



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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COMMITTEE AGAINST TORTURE

Thirty-fifth session

SUMMARY RECORD OF THE 679th MEETING\*

Held at the Palais des Nations, Geneva,  
on Wednesday, 16 November 2005, at 10 a.m.

Chairperson: Mr. MARIÑO MENÉNDEZ

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\* No summary records were issued for the 676th to 678th meetings.

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The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER  
ARTICLE 19 OF THE CONVENTION (agenda item 5) (continued)

Third periodic report of Austria (CAT/C/34/Add.18; CAT/C/35/L/AUT;  
HRI/CORE/1/Add.8)

1. At the invitation of the Chairperson, the members of the delegation of Austria took places at the Committee table.
2. Mr. TRAUTTMANSDORFF (Austria) introducing his country's third periodic report, also comprising its fourth periodic report (CAT/C/34/Add.18), said that while significant progress had been made since Austria had signed the Convention against Torture in 1985, terrorism and organized crime had made new demands on Governments and justice systems throughout the world in recent times. Given that doubts had been raised about the absolute character of the prohibition of torture in the light of the events of 11 September 2001, global efforts to promote human rights, and the prohibition of torture in particular, should continue. Austria would work with the Committee to defend the basic rules that had been agreed and enshrined in the Convention, especially from encroachment under the auspices of combating terrorism.
3. Measures to prevent torture and other cruel, inhuman or degrading treatment or punishment currently required constant adaptation in order to respond to circumstances. It was necessary to improve the exchange of information and human rights education, and to refine systems to protect people who were at risk of such treatment or punishment.
4. While criminal acts included in the Convention were occasionally committed in his country, Austrian public opinion was particularly sensitive to matters regulated by that instrument. That provided a further incentive to implement the relevant mechanisms as effectively as possible. National and international reporting of such isolated acts had sometimes distorted the reality of Austrian efforts to prevent torture and other cruel, inhuman or degrading treatment or punishment.
5. Austria was committed to strengthening efforts to prevent torture at the national and international level, and cooperated with the Committee against Torture and with the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The latter had visited Austria in April 2004, and both the report of that visit and the Government's response to the report had been published at Austria's behest. Having signed the Optional Protocol to the Convention, his Government was currently working towards full ratification. All the country's political parties welcomed the establishment of a national preventive mechanism to conduct visits to places of detention.
6. Austria would take advantage of its European Union (EU) presidency in 2006 to promote the EU Guidelines on Torture and to discuss the issue with third countries and in international forums. The Government would urge countries that had not ratified the Convention and the Optional Protocol to do so, and would encourage countries that had not responded to a request

for a visit by the United Nations Special Rapporteur on the question of torture to extend a prompt invitation. It would also try to facilitate efforts by EU partners to assist individual torture victims.

7. Regarding the definition of torture, his Government remained convinced that the existing provisions of the Penal Code were most effective in preventing torture, as explained in the periodic report (CAT/C/34/Add.18, paras. 6-10). To introduce a special provision including the definition from the Convention in Austrian legislation would lead to duplication. It would also make it more difficult for the Austrian justice system to maintain the high level of protection afforded under current legislation, particularly in cases involving severe pain and suffering and the element of intent, referred to in article 1 of the Convention.

8. All persons in police custody had the right to have access to a lawyer, which had been regulated under a joint decree issued by the Federal Ministry of the Interior and the Federal Ministry of Justice in February 2003 following a decision by the Administrative Court. That decision had ruled that suspects were authorized to contact a lawyer when being questioned by the police, and that all detainees must be informed of that right. The amended Code of Criminal Procedure now included that right. The police could, however, decide that contact between a suspect and a lawyer could be monitored if the case was particularly sensitive. Moreover, the presence of a lawyer could be refused if it was believed that it would prejudice the questioning process or subsequent evidence. While the new provision would not enter into force until 1 January 2008, its effects would be felt in the practice of the Austrian justice system before then. The Ministry of the Interior and the Ministry of Justice had updated an information sheet for detainees, in use from May 2004, a copy of which was included in annex A of Austria's written replies to the list of issues (CAT/C/35/L/AUT). It took account of the situation of minors by including a Council of Europe recommendation that young people should have the right to be accompanied by their parents or guardians when being questioned by the police.

