

TREATY BODY MONITOR

International Service for Human Rights



Human Rights Monitor Series

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION 73RD SESSION AUSTRIA, 15-17TH REPORTS 7-8 AUGUST 2008

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Key facts¹

Date of Ratification	Reservations	Individual Communication Declaration Art 14	Additional ratified core treaties
May 9 1972	Article 4	Yes	ICERD, ICCPR, ICESCR, CAT, CRC

Type of report	Date submitted	Report submitted	NGO / NHRI consultation/input	List of issues provided / Written	Last appearance before
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¹ The information in these two tables is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at <http://www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx>

		on time		replies to issues rec'd	Committee
15 th -17 th	8 May 2007	No	No	Written reply: 25 July 2008	24 July 2000

Information submitted to the Committee

State party report²

Austria's 15th to 17th reports on *the International Convention on the Elimination of all Forms of Racial Discrimination* (the Convention) were submitted as a consolidated report to the Committee on the Elimination of all Forms of Racial Discrimination (the Committee) on 8 May 2007. The main focus of Austria's report is the range of legislative reforms it has instituted in relation to racial discrimination. The report lists the recommendations made by the Committee on the basis of the 14th report and expands on the reforms which have been carried out since 2003. Austria's report pays significant attention to its efforts in educating against racism, and various other initiatives taken in recent years. The report outlines the measures Austria has taken to combat prejudice, racism, racial discrimination, xenophobia and anti-Semitism. Attention is given also to the Equal Treatment Commission which has expanded the scope of its work to include racial discrimination; where it originally only covered gender equality, it now also deals with equal treatment without distinction on the grounds of ethnic origin, religion or ideology.

Austria provided up to date information on the treatment of minorities, and on the *National Minorities Act*, explaining the difference between 'national minorities' and those considered 'non-indigenous'. The report also analysed the work undertaken by the Advisory Board for human rights: thus far it has prepared 20 reports dealing with issues such as asylum seekers and deportation. Also in its report, Austria provided selected examples of 'good practice projects'. For example, in line with Vienna's integration and diversity policy, a municipal department was set up in Vienna in July 2004 to support the municipal administrative authorities in implementing integration goals, and to act as an interface between migrants' organisations, NGOs and the City of Vienna. Another example provided by Austria was a series of workshops to fight and prevent discrimination. This program had three aims, addressing different aspects of racial discrimination: the first covered information about rights in connection with discrimination; the second aimed to raise awareness regarding the effects of discrimination; while the third focused on the elaboration of counter-measures to prevent discrimination.

List of issues

The list of issues³ inquired about the composition of the population, and sought more detailed and updated data regarding the socio-economic status of members of national and ethnic minorities. The list also requested further clarification on the distinction between autochthonous national minorities and other minorities. In relation to neo-Nazi activities the Committee expressed interest in the existing legislation prohibiting associations that incite or promote racial discrimination. Further information was also requested on measures taken by the authorities to protect foreigners from violence committed by law enforcement officials. In addition, the list of issues inquired about the activities of the Equal Treatment Commission and the Federal Treatment Commission, and the enforceability of their decisions. Other issues raised included the use of educational measures and media campaigns to educate the public on non-discrimination towards foreigners, and the issue of racism in relation to asylum seekers.

² The State party report (CERD/C/AUT/17, 8 May 2007) is available at <http://www2.ohchr.org/english/bodies/cedaw/docs/pswg.doc>

³ The list of issues is available at <http://www2.ohchr.org/english/bodies/cerd/cerds73.htm>

NGO parallel reports

No NGO reports were submitted in parallel with Austria's report to the Committee.

Themes and issues

The Committee put a great deal of pressure on Austria to comply with international standards in relation to racial discrimination. Austria provided the Committee with thorough answers to all the questions asked, and appeared open and responsive to constructive criticism from the delegation. Austria underlined the challenges faced in fully implementing the Convention due to its federal legal system. The delegation's engagement was of a high standard and its members welcomed the recommendations of the Committee. It was made clear by the country rapporteur (Mr Diaconu) that the Committee expected more from Austria and that there remained much room for progress.

