as from 1 May 1989.

204. The representative of the State party drew the Committee's attention to the amendments to the Austrian Code of Administrative and Criminal Procedure, which had entered into force on 1 July 1988, and referred to the rights of detainees enunciated therein, and to the constitutional bill on the protection of personal freedom, which has been submitted to Parliament in autumn 1988. He added that the verification system established under the European Convention against Torture would provide a further guarantee in addition to national mechanisms for the protection of human rights.

205. The members of the Committee congratulated the Government of Austria on its report, which they felt was clear and precise. They nevertheless found that the report lacked specific information and details on the practical implementation of the provisions of the Convention and on the specific measures adopted to ensure compliance with the obligations entered into by Austria under the Convention. Nor had any mention been made in the report of difficulties encountered in executing the provisions of the Convention. The members of the Committee also stated that they would like to receive the legislative texts to which reference had been made in the report, and relevant statistics, in particular those concerning the number of torture victims recorded in Austria in recent years and the number of perpetrators who had been prosecuted or subjected to disciplinary measures.

206. It was noted that Austria had made the European Convention on Human Rights a constitutional law, which rendered it directly applicable. It was asked if that would also be the case with the United Nations Convention against Torture.

207. In the same context, further information was requested in order to explain how, in general, international treaties were incorporated within domestic law and what mechanism enabled their provisions to be invoked before the competent authorities and courts.

208. Additional information was requested concerning the statement in the report that torture had been abolished in Austria more than 200 years before.

209. Having noted from the report that articles 5 and 15 of the Convention were the subject of national enforcement measures, members of the Committee asked what were the reasons for the

reservations expressed by Austria with regard to those articles.

210. In addition, clarification was requested concerning the composition and powers of the Constitutional Court, and about the various recourse procedures in the courts mentioned in the report. It was also asked whether a habeas corpus procedure existed in Austria.

211. Some members of the Committee requested clarification of the statement: “the expulsion and refoulement of persons are within the competence of the police authorities”. They asked, in particular, whether decisions by the police on the subject could be challenged.

212. Referring to article 4 of the Convention, members of the Committee asked whether the penalties deriving from article 312 of the Penal Code had proved appropriate in practice and what were the penalties established for ordinary and premeditated homicide and for rape. It was also asked whether the penalty for a public official guilty of ill-treatment or neglect of another person was suspension from duty or permanent dismissal from public service. In the same context, clarification was requested concerning the nature and share of responsibility of a public official who had inflicted suffering on a detainee or witness. It was asked in what way an attempt to commit such an act would be punishable and whether it was necessary that an offence should actually be committed for a punishment to be imposed.

213. In connection with the implementation of article 5 of the Convention, it was asked whether a refugee who had committed an act of torture abroad could be prosecuted in Austria.

214. Turning to article 10 of the Convention, members of the Committee wished to know whether the training of the personnel referred to in that article also related to that after-effects of physical or psychological torture, whether at the university level the training mentioned was provided within the framework of the teaching of forensic medicine, psychology or psychiatry or in any other way, whether non-governmental organizations participated in the activities of the Austrian authorities in the area of training, rehabilitation and information relating to torture, and whether training for the medical corps comprised specialized tuition in the care of torture victims.

215. Referring to article 11 of the Convention, members of the Committee asked who had powers of arrest, how investigations were conducted and what was the maximum duration of pre-trial detention, what were the powers of the prison commissions mentioned in paragraph 40 of the report, and what happened when they found anomalies, what authority could receive grievances from detainees in the interval between visits by prison commissions and whether there was a special service responsible for supervising the overall implementation of the Prison System Act.

216. In connection with the information provided on implementation of article 13 of the Convention, it was asked whether, if the Public Prosecutor refused for reasons of public order or other reasons to prosecute a person charged with acts of torture, the victim had a further recourse mechanism available to him.

