

**Response to the Recommendations Nr.9, 16, 19 and 22 by Austria as
requested by the Committee against Torture in its Concluding
Observations (CAT/C/SR.950) at its 44th session on 26 April – 14 May 2010**

Recommendation 9:

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.

Since the entry into force of the 2004 amendments to the StPO (Strafprozessreformgesetz, Federal Law Gazette I No.19/2004) in January 2008 the right of confidential access to a lawyer, including during detention, is formally guaranteed by law (section 164 paragraph 1 and 2 of the Code of Criminal Procedure, StPO).

Derogations from this right are stipulated in section 59 para 1 StPO and may only be applied in exceptional cases, if there is conclusive evidence of jeopardising the legitimate interests of the investigation. This legal option is only rarely applied, mainly in connection with the fight against organised crime, and has to be documented in the Detention Report.

An information sheet on the stand-by legal counselling service by the Bar Association is handed over to the detained person along with the general information sheet on the rights of a detained person immediately after his apprehension which has to be documented appropriately in the Detention Report.

An initial counselling through the stand-by legal counselling service is free of charge. Costs which arise from further legal representation have to be borne by the client. Non-recoverable costs are ceded to the Federal Ministry of Justice. In case that the court appoints a legal aid for the defendant, the Ministry would suspend its demand to recover the claim.

The installation and utilization of audio and video equipment in all police stations and detention facilities, including in interrogation rooms, cells and corridors, is not planned for the time being.

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.

Austria sees no necessity to amend the internal instruction by the Federal Ministry of the Interior (BMI-EE1500/0007-II/2a/2009), which is based on the respective provisions of the Criminal Procedure Act; the procedural rights of the detained person are properly ensured by providing him/her with the right to contact a lawyer prior to interrogation (section 164 para 1 StPO) and by the right to remain silent until the arrival of his/her legal counsel (sections 49 para 4 and 164 para 1 StPO).

Recommendation 16: Conditions of detention

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;

Deportation is, if alternatives – such as the voluntary return – are not accepted, a coercive measure and only used as a last resort, on the basis of a concluded administrative procedure.

An adequate enforcement of the respective asylum and immigration laws implies the availability of the person concerned for his/her deportation or transfer according to the Dublin II regulations.

The legal possibility of pre-deportation detention is only rarely applied as a measure of last resort. Each single case is individually assessed and carefully examined by the responsible authorities.

Pre-deportation detention is indispensable mainly in those cases, in which an official deportation order (§ 10 *Asylum Act* (AsylG) or §§ 53 and 54 FPG) or entry ban (§ 60 FPG) has to be enforced. It is based on a notification issued by the Immigration Police in compliance with the Aliens Police Act (*Fremdenpolizeigesetz*, FPG).

The duration of detention is to be kept to an absolute minimum, usually around three weeks (whereas the law provides for up to three months of detention, if the delay is caused by the person awaiting deportation or by the authorities of the country of origin).

Although deportations and detention pending deportation will never be entirely avoidable, the preferred measure will always be the voluntary return.

(b) Consider alternatives to detention and end the practice of detaining asylum-seekers in police holding centres;

Less intrusive measures may be applied as an alternative to detention pending deportation to the extent to which it is justifiable with regard to security interests and the individual case. The local immigration authorities can refrain from the use of detention pending deportation, in case of a substantiated claim that the initial objective of detention may be achieved otherwise. There is a considerable number of relevant case law in this field.

These alternative forms usually consist of accommodation others than police facilities where the presence of the persons concerned is controlled regularly or where the persons concerned have to report regularly to police stations. These less intrusive measures are used especially for minors, families or if the persons concerned have a regular place of residence.

In addition to the above-mentioned measures, conditions for detention pending deportation are continuously improved.

(c) 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;

Austria is aware that the conditions of the infrastructure can be further improved in order to reach the highest standards possible. Police detention centres are being continuously improved as to equipment and space to meet modern standards which are in line with human rights requirements, thus enabling humane detention/custody of high quality.

To this end, a new pre-deportation centre will be constructed in Vordernberg/Styria for up to 220 persons. The primary goal of this centre is to improve the situation of those persons in detention pending deportation by allowing greatest possible freedom of movement inside the centre and ensuring the autonomy of persons living together in accommodation units. The planning for the new facility also accommodates for adequate occupation for the persons in detention, as well as requirements resulting from the linguistic and cultural background of the persons in custody.

