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Human Rights Committee**Report on follow-up to the concluding observations of the Committee*****Addendum****Evaluation of the information on follow-up to the concluding observations on Austria****

*Concluding observations
(115th session):*

CCPR/C/AUT/CO/5, 3 November 2015

Follow-up paragraphs:

20, 22 and 30

Follow-up reply:

CCPR/C/AUT/CO/5/Add.1, 16 December 2016

Committee's evaluation:

Additional information required on paragraphs
20[C], 22[B] and 30[C]

Paragraph 20: Racial profiling and police misconduct

The State party should ensure that its legislation clearly prohibits racial profiling by the police and prevent investigation, arbitrary detention, searches and interrogation on the basis of physical appearance, colour or ethnic or national origin. It should continue to provide all law enforcement personnel with racial sensitivity training in order to curb racial profiling and police misbehaviour towards ethnic minorities. Law enforcement personnel who commit offences against persons belonging to ethnic minorities should be held accountable. The Austrian Ombudsman Board should take steps to raise awareness about its new competence to receive complaints and consider making use of its ex officio powers to open investigations into allegations of racial discrimination and racially motivated misconduct by the police.

Summary of State party's reply

Complaints against police misconduct can be lodged with the Regional Administrative Court under article 130 (1) of the Federal Constitutional Law. Unlawful investigations or coercive measures ordered by the Public Prosecutor's Office may be challenged under section 106 (1) of the Code of Criminal Procedure. Further appeals are available under section 87 of the Code.

Committee's evaluation

[C]: The Committee regrets the lack of specific information on: (a) measures taken after the adoption of the concluding observations to clearly prohibit, in law, racial profiling by the police, to continue providing racial sensitivity training for law enforcement, and to hold law

* Adopted by the Committee at its 125th session (4 to 29 March 2019).

** The assessment criteria are available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/INT_CCPR_FGD_8108_E.pdf.

enforcement personnel accountable for offences against persons belonging to ethnic minorities; and (b) the implementation of the recommendations addressed to the Austrian Ombudsman Board. The Committee reiterates its recommendations.

Paragraph 22: Ill-treatment of persons deprived of their liberty

The State party should undertake an independent investigation into the reasons underlying the discrepancy between the low number of criminal convictions for ill-treatment in police custody and the relatively high number of allegations. It should also ensure prompt, thorough and impartial investigations and documentation, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), into all allegations of torture and ill-treatment. Perpetrators prosecuted and convicted should be subjected to sanctions commensurate with the gravity of their acts, and victims provided with effective remedies. The State party should collect and make public information on the number and nature of reported incidents of torture and ill-treatment of detainees, disaggregated by age, gender and ethnic origin of victims, and on the convictions and types of sentences or sanctions imposed on perpetrators of such acts.

Summary of State party's reply

A 2015 decree issued by the federal ministry for justice requires that allegations of ill-treatment by prison personnel be referred, without delay, to the Senior Public Prosecutor, who then orders that a public prosecutor's office other than the one with local jurisdiction take further measures.

In response to the Committee's comments, the federal ministry for justice evaluated the approach to cases of alleged ill-treatment previously taken by the public prosecutor's offices and police.

An external study of the investigations by the public prosecutor's offices of Vienna and Salzburg (covering the period 2012 to 2015) was planned for the autumn of 2016. The compilation of statistics on allegations of ill-treatment by prison personnel was initiated. The outcomes of investigations, trials and disciplinary measures for 2015 and 2016 were to be evaluated in 2017.

The Federal Ministry for the Interior transmits allegations of ill-treatment to the criminal prosecution authorities and the Austrian Ombudsman Board. Amendments to the decree of 23 April 2010 on allegations of ill-treatment, documentation, establishment of facts, reporting to the Human Rights Advisory Council of Austria and organization were planned in order to provide for transparency and documentation of all allegations of ill-treatment and to permit earlier identification of deficiencies in the prevention of abuse and resolution of allegations.

Committee's evaluation

[B]: The Committee notes the measures taken by the State party, but requires additional information on:

(a) The findings of (i) the evaluation of the investigative approach in relation to allegations of ill-treatment and the external study on investigative proceedings concluded by the public prosecutor's offices of Vienna and Salzburg between 2012 and 2015 and (ii) the evaluation of the outcomes of investigations, trials and disciplinary measures for 2015 and 2016; and any follow-up to the study and evaluations and the impact of any measures taken as a result to ensure prompt, thorough and impartial investigations and documentation of all allegations of torture and ill-treatment and sanctions commensurate with the gravity of such acts for those convicted, and to address effectively the discrepancy between reported allegations of ill-treatment and the number of ensuing criminal convictions;

(b) The content of the amendments to the decree of 23 April 2010 and how they address the shortcomings identified in respect of preventing and resolving ill-treatment allegations.

Clarification is required as to whether statistics are also collected and made public regarding reported allegations of torture and ill-treatment in police custody, disaggregated by the age, gender and ethnic origin of victims, and convictions and sentences/sanctions imposed on perpetrators.

Paragraph 30: Detention of asylum seekers and refugees

The State party should pursue its efforts to ensure that detention pending deportation is applied only after due consideration of less invasive means, with special regard being given to the needs of particularly vulnerable persons, and that individuals detained for immigration-related reasons are held in facilities specifically designed for that purpose. The State party should review its detention policy with regard to children over the age of 14 years to ensure that children are not deprived of their liberty except as a measure of last resort and for the shortest appropriate period of time.

Summary of State party's reply

Under sections 76 ff. of the 2005 Aliens Police Act, detention pending deportation is only applied to adults and to children above 14 years if it is proportionate, and as a measure of last resort in cases where there is a clear risk of the person absconding, or a need to "secure proceedings terminating a person's stay". Alternative measures that can be applied include the allocation of accommodation, a requirement to report to authorities on a regular basis, and a requirement of a financial security deposit. Unaccompanied minors are accommodated separately from adults.

In 2015, detention orders were issued against three minors; more lenient measures were applied in 41 cases of minors aged 14 to 16. From January to October 2016, detention orders were issued against 13 minors (16 to 18 years), and alternatives were applied in 14 cases (same age group).

Committee's evaluation

[C]: The Committee takes note of the information provided on detention pending deportation, the accommodation of individuals, including of unaccompanied minors, and the statistics on the detention of minors. While welcoming the application of measures that are more lenient than pre-deportation detention in the majority of cases concerning children above the age of 14, the Committee regrets the lack of information on the length of detention, and that a review of detention policy with regard to children over the age of 14 years does not appear to have been carried out. The Committee reiterates its recommendations.

Recommended action: A letter should be sent informing the State party of the discontinuation of the follow-up procedure. The information requested should be addressed in the State party's next periodic report.

Next periodic report: 6 November 2021.