217. As regards the implementation by Austria of the provisions of article 14 of the Convention, the members of the Committee wished to know whether responsibility of the State in the matter of redress and compensation for the victim of an act of torture applied in the same way to refugees who

had been granted asylum as to Austrian nationals. In that connection, it was observed that that responsibility must not only be financial, it must also apply to the treatment of any serious or long-lasting physical or psychological after-effects. It was asked whether victims could apply to a court in order to seek compensation and what judicial practice was in that area, whether in the case of a suit for damages the civil proceedings were connected with the criminal proceedings or whether the two proceedings must be conducted separately, and whether there were in Austria positive law provisions for the compensation of persons who had been held in pre-trial detention before being acquitted or whose proceedings had been dismissed when they had suffered serious damage. As regards assistance to victims, it was also asked whether foreigners were treated in the same way as Austrian nationals, given the fact that the Convention provided that, in general, foreigners and citizens should enjoy the same guarantees.

218. Noting that, in accordance with article 15 of the Convention, in Austria confessions obtained through torture could not be used as evidence, it was asked whether, for their part, the victims could provide testimony with evidential value against torturers.

219. Replying to the questions asked and observations made by members of the Committee, the representative of the State party said that, in affirming that torture had been abolished in Austria in the eighteenth century, the authors of the report had meant that torture had formerly been a common means of obtaining evidence and that the sovereign rulers of that time had abolished the practice as a means of obtaining evidence.

220. He then gave additional information on the legal status of the European Convention on Human Rights in Austrian domestic law, emphasizing that, following ratification of that Convention, the Austrian Government had noted certain incompatibilities with the Constitution. That had prompted it to make the Convention a constitutional act, which had accordingly become applicable on the same basis as any other constitutional act. He also gave information on the structure, composition, powers and competence of the Constitutional Court and the administrative tribunals. In the same context, he gave additional information on a particular institution equivalent to that of mediator.

221. The representative of the State party referred to the role of non-governmental organizations in the implementation of the Convention in Austria in close co-operation with international non-governmental organizations. The Ministry of Foreign Affairs co-ordinated all activities in that area.

222. He further provided detailed information on article 312 of the Austrian Penal Code and its relation to other provisions covering such offences as murder, assault, or physical injury. Penalties for complicity were provided for under article 12 of the Penal Code, complicity being understood not only as the instigation of another person to commit an offence, but also as any other kind of participation in that offence. Any form of complicity in an offence carried the same penalty as the offence itself.

223. With regard to the question of jurisdiction, the representative stated that Austria's statement of interpretation upon ratification of the Convention, which was not a reservation, had made it clear that it would establish jurisdiction in cases covered by article 5, paragraph 1 (c), of the Convention only when it was not to be expected that either the State where the offence was committed, or the offender's own State, would be instituting criminal proceedings. Article 64 of the Penal Code

extended Austria's jurisdiction to cover all cases in which there was an obligation to prosecute under an international treaty. In the case of an alleged offender being present on Austrian territory, the authorities would first review the case to establish whether there were grounds for extradition; if not, there would be an obligation to prosecute under article 5, paragraph 2, of the Convention.

224. Turning to the questions regarding the prison commissions, the representative said that there were 15 of these commissions, one for each of the 15 courts of first instance in Austria. They consisted of seven members, appointed by the Minister of Justice. Their role was to monitor compliance with all the rules of prison administrations, notably the rules for treatment of detainees. Compliance with prison regulations governing detention was also monitored on a regular basis by inspectors of the Ministry of Justice, who also dealt with complaints from prisoners. In the last instance, there was also a procedure for complaints from prisoners to be brought before the High Court. Finally, the Austrian prisons Advisory Commission was empowered to make visits and inspections, without prior notice, to any place where persons were in detention, and to make proposals to the Ministry of Justice for any changes that might be found necessary. In connection with other questions concerning article 12 of the Convention, the representative provided information about the procedure for bringing complaints to a higher court.

225. On the question of compensation, the Committee was informed that the State was obliged under the Austrian Constitution to compensate any person who had suffered damage because of culpable behaviour on the part of public officials. It was for the injured party to apply for compensation, which would be payable not only for material damage but also for non-material damage. Where compensation in terms of rehabilitation was concerned, resort to the law was not the only means of obtaining redress, although Austrian legislation expressly provided that victims of torture or ill-treatment should be compensated. Rehabilitation treatment was also obtainable under Austria's normal system of public health care and in accordance with the Federal Act of Assistance to Victims of Crime.

