



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

Distr.: General
17 November 2015

Original: English

Committee against Torture

Fifty-sixth session

Summary record of the 1365th meeting*

Held at the Palais Wilson, Geneva, on Friday, 13 November 2015, at 3 p.m.

Chair: Mr. Grossman

Contents

Consideration of reports submitted by States parties under article 19 of the Convention
(*continued*)

Sixth periodic report of Austria (continued)

* No summary record was issued for the 1364th meeting.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of the present document* to the English Translation Section, room E.6040, Palais des Nations, Geneva (trad_sec_eng@unog.ch).

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.



The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Sixth periodic report of Austria (continued) (CAT/C/AUT/6; CAT/C/AUT/Q/6)

1. *At the invitation of the Chair, the delegation of Austria took places at the Committee table.*

2. **The Chair** invited the members of the delegation of Austria to reply to the questions raised by Committee members at the 1362nd meeting.

3. **Mr. Aigner** (Austria) said that in Austria emergency medical care was available to all persons, regardless of their legal status, including undocumented migrants and asylum seekers. The situation of asylum seekers in particular was addressed by the law governing health care, which granted them access to a full array of medical services, including check-ups and vaccinations for children up to the age of 15, and provided subsidies for their medical insurance. By law, persons in detention, both at Ministry of Interior and Ministry of Justice facilities, had access to a doctor. If a facility's doctor was temporarily unavailable, arrangements were made for the doctor's replacement with medical personnel from the various law enforcement and health services. For emergencies, Austria also had effective telephone hotlines that provided visiting doctors' services and ambulance services for hospitalization. The Ministry of Health had made an enormous effort in the past two months to provide medical services for the wave of refugees that had recently flooded into the country and to integrate them into the health system as quickly as possible. Austrian doctors, often working with interpreters, had risen to the task admirably, showing skill and professionalism. Under a programme known as MiMi, migrants who had already been integrated into Austrian society were enlisted to train and inform new arrivals and help provide services for them. Participants took a 50-hour training course prior to entering service. The MiMi programme had been set up by an Austrian NGO, which had won the European Health Award for that initiative.

4. People with disabilities who performed tasks at occupational therapy workshops received small amounts of pocket money. The money was not considered to be wages, as their situation was not a genuine employment relationship. However, such persons did benefit from full insurance coverage. The authorities were currently considering how to improve the social security protection system to provide them with better coverage.

5. New medical training ordinances set priorities for the training of young doctors, psychologists, therapists, nurses and other health-care practitioners, focusing greater attention on raising awareness of the situation of victims of psychological and physical violence and victims of human trafficking, with particular emphasis on vulnerable groups, including women, children and persons with disabilities. In 2015 the Health Ministry had examined the way in which local hospitals dealt with and documented cases involving a suspicion of violence, with the aim of improving record-keeping so as to allow for the possible use of such information as evidence. Any suspected act of physical violence or female genital mutilation was given serious consideration by health professionals. If minors were involved, the medical personnel had the obligation to report the case to the Ombudsman. Interdisciplinary groups including psychologists, doctors and other health-care practitioners had been set up at public medical centres to deal with cases involving women and children. They referred any cases involving suspicion of ill-treatment or violence as soon as possible to the prosecutors' offices and police with a view to their taking prompt action.

6. The Ministry of Health had established a support network for families, pregnant women and children under the age of 3 who were in vulnerable situations. The network received funding of about €2.5 million a year and served as a first line of defence and prevention against possible escalations of domestic violence. Since 2013, female genital mutilation practised on Austrian residents while in other countries had been defined as an offence under Austrian criminal law.

7. Issues regarding sexual reassignment surgery had not been raised with the Ministry of Health. In 2013, a doctors' association had determined that such surgery, when practised on children, must be considered with the utmost caution; the association stated that such surgery should in principle be carried out only after determining how the child would develop as an adult. The medical literature called for such operations to be performed only when absolutely necessary, when they were clearly in the best interests of the child and as late as possible, only with the consent of the parents and after determining whether the child had been subjected to any external influence. The number of sexual reassignment operations had fallen in recent years.

8. The use of net beds in psychological treatment, which had been practised only in Vienna and Graz, had been prohibited by a ministerial instruction in mid-2015. In his opinion, it was preferable to ban such practices through an internal instruction issued by the competent authority rather than by a law, as laws were more subject to challenges and the vicissitudes of politics. A court hearing was due to be held on the question of net beds in November 2015.