For short term detention of families and unaccompanied minor refugees before their transfer, family-friendly accommodation infrastructure for 12 families was created in Vienna (Zinnergasse 29a, A-1110 Vienna). The plainclothes officers in this institution are particularly sensitized.

Concerning the increased use of less intrusive measures, another accommodation for around 50 persons is planned in Vienna.

(d) Ensure that asylum-seekers have full access to free and qualified legal counselling, adequate medical services, occupational activities and the right to receive visits.

Free legal counselling for asylum seekers will be introduced in 2011 implementing Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegal third-country nationals.

Recommendation 19: Prompt, thorough and impartial investigations

The Committee recommends that the State party should:

(a) 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.

Impartial and prompt investigation and prosecution:

The criminal investigation departments and the public prosecutor's offices are obliged to investigate every suspicion of ill-treatment ex officio once they obtain knowledge of it (section 2 paragraph 1 of the Code of Criminal Procedure [Strafprozessordnung StPO]). The law obliges them to be impartial (section 3 Code of Criminal Procedure). According to section 100 paragraph 2(1) of the Code of Criminal Procedure any complaint of ill-treatment is to be reported to the public prosecutor's office without delay, no later than within 24 hours, by the competent criminal investigation departments of the provinces (Landeskriminalamt) or, in Vienna, by the Bureau for Special Investigations (Büro für besondere Ermittlungen) or the Federal Bureau of Anti-Corruption (Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung).

In order to prevent any impression of lack of impartiality, a judge can be entrusted with the investigations (section 101 paragraph 2 second sentence of the Code of Criminal Procedure), especially in cases where high-ranking or executive officers of the criminal investigation departments (or the public prosecutor's office) are personally involved in alleged ill-treatment.

Victims' compensation:

The Crime Victims Act of 9 June 1972 (Federal Law Gazette no. 288) on the granting of support to crime victims, forms the legal basis for compensation for crime victims. In cases of bodily injury (e.g. abuse) or harm to health, the law provides for continuous support, such as compensation for the loss of income or livelihood, for compensation of treatment costs and professional and social rehabilitation. The amendment of the law (Federal Law Gazette no. 620/1977) provides for the conditions of support, both as regards the extent of claims and the amount of compensation. Another amendment (Federal Law Gazette no. 112/1993) expanded the group of eligible persons to citizens of EEA countries (section 1 paragraph 6 of the Crime Victims Act). The amendment of the Act that entered into force on 1 January 1999 (Federal Law Gazette I no. 11/1999) created the basis for reimbursement of costs for case-related psychotherapy of crime victims or their surviving dependants. Under the Act Amending Support Legislation (Versorgungsrechts-Änderungsgesetz, VRÄG) of 2005 (Federal Law Gazette no. 48/2005), legal service and legal aid for crime victims were further improved and the group of entitled persons expanded (section 1 paragraph 7 of the Crime Victims Act). In addition to granting income-related additional benefits to compensate for loss of income or livelihood, the right of crime victims or their surviving dependants to receive psychotherapy was substantially expanded. As regards treatment, care and rehabilitation, the state is also obliged to reimburse case related co-pays and prescription fees incurred by the victims. Access to compensation in cross-border cases is also considerably facilitated by the amendment. According to the Second Violence Protection Act (2. Gewaltschutzgesetz, Federal Law Gazette I no. 40/2009) victims can additionally claim a lump-sum compensation for pain and suffering (section 2(10) of the Crime Victims Act) amounting to EUR 1,000 in case of severe bodily injury and to EUR 5,000 in case of bodily injury with irreversible damage.

In 2007, support payments under the Crime Victims Act totalled EUR 2.2 million; in 2008 EUR 2.866 million. For 2009 and 2010, the annual budget for compensation payments amounts to EUR 2.482 million each year.

Legal position of the victim:

The legal position of victims has been considerably improved with the entering into force of the Criminal Procedure Reform Act on 1 January 2008. Under section 66 of the Code of Criminal Procedure, amended by Federal Law Gazette I no. 109/2007, their rights to information and to be a party in proceedings have been extended (e.g. right to information on procedural rights, right to inspection of files, right of notification, right to participate in the adversarial interrogation of witnesses and defendants, in the elaboration of findings and in the re-enactment of the crime, right to psychosocial and legal assistance during proceedings for victims suffering a particular emotional impact). Victims are also entitled to request the continuation of proceedings if discontinued by the public prosecutor's office (section 195 of the Code of Criminal Procedure). Victims, who have claimed compensation, have the status of private parties in the proceedings (section 67 of the Code of Criminal Procedure), which assures them further special rights (e.g. right to demand the taking of evidence). When certain conditions are met, legal counsel is free of charge under the legal aid system.