9. With regard to the maximum duration of pretrial detention, he said that the court had to be informed immediately about the arrest of a suspect for whom an arrest warrant had been issued. The suspect had to be brought before the court within 48 hours of his arrest. If a suspect was arrested without a warrant, and custody exceeding 48 hours was deemed necessary, the police had to contact the public prosecutor. If the public prosecutor intended to apply for a detention order, the suspect had to be brought before the competent court within 48 hours of the arrest. Otherwise, the suspect had to be released immediately.

10. Under article 20 of the Federal Constitutional Law, administrative bodies were bound by the instructions of their superior bodies. However, the same article stipulated that an instruction was not binding in the event that the observance thereof constituted a violation of the Penal Code.

11. The Penal Code contained a number of provisions on gender-based breaches of the Convention, including rape, sexual assault and sexual abuse of defenceless or mentally impaired persons. The abuse of one's position of authority was an aggravating factor, which resulted in an extension of the maximum prison sentence.

12. The Government attached great importance to the need to separate persons under the age of 18 from adults in places of detention. Under the Austrian Court Act, juvenile inmates had to be segregated from adult inmates. A juvenile could be kept with adult inmates only if that was in his best interests. At present, juveniles accounted for about 3 per cent of all persons being held in penal institutions in Austria. Juveniles serving prison sentences exceeding 18 months were kept in special institutions.

13. Additional human and financial resources had been made available with a view to rectifying shortcomings in the administration of justice. Special efforts had been made to improve conditions in places of detention and to train and increase the number of prison guards. Seminars on fundamental freedoms and human rights for judges and public prosecutors were held on a regular basis.

14. With regard to the payment of compensation to victims of torture, he said that, under the Austrian Liability of Public Bodies Act, the State could be held responsible for paying compensation to a victim, if the perpetrator was a public official. In other cases, the right to compensation was governed by civil law.

15. Efforts were being made to prevent trafficking and to provide psychological and social assistance to the victims. A strict procedure was in place for issuing visas and work permits, and steps were taken to raise public awareness of the phenomenon.

16. Significant improvements had been made in the quality of therapeutic activities offered to inmates who had been sentenced to undergo psychiatric treatment. The vast majority of such inmates were employed in workshops and domestic services. Therapeutic and recreational activities included work with ceramics and wood.

17. The issue of trade in equipment specifically designed to inflict torture and other cruel, inhuman or degrading treatment was within the purview of the EU. On 27 June 2005, the Council of the EU had adopted Regulation No. 1236/2005, restricting trade in goods which could be used for those purposes. The Regulation would be directly applicable in all EU member States.

18. A number of measures had been taken to respond to the threat of terrorism. Three new indictable offences had been introduced into the Austrian Penal Code, namely, forming a terrorist association, terrorist acts, and financing of terrorism. The new provisions would improve the efficiency of the justice system in responding to the threat of terrorism and help prevent human rights violations.

19. Mr. EL MASRY (Country Rapporteur) reiterated the importance of the link between the events of 11 September 2001 and the practice of torture, and stressed the need for joint efforts to prevent the use of torture from becoming publicly accepted.