9. **Ms. Klein** said that the Austrian criminal justice system provided for three categories of offences. Murder and very serious offences were punishable by 10 to 20 years or life imprisonment; offences such as aggravated burglary or theft incurred penalties of 5 to 15 years of deprivation of liberty; and rape and robbery fell into another category and were punishable by 1 to 10 years of imprisonment. As the legislation relating to torture had to fit into that framework, the legislators wanted to provide for the various degrees of severity of the crime. Torture itself was punishable by a prison sentence of 1 to 10 years, but if it involved bodily injury, lasting consequences or death it incurred the more stringent penalties. Pursuant to the Rome Statute of the International Criminal Court, since 1 January 2015 the crime of torture had been included in the definition of crimes against humanity and war crimes, and in that context it was punishable by a base sentence of 5 to 15 years of deprivation of liberty.

10. When issuing sentences for torture, judges had to follow certain guidelines. In particular, they had to take into account the extent of the damage or threat caused, preparation or intent and disregard of the consequences of such acts, along with any mitigating or aggravating circumstances, such as racist intent. The legislature had placed trust in the independence of the judiciary for the imposition of sentences.

11. The statute of limitations, including for torture, varied with the penalties applicable to the offences in question. For those incurring sentences of 10 to 20 years or life imprisonment, war crimes and crimes against humanity, no prescription was applicable. For offences punishable by 5 to 15 years of deprivation of liberty, the statute of limitations was 20 years, and for those incurring sentences of 1 to 10 years, the prescription was effective after 10 years. If a number of crimes were committed by one person, the latest offence determined the applicable period. If the victim of the crime was a minor, then the statute of limitations began to be counted from the time when the victim reached the age of 28.

12. Since 2013, 17 cases of accusations of torture had been filed. Of those, none had resulted in a conviction; 6 cases had been dropped for legal reasons, including a lack

of evidence, 10 had been settled using other means and 1 had been dismissed owing to insufficient evidence. The legislature had allowed some latitude to the office of the State prosecutor in deciding whether to pursue a case based on the merits of the accusations submitted to it. So far, it had proceeded to verify the evidence in just one case, in which it had eventually found that the accusations were not substantiated by evidence.

13. In criminal cases, legal aid was provided to defendants, but in the event of a conviction, they bore responsibility for paying a flat fee. The amount of the fee must not impinge upon their ability to cover their own basic needs and those of their dependants. In the case of trial by jury, the flat fee could not exceed €10,000. Fees were set taking into account the individual's assets and income. No fee was applicable in the event of an acquittal. Some 90 per cent of applications for legal aid were granted, and when applications were denied the judge was required to inform defendants of their procedural rights.

14. Administrative courts too could supply legal aid. The Constitutional Court had recently ruled that the aid provided by administrative courts was insufficient. That decision sent the issue to the legislature, which had until the end of 2016 to adopt a new law addressing that question. In administrative proceedings too, defendants who had no right to legal aid must be informed by the administrative authorities of their procedural right to a defence.

15. Penalties for human trafficking had recently been made more severe. For trafficking of minors, even with aggravating circumstances such as participation in organized crime, severe bodily injury or endangerment, the applicable penalty had been from 1 to 10 years of deprivation of liberty. The recent amendment had introduced definitions that built upon anti-slavery legislation dating from 1975. The offence of slavery as defined by that law included acts such as the deprivation of the liberty of another person and was punishable by sentences of 10 to 20 years.

16. The domestic legislation allowed for the Austrian justice system to try perpetrators of human trafficking only if they and their victims were in Austria. According to the principles of sovereignty and territoriality, the legislature must respect the sovereignty of other States, and in the absence of an agreement with another State an Austrian prosecutor could not take action against people involved in human trafficking in other countries or in acts committed outside Austria.

17. Evidence in cases involving violence against women and children had to meet certain standards of credibility and reliability in order to stand in court. However, the rules were not specific. It was for the individual court to determine whether an accusation was sufficiently substantiated.

18. Judges and prosecutors attended dedicated training and continuous training courses on human rights. Since 2008, seminars given by various NGOs and the University of Vienna's Ludwig Boltzmann Institute of Human Rights had been mandatory for all new judges. The aim was to prepare them to handle cases properly, including those taken up by the European Court of Human Rights. Trainee judges also had the opportunity to serve in traineeships at the European Court of Human Rights. One of the courses was on racism, Nazism and xenophobia and involved visits to the sites of concentration camps. Other courses presented information on the Charter of Fundamental Rights of the European Union, anti-discrimination law and the case law of the European Court of Human Rights. Specific courses given by the Ministry of Justice trained judges in ways of recognizing trauma patterns of victims of violence, and part of the training involved a two-week period spent at centres for victims of violence.