Austria's delegation

Austria's delegation comprised the following members: Ms Brigitte Ohms, The Deputy Head of Division for International Affairs and General Administrative Affairs, Legal Service in the Federal Chancellery of the Republic of Austria (head of delegation); Ms Christina Kokkinakis, Austrian Mission to the United Nations Office in Geneva; Mr Wolfgang Bogensberger, Federal Ministry of Justice; Mr Karlheinz Dudek, Federal Ministry of the Interior; Mr Albert Grasel, Federal Ministry of the Interior; Mr Walter Ruscher, Federal Ministry of the Interior; Mr Hermann Holubetz, Federal Ministry of Education, the Arts and Culture; Ms Barbara Kussbach, Specialized Equality Body/National Equality Body.

Status of the Convention in domestic law

Owing to Austria's federal system of Government, the Convention is not directly incorporated in Austria's domestic law. The Committee urged Austria to adopt national legislation, alongside separate regional legislation, to ensure the Convention's maximum incorporation throughout the Austrian legal system. Mr Diaconu, the country rapporteur, stated that he felt compelled to insist that Austria develop strong federal and regional legislation that comprehensively deals with the issue of racial discrimination in Austrian society. He expressed concern that not all regions in Austria acted in accordance with federal law; for example, the legal provisions relating to refugees varied from region to region. As an example, he cited reports of Africans and Latin Americans being denied access to bars in Austria. In this context, Mr Diaconu recommended that the Federal Government take resolute measures to suspend or withdraw licences to bar owners who refused entrance based on race. The problem with the federal system, he commented, was that it lended itself to conflict between regional and federal legislation.

In its concluding observations the Committee recommended that Austria take the necessary legal and political measures to ensure that all its federal provinces and local authorities observe and comply with the laws and decisions adopted to implement provisions of the Covenant.⁴

Minorities

The Committee dedicated a large portion of its time discussing the issue of minorities in Austria. The Austrian report divided minority groups into indigenous and non-indigenous minorities. Mr Diaconu noted that minorities were treated differently in the different regions throughout Austria. He added that it appeared that indigenous minorities such as the Roma were treated differently than those minorities which came to

⁴ Paragraph 11 of the concluding observations (CERD/C/AUT/CO/7), available at www2.ohchr.org/english/bodies/cerd/cerds73.htm

Austria from African or Asian countries. In particular, the Austrian authorities seemed to offer better protection to indigenous minorities than immigrants. However, Mr Diaconu acknowledged that immigrants in Austria far outnumbered members of indigenous minorities; he recognised that unequal protection was a common problem among Western European countries.

Another key issue in relation to minorities in Austria was the preservation of their languages, and the option of providing education in these native languages. Mr Diaconu pointed out that hardly any public officials do not speak the minorities' languages. He recommended that the Austrian Government adopt more determined measures to include minority languages in the judiciary and the media.

The Committee recommended that Austria take steps to recruit public officials from minority groups to the administration and police force, as this was considered one effective means of improving relations between minority and majority groups throughout Austria. Mr Diaconu stressed that the Committee supported the idea of 'integration rather than assimilation of minorities'. Integration of minorities maintained the identities, and the cultural, linguistic and religious beliefs of minorities. Several other Committee members also raised the issue of minorities⁵: Mr Avtonomov requested clarification of the term 'national minority', used throughout Austria's report. Mr Thornberry raised the issue of data collection in relation to minorities, and asked whether or not 'minorities' could choose whether to be regarded as such. Mr Huang raised concerns about the plight of Asian minorities, and claimed that native Austrians did not welcome Asian immigrants but instead treated them as a source of social problems. He stated that it seemed very difficult for foreigners to integrate into local communities in Austria, and raised the point that Austria had one of the strictest migration policies in Europe. In order to combat the difficulties of integration, Mr Huang suggested that a new approach was needed which promotes tolerance and a multicultural society. Mr Lahiri requested more data on social indicators pertaining to ethnic minorities and immigrants.