20. He asked the delegation to explain the reasons for the late submission of its second and third periodic reports.

21. The Committee welcomed the long-overdue reorganization of deportation procedures; the special attention given to human rights issues; and the involvement of NGOs in the process. Other commendable developments included the adoption of legislation in 2003 to regulate the right of access to a lawyer during police interrogations; improvements in the conditions of detention; the broadened scope of anti-trafficking legislation; and the issuance in 26 languages of an information sheet on the rights of detainees. However, that document stated that the interrogation of adults might commence prior to the arrival of a lawyer, and he asked the delegation to explain that provision.
22. He was concerned by the persisting gap between the definition of torture in State party legislation and the one set forth in the Convention against Torture. At present, the legal system in the State party recognized three different definitions of torture, which caused confusion and led to problems in data collection. A lack of conformity in the definition of torture could undermine efforts to eliminate that practice.
23. Both the United Nations High Commissioner for Refugees and NGOs had heavily criticized some of the amendments to the Asylum Act that had entered into force in May 2004, including the limitation of stay for asylum-seekers during appeals procedures; the absence of a procedure for applications submitted at the border with Switzerland and Liechtenstein; and the prohibition to present new facts in an appeals procedure. He requested information on the outcome of the review of the new provisions undertaken by the Constitutional Court. The practice of detaining all asylum-seekers also caused concern.
24. In its 2005 report on Austria, the European Commission against Racism and Intolerance (ECRI) had denounced the negative climate surrounding asylum-seekers in Austria, stating that it was closely linked to the consistent presentation by the authorities of asylum issues as matters posing security concerns. The media and public statements of certain politicians had further exacerbated the situation. He asked the delegation to comment.
25. Given that the State party frequently relied on diplomatic assurances for the deportation or extradition of foreign nationals, he asked what safeguards were in place to ensure that those persons were not subjected to torture upon return to the requesting State.
26. The delegation should comment on the apparent overlap between the powers of the aliens' police and those of the asylum authorities under the new Aliens' Police Act.
27. He requested information on the outcome of the criminal proceedings instituted against the Austrian officer of the United Nations Interim Administration Mission in Kosovo (UNMIK) police accused of torturing an ethnic Albanian detainee.
28. Recent amendments to the guidelines regulating the care programme for asylum-seekers reportedly limited the responsibility of the federal Government to federal care centres, of which there were very few. Consequently, care for the vast majority of asylum-seekers was now subject to provincial legislation. The delegation should brief the Committee on the new system, in particular given that only two provinces had enacted legal provisions to implement the agreement.

29. While taking note of the verdict delivered on 9 November 2005 regarding the death of Cheibani Wague, the Committee was gravely concerned over the long delay between pretrial investigation and trial hearing and its implications for the consideration of evidence and the establishment of the truth. The delegation should indicate whether inquiries had been conducted into the reasons for that delay and, if so, explain their outcome.

30. According to a report by Amnesty International, a Russian citizen, Akhmet A., had been extradited to Russia despite pending asylum procedures. There had been concern that the investigations by the Austrian authorities into the offences he had allegedly committed in Russia, which were the basis of the extradition request, had been inadequate, and that he might have been ill-treated in pretrial detention on his return to Russia. He asked the delegation to comment.

31. He noted that the relatives of the deceased Marcus Omofuma had been awarded a mere €10,000 of compensation for pain and suffering, out of the original claim for €100,000. The Committee had received reports that the majority of compensation claims were settled out of court.

32. Mr. RASMUSSEN asked the delegation to comment on reports that the State party had no separate detention facilities for juvenile offenders. Noting that State party legislation provided for the separation of juveniles from adult prisoners “as far as possible”, he enquired about the reasons for that qualification. Were any juveniles currently held in adult prisons?

33. Prisoners were reportedly sometimes kept in their cells for 23 hours per day and juveniles had little or no access to education or recreational facilities. He asked what measures had been taken to address those shortcomings. He also wished to know whether prison staff were specifically trained to deal with juvenile inmates.

34. The delegation should explain how the State party had tackled the reported widespread psychological and psychiatric problems of juvenile inmates at Vienna-Josefstadt Prison; describe the purpose, modalities and safeguards of the medical research project involving juvenile inmates of that prison; and indicate whether the parents of juvenile suspects were present at all times during interrogations.

35. CPT had expressed particular concern about the alleged ill-treatment of juvenile detainees in order to obtain confessions. The ill-treatment included kicks, blows to the head and protracted ankle-cuffing and handcuffing. He sought clarification regarding those allegations and the existence of measures to prevent such ill-treatment.

36. Paragraphs 56 and 57 of the periodic report referred to legislation that prohibited the use of evidence obtained by means of torture or coercion. Could the State party provide examples of the application of that legislation?

37. He would welcome information on the outcome proceedings in the case concerning the death of Cheibani Wague, as referred to in paragraph 17 of the CPT report on its visit to Austria in April 2004.