19. A recently adopted law on reform of the juvenile justice system, which was due to enter into force on 1 January 2016, provided for alternatives to detention and imprisonment, lower maximum sentences for young offenders and the right to legal aid for young people, among other measures. Under the new provisions, minors suspected of offences would not be taken into detention unless it was deemed absolutely necessary; accommodation would be provided in supervised social housing, where appropriate. The law would also establish a legal basis for a community-based initiative, known as the Social Network Conference Programme, which sought to provide alternatives to custodial measures. Under the Programme, which had been introduced as a pilot project in 2012 before being launched nationally, young offenders received counselling from designated competent persons who formed part of their social network, such as family members, neighbours, friends and teachers, with the aim of deterring them from reoffending. Under the new law, the maximum penalty for young offenders was set at 15 years' imprisonment and there were greater opportunities for conditional release. The law also provided for the granting of legal aid to young people aged up to 21 years in order to ensure that they were properly represented in legal proceedings.

20. Prosecutors were under an *ex officio* obligation to open an investigation into any cases of torture or ill-treatment that were brought to their attention where there was reasonable suspicion that an offence had been committed. In other words, victims were not required to file a formal complaint in order for an investigation to be initiated. The considerable difference between the number of complaints lodged and the number of convictions imposed in cases of torture and ill-treatment allegedly committed by law enforcement officials, which had been noted by a Committee member the previous day, could be accounted for by the fact that many such complaints related to minor bodily injuries caused by restraint where there was insufficient evidence for criminal charges to be brought. The Federal Ministry of Justice had recently conducted a review of the procedures for the investigation of complaints of abuse by such officials and would be making recommendations in due course. Regarding the death in detention of a Kazakh national, the Minister of Justice had handed over the investigation of the case to an independent commission of inquiry, which was expected to announce its findings shortly.

21. **Mr. Fruhmann** (Austria), responding to a question concerning prison staff shortages, said that the Government had in recent months created a total of 130 new posts, which had helped to reduce significantly the time that inmates spent locked up in their cells and to improve their access to a range of out-of-cell activities. The authorities were also taking action to prevent inter-prisoner violence by, among other things, separating problematic prisoners from other inmates or transferring them to different establishments, providing therapeutic treatment for particularly violent individuals and ensuring that no more than two prisoners were accommodated per cell. While it had not been possible for budgetary reasons to build a new detention facility in the greater Vienna area, a number of construction projects had been launched around the country to increase capacity at existing facilities. Prison staff received training on a number of topics including human rights and suicide prevention as part of the "train the trainer" programme. Programme trainers were selected on the basis of their interpersonal skills, among other criteria. A six-month video interpreting pilot project undertaken in the Vienna-Josefstadt prison had proved highly successful and there were plans to make it nationwide.

22. In reply to a question that had been raised concerning the ill-treatment of a developmentally immature juvenile at the Vienna-Josefstadt prison, he said that a task force set up by the Ministry of Justice to investigate the case had made a number of recommendations. They included improved training and vocational opportunities for

young people, the appointment of more social educators and the implementation of alternatives to pretrial detention.

23. In 2015 thus far, 27 individuals had died in custody, 19 from natural causes and 8 by suicide. The number of deaths by suicide had fallen in recent years thanks to the implementation of a range of preventive measures that had been developed on the basis of a detailed analysis of suicides occurring in detention facilities. The measures included training for prison staff on recognizing suicide warning signs and symptoms, the development of an effective screening instrument which enabled prisoners to be allocated to cells in accordance with a three-stage risk assessment and the introduction of a listening model for use with particularly vulnerable first-time prisoners.

24. The Criminal Code provided for a small number of situations where prisoners could be placed in some form of solitary confinement. For example, individuals who posed a particular danger to themselves or others could be moved to high-security cells or otherwise separated from fellow prisoners, while house arrest with restrictions on visits and telephone calls could be ordered in exceptional circumstances.

25. **Mr. Ruscher** (Austria) said that, at any given time, some 20 to 30 persons were held in detention pending deportation and that the average period of detention was 11 days. Detainees were held at two special facilities in Vienna where, thanks to an “open-door” system that was in operation on weekdays from 8 a.m. to 9 p.m., detainees were able to enjoy freedom of movement.

26. Regarding the use of audio and video recording of interrogations, a pilot project had been introduced in Styria and would be assessed following its completion in March 2016. The outcome of that assessment would determine any future action in that area. No statistics were available on the number of interrogations that were conducted immediately after arrest in the absence of defence counsel; however, it was in the interest of the authorities to begin the interrogation of suspects only when their lawyer was present.