The head of delegation clarified the distinction that had been drawn throughout the report between indigenous minorities and immigrants; namely, the term 'national minority' was used interchangeably with 'indigenous minority', whereas migrants were referred to simply as 'minorities'. She went on to elaborate that there currently existed no concrete data in relation to the socio-economic status of either 'national' minorities or immigrant minorities. Mr Lahiri picked up on the lack of detail in the delegation's response to the issue of sanctions in place to protect both 'indigenous' and immigrant minorities.

In his preliminary concluding observations Mr Diaconu expressed disappointment with Austria's approach to minorities. Among the more significant problems, he highlighted the division that existed between ethnic minorities and non-ethnic minorities. One particular problem noted by Mr Diaconu concerned ethnic minorities receiving more benefits and more extensive rights than other minority groups. This, he asserted, constituted discrimination according to the Convention. Mr Diaconu stressed the need for special measures and permanent measures to be used by Austria in relation to minority groups. An example of a specific measure to help integrate minorities was the provision of subsidies to newspapers printed in minority languages, even if only a small number of people read them.

The Committee seemed dissatisfied with the progress Austria had made in regard to minority rights, and emphasised that Austria's laws were currently not fully in line with the Convention. Having said that, the delegation was open to constructive criticism and expressed optimism that Austria could improve the situation of migrants and indigenous minorities in the future. The Committee noted that this improvement could begin with the collection of data in relation to the socioeconomic status of the various minorities.

⁵ Mr Avtonomov, Mr Thornberry, Mr Lindgren Alves, Mr Peter, Mr Huang, Mr Amir, Mr Lahiri.

In its concluding observations the Committee recommended that Austria conduct censuses and collect data, including on the basis of the use of mother-tongue languages commonly spoken and of other indicators of ethnic diversity. This would allow accurate information to be collected on all ethnic groups living in Austria.⁶

Neo-Nazi groups

The issue of neo-Nazi groups and associated behaviour throughout Austria, especially in the state of Carinthia, was of great concern to the Committee. It inquired whether Austria had strict legal sanctions in place to punish the perpetrators of neo-Nazi ‘hate crimes’. The delegation provided information on Austria’s ‘preventative approach’ to such hate crimes: fundamentally, the Government was attempting to set a good example and produce a tolerant social climate. The delegation provided some details about the prosecution of racist acts throughout Austria. A representative of the Ministry of Justice referred to the *National Socialist Prohibition Act* of 1947, which prohibited any form of neo-Nazism and activities in the spirit of National Socialism. Neo-Nazi organisations were outlawed under this Act. However, in reality the number of acquittals in relation to this Act remained quite high. The Committee assessed that although the legal framework was in place, Austrian authorities were not enforcing the law as strictly as necessary. The delegation added that the criminal law code in Austria also prohibited hostile acts based on race or nationality.

Mr Diaconu reported that the state of Carinthia demonstrated a high incidence of neo-Nazi behaviour and he urged that regional legislation be developed in order for the Convention to be effectively implemented in the individual regions of Austria. Another cause for concern for the Committee was the recent publication of texts in Austrian newspapers supporting neo-Nazi beliefs. Mr Diaconu stressed the need for the Government to promote tolerance, respect for cultural diversity, and universal human rights. Several other members of the Committee raised points in relation to neo-Nazism in Austria:⁷ Mr de Gouttes brought to the attention of the delegation the 3rd report compiled by the European Commission against Racism and Intolerance, which had noted that racist stereotypes still surfaced in public debates and the media, and which had recommended that measures be taken in this area.⁸

The delegation elaborated on criminal sanctions that were in place to counter neo-Nazi groups; among other things, neo-Nazi organisation (including providing them financial support) is a crime in Austria, which could lead to 20 years imprisonment. The delegation also referred to the training of judges and prosecutors with compulsory courses on discrimination, racism and xenophobia. On the question on legal aid to victims of racial hatred, the delegation highlighted Austria’s commitment to improving the situation. Victims of violence were allowed free access to legal support before, during and after a trial.