(b) 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;

In the course of the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT) it is planned to

establish a preventive mechanism within the Austrian Ombudsman Board whose structure and mandate shall be adapted and enlarged to this end. Several Commissions as organs of the Austrian Ombudsman Board will be set up according to the Paris Principles which will conduct monitoring visits also on their own initiative (visiting bodies). The necessary legal measures are being prepared in close consultation with the civil society. The Council of Ministers has adopted the respective draft and submitted to the Austrian Parliament for further consideration on 15 November 2011.

Incidentally, Austria would like to emphasise its independent judiciary to play a central role in human rights protection. It is, therefore, envisaged to further strengthening the court system, by establishing administrative courts of first instance. A multi-level administrative jurisdiction offers advantages in terms of speeding up proceedings, improving service and easing the burden of the Administrative Court.

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

The procedure for investigations of accusations of alleged ill-treatment by the police is regulated by law as well as by respective ordinances of the Federal Ministry of the Interior and the Federal Ministry of Justice which are closely coordinated. Cases of accusations or suspicions of ill-treatment are immediately investigated by the Federal Bureau of Anti-Corruption and the Office for special investigations within the Federal Police Directorate Vienna (“Bundespolizeidirektion Wien”), respectively. The Federal Bureau of Anti-Corruption is an institution of the Federal Ministry of Interior which has been established outside the structures of the Directorate-General for Public Security.

A complete documentation is ensured by the first information reports and reports to the police. A standardised detention report is being filed for the detention documentation, which documents the entire course of the arrest, from detention to release or transfer to other competent authorities (partly as electronic file). This form especially caters also for accusations and incidents during the detention.

The independent Human Rights Advisory Board was established in July 1999 as a predominantly preventive human rights institution and monitors the activities of the law-enforcement officials with regard to human rights compliance. The Human Rights Advisory Board conducts announced and unannounced visits to police detention centers, identifies deficits and makes recommendations. Their findings are public according to a transparent administration. All relevant authorities are obliged to report cases of alleged ill-treatment to the Advisory Board.

In the provincial States (“Länder”) independent Administrative Senates have been established since 1991 that rule - amongst other duties - on allegations of persons whose rights were allegedly violated by administrative authorities. It goes without saying that law enforcement officials are subject to a strict public service and disciplinary law and face respective sanctions in case of malpractice and failure to comply with obligations.

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 new Federal Bureau of Anti-Corruption (Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung; BAK) is an institution of the Austrian Federal Ministry of the Interior. It has been - ex lege - established outside the Directorate-General for Public Security and has nationwide jurisdiction with regard to:

- the prevention of and the fight against corruption,
- the close cooperation with the Public Prosecutor's Office for Corruption (KStA)
- and is the center of security police and criminal police cooperation

The Federal Law on the Establishment and Organization of the Federal Bureau of Anti-Corruption (BAK-G) entered into force on 1 January 2010 and constitutes the legal basis of the BAK. With this law, Austria meets international requirements and obligations concerning the setting-up of independent national anti-corruption bodies.

The BAK has also the legal mandate of elaborating and implementing measures to combat and prevent corruption on the basis of comprehensive analysis of corruption phenomena.

According to the aim of BAK corruption prevention encompasses all measures which help combating and preventing all forms of corruption.

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.

Within the past year 2010 the Austrian Federal Ministry of Justice received no report by the prosecutor's offices 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.

Recommendation 22:

The Committee is concerned about reports of alleged lack of privacy and humiliating circumstances amounting to degrading treatment during medical examinations at the Vienna Communal Health Office, where registered sex workers are required to undergo weekly medical checkups, including gynaecological exams, and to take regular blood tests for sexually transmitted diseases (art. 16).

The State party should ensure that these medical examinations are carried out in an environment where privacy is safeguarded and in taking the greatest care to preserve the dignity of women being examined.

On this recommendation the City of Vienna has made available following detailed position statement:

In its report the UN Committee against Torture expressed concern over violations of privacy and humiliating circumstances during medical examinations carried out at the Vienna Communal Health Office, urging Austria to ensure that the greatest care would be taken to preserve the privacy and the dignity of the persons undergoing the examinations. This was apparently the result of a written posting on the Internet platform sexworkers.at which had levelled accusations against the Health Office regarding the diagnosis and treatment of sexually transmitted diseases (STD clinic – outpatient clinic for sexually transmitted diseases) and despite the Austrian delegation's repudiation of the accusations in question at the presentation of the report on 5-6 May 2010.