38. Concerns had been raised about the systematic presence of police officers and prison guards during medical examinations. They were supposed to be present under exceptional circumstances only, for instance to protect the doctor against assault by the detainees. Had the State party followed up the recommendation by CPT to transfer prison doctors under the supervision of the Ministry of Health?
39. With regard to new procedures for the expulsion of aliens, he enquired whether aliens who had not been successfully expelled had to undergo a medical examination to establish whether they had been subjected to any ill-treatment.
40. He asked whether the State party would reconsider making video recordings of interrogations, which it had tested and had found unsatisfactory. Other States parties had found that method useful, particularly in ensuring that there was no ill-treatment of the persons under interrogation. Perhaps police officers could be given some appropriate training?
41. Ms. GAER said the State party had indicated that it did not have disaggregated data on gender-based breaches of the Convention. Was that because it did not monitor the situation or did not compile relevant statistics?
42. Referring to the case of Marcus Omofuma mentioned in paragraph 12 of the list of issues, she asked why the police officers responsible for his deportation that had ended in his death had been given only an eight-month suspended sentence. Also, had they resumed their duties after serving the sentence?
43. She sought clarification concerning the written reply to the question in paragraph 13 of the list of issues, which implied that female asylum-seekers were not always interviewed by female police officers, but only when their claim to asylum was based on one specific ground.
44. The written reply to the question in paragraph 14 of the list of issues showed that the return (refoulement) of foreigners posed a significant problem for the State party. What proportion of the people in question were male and what proportion female? Did the majority come from one country in particular? What was the impact of the recent expansion of the EU?
45. The Austrian NGO ZARA (Zivilcourage und Anti-Rassismus-Arbeit) had reported a series of incidents in which the police had taken people, mainly black, into police vans and had subjected them to body and strip searches on suspicion of possession of drugs. Were there any police guidelines relating to the use of invasive body searches? Was the consent of the persons concerned not required?
46. CPT had drawn attention in its report on its most recent visit to Austria to a number of language-related problems, including discriminatory language used by officials and the fact that many detainees did not understand German, which placed them at a disadvantage during hearings. Had there been any progress in providing the services of an interpreter during hearings before penalties or deportation were ordered? The State party had mentioned that training seminars were run for new recruits in the police force to raise awareness of linguistic, ethnic and cultural differences, but what of long-serving officers? Did they have to undergo the same training?

47. She asked for statistics on the number of women employed in prisons and other custodial facilities and for information on specific training relating to women prisoners.

48. Reportedly many aliens seeking asylum or awaiting deportation, including juveniles, were detained in the same facilities as criminals. Were there any plans to provide them with separate facilities? In conclusion, she thanked the State party for its excellent report and written replies.

49. Mr. WANG Xuexian said that the State party had failed to furnish a complete answer to the question in paragraph 14 (a) of the list of issues. What were the 10 main countries of destination for returnees?

50. The CHAIRPERSON, speaking in a personal capacity, said that the question of the incorporation of the definition of torture in domestic legislation raised the issue of whether torture could be considered as a crime under international public law, given the universal nature of the Convention. The purpose and circumstances of torture had an impact not only on the type of penalty imposed, but also on the application of universal jurisdiction. The latter was not compulsory but could be lawful in certain situations. The Committee attached great importance to information on State practice in that connection with a view to combating impunity for international crimes.

51. Referring to the written replies to the question in paragraph 33 of the list of issues and clarifications provided by the delegation, he asked whether there had been any cases of Austrian anti-terrorist legislation being applied to foreigners suspected of terrorism who had not been extradited to other States.

52. Following up on Mr. Wang Xuexian's question, he asked for information on cases where the State party had sought diplomatic assurances from third countries to which foreigners were being returned.

53. With reference to the question in paragraph 30 of the list of issues, he enquired about the procedures, both under criminal and civil law, for subjecting persons to psychiatric treatment without their consent.

54. Mr. TRAUTTMANSDORFF (Austria) said that his delegation looked forward to a constructive discussion with the Committee and would provide detailed replies to the specific questions raised at the next meeting. In view of time constraints, it might not be able to answer some of the questions, particularly relating to asylum-seekers, which in its view did not come strictly under the scope of the Convention.

55. In more general terms, he highlighted the importance of Austria's ongoing dialogue with other regional and international bodies, including CPT. One of the reasons Austria had not incorporated in its domestic legislation a definition of torture in line with that of the Convention was that it considered that its compliance with various national and international provisions afforded a higher degree of protection. It nonetheless recognized that there was room for improvement in other areas, not only in response to tragic cases that aroused public interest, but also through its continued cooperation with NGOs and international organizations.

The meeting rose at 1 p.m.