In relation to financing the press agency which published anti-Semitic articles, the head of delegation assured the Committee that the Government was not involved in the funding of such agencies. The Government only funded the large national newspapers, to prevent them being bought by German newspapers. The delegation stressed that the only newspapers which published these articles of concern were very small ones, which had little impact on society.

Mr Diaconu stressed that the Government of Austria needed to make more effort to promote tolerance nationally, and to set a good example which could filter down to the regions. Improved accountability, and a firmer stance on the unacceptability of intolerant behaviour, would help to combat these crimes more efficiently.

⁶ Paragraph 9 of the concluding observations (CERD/C/AUT/CO/7), available at www2.ohchr.org/english/bodies/cerd/cerds73.htm

⁷ Mr de Gouttes, Mr Lindgren Alves, Mr Huang, and Mr Ewomsan.

⁸ This is available at www.coe.int/t/e/human_rights/ecri/1%2Decri/2%2Dcountry%2Dby%2Dcountry_approach/Austria/Austria_CBC_3.asp#TopOfPage

Law enforcement training

Another key issue discussed was that of racism within the police force. The Committee repeatedly raised this concern, and requested information on Austria's strategies to improve the situation on the ground. The delegation described training courses which Austria was currently implementing, as well as a handbook on human rights and the police, which was distributed in 2005. There were also 90 human rights training seminars a year for police. The delegation also reported on initiatives to help improve the ethnic make-up of the police force. For example, one new initiative encouraged immigrants to apply for police jobs. However, this initiative was only in operation in Vienna. The Committee urged that these ideas be brought to the other regions throughout Austria.

Mr Diaconu noted reports from Austria that indicated a worrying trend of police taking inadequate action in response to neo-Nazi crimes.⁹ Mr Thornberry expressed his support for the training of law enforcement officers in human rights, to help prevent 'racial profiling'. Mr de Gouttes also referred to the issue of racial profiling by the police, and in this context to a Council of Europe report on Austria which had also identified this problem. This was one area in which the delegation offered a great deal of information and in which the Committee seemed satisfied with the responses it received. The delegation expanded on the idea of law enforcement training, and also explained the framework in place to deal with complaints against police. On the latter, a complaint instigated three parallel actions: a criminal court investigation, and notifications to the internal affairs office and the Human Rights Advisory Board (HRAB). Victims of such offences were entitled to receive compensation. The HRAB also monitored police actions, intervened on behalf of victims, and made recommendations to the Government with regard to deportations. In 2007, the HRAB carried out 527 visits to police detention centres.

Mr Lahiri welcomed new initiatives taken by the police to employ people of various nationalities. The Committee noted positively various initiatives relating to the police force, which it hoped would produce the desired affect - a human rights-educated law enforcement structure consisting of people from various ethnicities, promoting tolerance and punishing those who incite racial hatred.

In its concluding observations the Committee strongly recommended that the State Party take the necessary steps to prevent questioning, arrests, searches and interrogations which are based on physical appearance, colour or membership of racial or ethnic group. The Committee requested the State Party to consider the establishment of a fully independent monitoring body with powers to investigate complaints about police misconduct.¹⁰

National Equality Ombudsman

The legal standing of the National Equality Ombudsman was touched upon numerous times by the Committee members. Ms Kussbach addressed the Committee as the representative of the National Equality Ombudsman. The Ombudsman's mandate was recently amended to include discrimination based on race, alongside gender discrimination. Ms Kussbach acknowledged the limits of the National Equality Ombudsman's powers and expressed the hope that, in the future, the legal standing of the Ombudsman would be enhanced. She also expressed the hope that a further expansion of the mandate would enable the Ombudsman to work with regional offices - for the moment the National Equality Ombudsman only worked in Vienna.