Before a more detailed discussion of the contents is undertaken, it must be stressed that Municipal Department 15 rejects the claims asserted on the Internet platform sexworkers.at.

The medical facility in question has been in existence for nearly two decades and is operated by Municipal Department 15 of the City of Vienna as an outpatient clinic for diagnosing and treating sexually transmitted diseases (STD clinic). The continued operation of the facility is subject to the provisions stipulated by the Vienna Hospitals Act. The Prostitution Ordinance forms legal basis for the examinations carried out at the STD clinic. The STD clinic in Vienna is a highly specialized medical facility which offers low threshold access to medical diagnostics and treatment, as well as counselling by social workers and street work free of charge.

Legal Situation in Austria

In Austria prostitution is only permitted within the framework of compliance with specific statutory provisions. The prostitution ordinance on the monitoring of the health situation of persons who engage in prostitution stipulates that persons who tolerate commercial sexual acts performed on their own bodies or perform such acts on others are to undergo an examination before taking up these activities as well as at regular weekly intervals. Said examinations are to be carried out by a public health officer to ascertain the absence of sexually transmitted diseases. In addition, persons who engage in prostitution must undergo an additional examination pursuant to the AIDS Act on a periodic basis at intervals of at least three months. Second examinations are to be carried out by public health officials to ascertain the absence of HIV infection. Provided that no infection is ascertained, the competent public

health service (in Vienna the STD clinic) issues a photo-identification (so-called “control card”), on which the date of the last examination is entered. The results of the examination are not entered on the card. Should a sexually transmitted disease or HIV infection be ascertained, this control card is revoked by the public health service.

Persons interested in engaging in prostitution in Vienna are also obligated to be officially registered with the Federal Police Directorate pursuant to the Vienna Prostitution Act.

An examination carried out by a public health official is mandatory in any case for the control card to be issued. This means that not just any office based physician, but rather a public health official employed by the public authorities must ascertain the absence of sexually transmitted diseases. A visit to a gynaecologist for general examinations is possible at any time, albeit not for obtaining a stamp on the control card.

Preserving the Privacy and Confidentiality of the Examinations

During the planning of the medical facility, which was newly built in 2007, standardized building guidelines were followed as to the arrangement of examination rooms, dressing rooms and waiting areas in order to ensure the confidentiality of such examinations. Patients may only gain access to the examination rooms by entering through the changing rooms, which can be locked to restrict further access from the waiting area. Each examination room has two changing rooms, which can be locked to ensure that they are not accessible from the waiting area and can only be opened from the examination-room side of the door. This ensures that no unauthorized or unwarranted individuals can enter the examination room during an examination. The examination area of the STD clinic has a separate waiting room for women.

Principally persons accompanying the patients are not present during the examination. However, in accordance with the wishes of the clients, such persons may join them for the subsequent consultation.

This clinic for the diagnosing and treating of sexually transmitted diseases is a public medical facility and accordingly open to anyone. Employees of the clinic are not permitted to refuse anyone access or the right to loiter in public areas (the street area in front of the clinic). Likewise, the medical staff is not legally authorized to ascertain any connections between the individuals waiting or remove anyone from the premises. Furthermore persons accompanying the patients are permitted in principle to enter the medical facility. Nor is it understandable why a visit to a medical facility would immediately constitute a “pillory-like situation”. The entrance to the clinic even offers particular protection, as the entrance is not located directly on a public street, but rather is accessible via an inner courtyard.

Essentially each examination takes place in accordance with the principle of the preservation of confidentiality, and the staff complies with the relevant statutory provisions, as it is obligated to uphold official confidentiality and the secrecy of data. Furthermore, the rules governing doctor-patient confidentiality also apply to the medical personnel.

Should a sexually transmitted disease be diagnosed, the only repercussion the patient faces is the loss of the control card. As a result, the patient in question is prohibited from engaging in prostitution and is provided with information from the STD clinic that he or she may be reissued a control card once the disease has been successfully treated.

Carrying out the Examination and Treatment

With regard to the procedure of the examination, it should be pointed out that the staff has completed all of the professional training required and is thereby subject to all of the provisions outlined in the appropriate professional statutes, all of which mandate the preservation of human dignity and working for the well-being of the patient. The examinations are carried out in accordance with scientific and medical, as well as hygienic standards and are validated as up-to-date in accordance with the prevailing standard operating procedures.