226. Concerning the question of inadmissibility of evidence under article 15 of the Convention, the representative of the State party stressed that the statement of interpretation was not a reservation: Austria assumed in full its obligations under the article. The statement had been merely intended to clarify that evidence obtained under torture had been inadmissible per se, thus establishing a legal principle that had been directly applicable by the criminal courts.

227. As for provisional detention or remaining in custody, he described the existing procedures, and indicated that provision had been made under a recent Act for a new procedure similar to that of habeas corpus, which would give any detainee, making a complaint, the right to request a judicial decision. Such a decision would have to be taken within one week of the complaint being made.

228. With regard to the training of police personnel, he provided detailed information on the comprehensive system of training which had been introduced in Austria since 1970.

229. The representative finally stated that several questions and observations by the members of the Committee that had been left unanswered would be dealt with in the second periodic report of his Government.

230. In concluding the consideration of the report, members of the Committee expressed their satisfaction at the constructive dialogue that had been established between the Committee and the Austrian Government and expressed the wish to be provided with the texts of the relevant legislative acts referred to in its report, as well as statistics concerning crime and information regarding medical treatment that might be available to torture victims. The Committee also expressed the hope that the second periodic report of Austria would contain details of the training of medical personnel, as well as the results of the judicial inquiry regarding certain allegations of ill-treatment made in the Austrian media.

CAT A/55/44 (2000)

46. The Committee considered the second periodic report of Austria (CAT/C/17/Add.21) at its 395th, 398th and 400th meetings on 10, 11 and 12 November 1999 (CAT/C/SR.395, 398 and 400), and adopted the following conclusions and recommendations.

1. Introduction

47. The Committee welcomes the dialogue with the representatives of Austria. Nevertheless, it regrets that the report, due in August 1992, was only submitted in October 1998 and that it was not in conformity with the Committee's guidelines for the preparation of periodic reports.

2. Positive aspects

48. The Committee notes with satisfaction the following:

- (a) The Security Police Act of 1993;
- (b) The Guidelines for the Intervention of Organs of Public Security;
- (c) The fact that the Federal Government is required to submit an annual security report to the Austrian Parliament;
- (d) The establishment of an inspection system in accordance with the provisions of article 11 of the Convention;
- (e) The Code of Criminal Procedure Modification Act 1993 and the Basic Rights Complaint Act 1992.

3. Subjects of concern

49. The Committee is concerned about the following:

- (a) In spite of the fact that the Convention has the status of law in the Austrian legal system and is directly enforceable, a definition of torture as provided in article 1 of the Convention is not included in the penal legislation of the State party and, therefore the offence of torture does not appear as punishable by appropriate penalties as required by article 4, paragraph 2 of the Convention;
- (b) Notwithstanding the entry into force of the Security Police Act 1993, allegations of ill-treatment by the police are still reported;
- (c) Potential complaints of abuse committed by police authorities may be discouraged by the provisions enabling the police to accuse of defamation a person who lodges a complaint against them;

(d) Insufficient measures of protection of individuals under a deportation order, which are not in conformity with the provisions of articles 3 and 11 of the Convention, particularly as instanced by a reported case of death during the deportation procedure.

4. Recommendations

50. The Committee recommends that:

(a) Austria establish adequate penal provisions to make torture as defined in article 1 of the Convention a punishable offence in accordance with article 4, paragraph 2 of the Convention;

(b) Clear instructions be given to the police by the competent authorities to avoid any incidence of ill-treatment by police agents. Such instructions should emphasize that ill-treatment by law enforcement officials shall not be tolerated and shall be promptly investigated and punished in cases of violation, in accordance with the law;

(c) Provisions concerning the protection of asylum seekers should fully conform with the relevant international standards, in particular, articles 3 and 11 of the Convention, both in law and practice;

(d) The third periodic report of Austria, which was due in August 1996, be prepared in accordance with the Committee's guidelines and be submitted by December 2000.