⁹ These reports are available at: www.zara.or.at/materialien/ueber-zara/index.en.html

¹⁰ Paragraph 19 of the concluding observations (CERD/C/AUT/CO/7), available at www2.ohchr.org/english/bodies/cerd/cerds73.htm

¹⁰ Paragraph 15 of the concluding observations (CERD/C/AUT/CO/7), available at www2.ohchr.org/english/bodies/cerd/cerds73.htm

Mr Peter picked up on the fact that the Ombudsman did not have *locus standi* in courts, and that the position lacked ‘sufficient teeth to bite’. In response, Ms Kussbach elaborated on the legal framework in place to protect victims of discrimination, and the problems experienced due to Austria’s federal system. She noted that Austrian law on equal treatment remained ‘scattered’, and Austrian anti-discrimination law was divided into 20 different acts. As a consequence, many potential victims were not aware of their rights in daily life. Harmonisation of equality laws was needed if Austria was to move forward on countering discrimination. On discrimination in access to goods and services, Ms Kussbach stated that goods and services providers were fined if they discriminate in any way. However, in terms of legal remedies and legal aid, Ms Kussbach recognised that there were still difficulties in this area of civil law, given the significant cost and time involved in claiming damages through the court system. It was acknowledged that more funding was needed to increase the conviction rate in discrimination cases. Ms Kussbach added that NGOs could support victims during proceedings, and were also allowed to represent them before the National Equality Ombudsman.

In response to the comment that the Ombudsman lacked ‘teeth to bite’, Ms Kussbach identified three main obstacles that hampered the achievement of this objective:

- The National Equality Ombudsman needed more independence from the Government.
- More human resources were needed. There were currently only 3 lawyers working for this body, for all of Austria. The mandate’s coverage also needed to be expanded to the regional level.
- The issue of legal standing in court needed to be addressed, so the Ombudsman could initiate administrative proceedings.

The Committee acknowledged that the National Equality Ombudsman was doing positive work, and represented a positive step in combating racial discrimination. However, the Committee urged that the Ombudsman’s work be expanded to all the Austrian regions and that the Ombudsman’s legal standing be enhanced.

In its concluding observations the Committee recommended that the State Party take appropriate measures to provide the National Equality Ombudsman with the human and financial resources required to adequately advise and support victims of discrimination, and to grant them competence to initiate and participate in court proceedings as a third party.¹¹

Asylum seekers

The issue of asylum seekers in Austria was briefly dealt with by the delegation and the Committee. The delegation stated that there had been an increase in resources, as well as administrative and legal reforms to improve the situation of asylum seekers in Austria. For example, the Austrian delegation stressed that the Government was working towards reducing the time required to make asylum decisions. Mr Diaconu suggested that asylum seekers were subjected to racial discrimination during their period of detention. There had also been deaths in detention and reports of physical abuse by the police. He recommended that Austria reduce the period of detention of asylum seekers.

In its concluding observations the Committee encouraged Austria to complete the review of its criminal code to cover all acts of racial discrimination against persons belonging to all vulnerable groups, including ethnic minorities, migrants and asylum seekers, in order to give full effect to paragraph 4 of the Convention.¹² Furthermore the Committee recommended that Austria take the necessary measures to treat asylum seekers

¹¹ Paragraph 13 of the concluding observations (CERD/C/AUT/CO/7), available at www2.ohchr.org/english/bodies/cerd/cerds73.htm

¹² Paragraph 15 of the concluding observations (CERD/C/AUT/CO/7), available at www2.ohchr.org/english/bodies/cerd/cerds73.htm

humanely and to reduce as much as possible the period of detention of asylum seekers whose application is rejected and who are awaiting deportation.¹³

Educational reforms

The issue of educational reforms was considered by the delegation and the Committee. Mr Thornberry focused on the issue of language in relation to education. He stated that ‘the traditional linguistic heritage of Austria is in decline’ and urged Austria to preserve languages which were in danger of dying out. He enquired whether there were efforts to retain Romany languages in written form, for example by creating school books in Romany languages. The delegation provided further information about education in Austria, for example the diversity of languages taught in schools. It outlined that in the state of Carinthia there had been a special effort to promote minority languages. The delegation stressed that the Austrian Government also paid close attention to the portrayal of racial discrimination in the media.

Other issues

The situation of the Islamic community in Austria was also raised. The delegation argued that the Islamic community had been legally recognised in Austria since 1912, and that there had been no tensions or discrimination to date. It added that the Attorney General placed great importance on dialogue with the Islamic community, and that there were excellent relations with that segment of the population. The training of judges and prosecutors through compulsory courses on discrimination and racism had also been introduced throughout Austria.