The STD clinic in Vienna is a highly qualified medical facility which provides low threshold access to medical diagnostics and treatments by specialists. All examinations are carried out in accordance with the latest medical and scientific findings. It can be assumed that the expert staff has gained a great deal of routine experience on a daily basis, thereby ensuring that the examinations are optimally carried out. However, many methods used in the examination, even when flawlessly carried out, can lead to short-term discomfort (e.g. a brief burning sensation when urinating for the first time after a urethral swab, bruising at the puncture site of a blood draw).

It should be principally stated that all examinations are only carried out after person to be examined has given his or her approval. Examinations carried out against a person's will, i.e. "forced examinations", are not permitted in Austria. Persons, who are incarcerated or in any other kind of judicial or police detention, must undergo a medical examination prior to imprisonment, and once their ability to be incarcerated has been established, they are entitled to a medical examination at any time pursuant to the Incarceration Ordinance. Should a person found to be suffering from symptoms of illness or shows any signs of having contracted a sexually transmitted disease – including based on the person's own statements – the person in question is accompanied by a correctional prison officer or a law enforcement officer to be examined at the STD clinic. The person in question is subject to the security provisions of the competent public authority during transport. The examination at the STD clinic then takes place based on the complaints of the person in question. Examinations on patients in handcuffs are not carried out in principle.

The Physicians' Act mandates that doctors explain and provide information on the treatments to be carried out. It is necessary to obtain the required compliance in particular for medicines to be taken by the patient, as the consistent administration of medication is important in particular in treatment of diseases using antibiotics. For this reason, special information material is available at the STD clinic when a sexually transmitted disease has been diagnosed; this material is also available in the patients' various native languages and provides information about the necessary check-ups and measures to be taken to prevent the spread of the disease in question. When taking a medical history, the patient is asked about any possible allergies, and the results are documented in the file.

Services Offered by the STD Clinic

The STD clinic's staff is made up of eight physicians, nine medical office assistants, three biomedical analysts, two office workers and four trained social workers.

Some 50,000 patient interactions take place every year at the STD clinic, wherein the focus is on examinations carried out pursuant to the Act on Sexually Transmitted Diseases. Gynaecological examinations outside of the STD clinic can only be carried out by specialists for gynaecological medicine. The opening hours are from 8 a.m. to 12 p.m. However,

examinations generally go on until 1 p.m. past the cut-off point for patient registration, and in some cases even longer. In response to the growing number of examinations carried out, funding for additional medical and clinic staff was approved in 2009; additional personnel has been and is still being requisitioned on an on-going basis.

Persons who visit the STD clinic on a weekly basis in accordance with the ordinance governing the monitoring of the health situation of persons in connection with the Act on Sexual Transmitted Diseases do so in order to receive the stamp on their official control card. For that reason, it is usually understood that this does not replace an annual or routine gynaecological examination. In any case, the staff at the STD clinic communicates to patients the necessity of additional gynaecological examinations with regards to an annual screening check-up, and should there be any suspicion of an gynaecological disease, the patient is then referred to a specialist to clarify the situation. If so desired, patients can receive assistance in their search for a physician (e.g. a doctor who speaks the native language of the patient).

The regular examinations to determine the absence of sexual transmitted diseases certainly do not automatically mean that prostitutes should not practice safer sex. The argument that customers feel safer thanks to the examinations is therefore irrelevant, because essentially prostitutes should only engage in contact with their customers when practicing safer sex. For that reason, regular information on safer sex is passed on within the context of the examinations and consultations with social workers at the STD clinic. In addition, within the context of street work, the sex workers, as well as the bar owners and customers are informed of the importance of practicing safer sex.

Austrian laws are aimed at upholding the principle of equality for all persons and are not aimed at a particular gender. Essentially it must be stated that diseases are transmitted primarily by the failure to practice safer sex, and must be viewed as occurring independent of gender.

The STD clinic carries out examinations on male as well as female prostitutes.

It is not possible to compare data between Germany and Austria, as examinations on sex workers in Germany are only recommended, and registration requirements are handled differently. According to the German Infectious Disease Control Act, only the detection of syphilis bacteria in laboratory diagnostics must be reported; gonorrhoea does not come under that heading. The data used both in Germany as well as in Austria are based on sentinel systems (i.e. only certain, representative facilities report infectious disease statistics), which, however, are structured differently.

In conclusion we would like to draw your attention to the enclosed photographs of the STD clinic, which are perhaps able to convey a suitable impression of the medical facility and its equipment.