

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION**

**Concluding observations of the Committee against Torture
(Extracts for follow-up of CAT/C/AUS/CO/4-5)**

AUSTRIA

(...)

C. Main subjects of concern and recommendations

(...)

Fundamental safeguards

9. The Committee is concerned at the restrictions placed by the State party on the exercise of the right of an arrested or detained person to communicate with counsel and have counsel present during interrogations. In this respect, it notes with concern that, pursuant to section 59 (1) of the amended Code of Criminal Procedure, police officers can monitor contacts between the arrested or detained person and counsel and exclude the presence of counsel during interrogations if “it appears necessary to prevent interference in ongoing investigations or corruption of evidence”. In such a case, an audio or visual recording of the interrogation must be made if possible (section 164, para. 2, of the Code of Criminal Procedure). The Committee is also concerned at the content of paragraph 24 of Internal Instruction (*Erlass*) Ref. BMI-EE1500/0007-II/2/a/2009 issued by the Federal Ministry of Interior on 30 January 2009, which would seem to infer that there is no obligation on the part of the police to delay questioning to allow the lawyer to arrive at the place of interrogation (arts. 2 and 11).

The Committee reiterates its recommendation (CAT/C/AUT/CO/3, para. 11) that the State party should take all necessary legal and administrative safeguards to ensure that suspects are guaranteed the right of confidential access to a lawyer, including during detention, and to legal aid from the moment of the arrest and irrespective of the nature of their alleged crime. The State party should also extend the use of audio and video equipment to all police stations and detention facilities, not only in interrogation rooms but also in cells and corridors.

The State party should promptly amend paragraph 24 of the above-mentioned internal instruction to avoid situations that would deprive detainees of the right to an effective defence at a critical stage in the proceedings and expose them to the risk of torture or ill-treatment.

(...)

Conditions of detention

16. The Committee is concerned at the detention policy applied to asylum-seekers, including reports that they are held in police detention centres for criminal and administrative offenders (*Polizeianhaltezentrum – PAZ*), in some cases confined in their cells for 23 hours a day, only allowed visits under closed conditions and without access to qualified medical care or legal aid. In this respect, the Committee regrets the change in the legislative framework resulting from the last reform of the Asylum Law and Aliens Police Act, which entered into force on 1 January 2006. Under the new article 76, paragraph 2a, of the Aliens Police Act, detention of asylum-seekers whose claims have not been finally decided or were only rejected on procedural grounds has, in certain circumstances, become mandatory, where found necessary to achieve expulsion (art. 11).

In line with the concerns expressed by other relevant international and regional human rights bodies, the State party should:

- (a) **Ensure that detention of asylum-seekers is used only in exceptional circumstances or as a measure of last resort;**
- (b) **Consider alternatives to detention and end the practice of detaining asylum-seekers in police holding centres;**
- (b) **Take immediate and effective measures to ensure that asylum-seekers who are detained pending deportation are held in detention centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal status;**
- (c) **Ensure that asylum-seekers have full access to free and qualified legal counselling, adequate medical services, occupational activities and the right to receive visits.**

(...)

Prompt, thorough and impartial investigations

19. The Committee regrets the insufficient statistical data on allegations of torture and ill-treatment provided by the State party as well as the lack of information on the results of the investigations undertaken in respect of those allegations. The Committee notes with concern that almost half of the incidents occurred in 2009 concerned foreigners. In this regard, the Committee continues to be concerned about the high level of impunity in cases of police brutality, including that perceived to be racially-motivated. Until January 2010, allegations of torture and ill-treatment were investigated by the Bureau for Internal Affairs (BIA), a special unit within the Federal Ministry of Interior, which informs the competent public prosecutor about the outcome of the internal inquiry. Although the Bureau of Internal Affairs provided a copy of its reports to the Human Rights Advisory Board, the members of this national human rights institution were not mandated to carry any investigative work. Since the entry into force of the Federal Act on the Establishment and Organization of the

Federal Bureau of Anti-Corruption on 1 January 2010, BIA was transformed into the Federal Bureau of Anti-Corruption (BAK) that, according to the information provided by the delegation, is “an independent body outside the traditional law enforcement structures and conducts independent investigation in close cooperation with the public prosecutors” (arts. 12-13).

The Committee recommends that the State party:

Take appropriate measures to ensure that all allegations of torture or cruel, inhuman or degrading treatment are promptly and impartially investigated, perpetrators duly prosecuted and, if found guilty, convicted to penalties taking into account the grave nature of their acts, and that the victims are adequately compensated, including their full rehabilitation;

Strengthen and expand the mandate of the Austrian Ombudsperson Board, to include protection and promotion of all human rights in accordance with the Paris Principles;

Ensure that clear and reliable data are compiled on acts of torture and abuse in police custody and in other places of detention;

The State party should provide the Committee with further information on the mandate of the new Federal Bureau of Anti-Corruption and the procedures established to carry out independent investigation into all allegations of torture and ill-treatment committed by law enforcement officials. The State party should also provide the Committee with information on cases of torture and ill-treatment where the aggravating circumstances as stated in section 33 of the Criminal Code, including racism and xenophobia, have been invoked in the determination of sanctions for such crimes.

(...)

31. The Committee requests the State party to provide information, within one year, in response to the Committee’s recommendations in paragraphs 9, 16 and 19 of the present document.

(...)