Conclusions and next steps

On 8 August 2008, Mr Diaconu as the country rapporteur made his preliminary observations regarding Austria. He underscored that the divisions Austria draws between indigenous and non-indigenous minorities was considered discrimination under the Convention. He noted that Austrian society appeared to be moving towards an improved approach to combating racial discrimination. He stressed that the targeted activities undertaken in Vienna were encouraging and that these should be expanded to other regions. Mr Diaconu underlined that all the necessary means were available to improve the situation of racial discrimination. However, he also pointed to gaps in Austria’s approach, for example the lack of NGO input to complement Austria’s State report.

The concluding observations of the Committee highlighted the positive aspects of Austria’s report with respect to racial discrimination.¹⁴ These included the amendment to the *Law on Equal Treatment* which brought discrimination on grounds of ethnic origin, religion and ideology within the scope of that law.¹⁵ Other positives included the work carried out by the Advisory Board of Human Rights in monitoring police activities.¹⁶

The Committee recommended that the State party as a Federal State takes the necessary legal and political measures to ensure that all its provinces and local authorities observe and comply with laws and decisions

¹³ Paragraph 17 of the concluding observations (CERD/C/AUT/CO/7), available at www2.ohchr.org/english/bodies/cerd/cerds73.htm

¹⁴ The Committee’s concluding observations (CERD/C/AUT/CO/17, 21 August 2008) are available at www.ohchr.org/EN/countries/ENACARegion/Pages/ATIndex.aspx

¹⁵ Paragraph 3 of the Committee’s concluding observations (CERD/C/AUT/CO/17), available at www.ohchr.org/EN/countries/ENACARegion/Pages/ATIndex.aspx

¹⁶ Paragraph 6 of the Committee’s concluding observations (CERD/C/AUT/CO/17), available at www.ohchr.org/EN/countries/ENACARegion/Pages/ATIndex.aspx

adopted to implement the provisions of the Convention.¹⁷ The Human Rights Committee also recommended that the *Equal Treatment Act* be broadened to protect the most vulnerable people in society. The Roma minority was also mentioned in the concluding observations of the Human Rights Committee, with particular regard to the lack of minorities in Government positions.

Both the Human Rights Committee and the Committee on the Elimination of Racial Discrimination welcomed in their most recent reports the measures taken to protect asylum seekers and to reduce the possible period of detention for those whose application had been rejected and who were awaiting deportation.¹⁸ The Committee on the Elimination of all Forms of Discrimination against Women made recommendations on media reforms aimed at promoting awareness of discrimination in Austria.¹⁹ The Committee on the Elimination of Racial Discrimination also suggested that Austria take action to develop educational and media training campaigns to educate the public about the lifestyles, society and culture of groups protected under the Covenant.²⁰ The Committee also encouraged Austria to complete the review of its criminal code and to extend the scope of Section 283 to cover all acts of racial discrimination against persons belonging to all vulnerable groups, in order to give full effect to provisions of article 4 of the Convention.²¹

¹⁷ Paragraph 11 of the Committee's concluding observations.

¹⁸ Paragraph 17 of the report of the Committee on Civil and Political Rights (CCPR/C/AUT/CO/4): is available at <http://daccessdds.un.org/doc/UNDOC/GEN/G07/453/60/PDF/G0745360.pdf?OpenElement>

¹⁹ Paragraph 18 of the report of the Committee on Elimination of all Forms of Discrimination against Women. (CEDAW/C/AUT/CO/6) (2007) is available at [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CEDAW.C.AUT.CO.6.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CEDAW.C.AUT.CO.6.En?Opendocument)

²⁰ Paragraph 26 of the Committee's concluding observations is available at www.ohchr.org/EN/countries/ENACARegion/Pages/ATIIndex.aspx

²¹ Paragraph 15 of the Committee's recommendations (CERD/C/AUT/CO/7) is available at www2.ohchr.org/english/bodies/cerd/cerds73.htm

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