27. Regarding reparation for victims of torture, in criminal cases where State officials were convicted of acts of torture the courts were required to ensure that the victims initiated administrative liability proceedings in order to be guaranteed compensation from the State. Financial compensation had been awarded in three cases from 2011 to 2014; two proceedings were currently pending. No disaggregated statistics were available on torture.

28. With respect to diversity in the police force, while applicants could not be selected on the basis of their ethnic background, their knowledge of, for example, certain languages was a consideration that could be taken into account. Women accounted for 15 per cent of all police officers and 18 per cent of those in supervisory positions.

29. **The Chair** (Country Rapporteur) welcomed the fact that health-care services were provided to everyone in Austria, including migrants in an irregular situation. The penalties and statute of limitations set out in Austrian law with respect to torture were not in line with the Committee’s jurisprudence and merited further reflection. He wished to know more about the settlement procedure followed in the 10 cases of torture in which a settlement had been reached. He also requested further information about the regulations governing legal aid. It would be useful to have more information about the cases in which legal aid was not granted.

30. Given that human trafficking might involve acts of torture in some cases, he believed that the Convention could provide a jurisdictional basis for the State party to try or extradite the perpetrators of such offences. He asked whether, in the Austrian

legal system, the State could be found to have civil liability for acts committed by its officials even in the absence of criminal liability.

31. In recent decades, many countries had found it useful to institute quotas based on ethnicity as a way of achieving real equality, and having a mix of different ethnicities represented in the police force was generally viewed as an asset. It was his understanding that, in Vienna, that was achieved by asking police candidates about their immigration status, and he wished to know whether there were plans to expand that practice to other parts of the country.

32. He asked whether the instruction prohibiting the use of net beds was legally binding. He also asked whether any instructions had been issued to medical professionals regarding the genital mutilation of intersex children. He requested further information about the suspended case of torture involving a teacher and a student. He asked what was meant by the reference to juvenile justice cases in which detention was not deemed necessary. He welcomed the use of video recording, which improved transparency and could also serve to protect police officers. Lastly, he wished to know more about the payment of compensation in cases of torture and whether the amount paid was standardized.

33. **Mr. Gaye** (Country Rapporteur) said that, while he understood that the internal order on the use of net beds offered a more flexible way of addressing the issue than the adoption of legislation, he was concerned that the order could also be overturned more easily than a law. He remained concerned that so few complaints of torture and ill-treatment had led to convictions. While in principle he agreed that the judiciary must be allowed to carry out its work independently, the situation was not necessarily that simple.

34. He welcomed the information provided about the role of the public prosecutor's office in defamation proceedings. He wished to know the outcome of the 2014 evaluation of the training provided to staff of the penal service system. He reiterated his concerns about persons suffering from mental illnesses being detained in prisons rather than psychiatric hospitals, and he asked the delegation to comment on that situation.

35. Noting the alternative measures to imprisonment described in the State party's report, he asked what effect those measures had had on the overcrowding in prison facilities, particularly in the Josefstadt prison in Vienna. The Committee remained concerned about the use of tasers, which had resulted in death in certain cases. He would welcome the delegation's comments on that issue.

36. He asked whether there had been any cases in which investigations into accusations of ill-treatment committed by the security police and employees of the penal service system had been carried out by the courts rather than the prosecution service and the police force, pursuant to the internal instruction of 6 November 2009.

37. **Ms. Belmir** said that, given the decision-making powers granted to the police in matters of immigration, mechanisms were needed to ensure judicial oversight and enable individuals to appeal police decisions taken concerning them. Information on any such mechanisms would be most welcome. Tasers were dangerous and potentially deadly weapons, and the State party should give consideration to that fact.

38. **Mr. Modvig** reiterated the Committee's request for the State party to respond to the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, particularly those on ensuring medical confidentiality, thoroughly reviewing the health-care services provided in detention centres, and conducting initial medical screenings of prisoners. The

delegation should clarify whether full medical examinations were conducted by a doctor and whether prison guards were still involved in such screenings.

39. **Mr. Bruni** requested further information on the recruitment of new prison staff to alleviate the shortage of personnel. New recruits should not be employees of private security companies but State officers who had undergone proper training. He asked what had been done to address the fact that, because prison workshops were often closed due to a lack of personnel, prisoners were left confined in their cells without the possibility to engage in productive activities.

40. **Mr. Domah** said that the Committee would welcome any statistical information available on the training given to judges with regard to torture. Of the 935 investigative proceedings initiated due to complaints against the judiciary lodged with the Austrian Ombudsman Board, he wished to know how many involved complaints of torture and how many had led to redress for the victims.

41. **Mr. Ruscher** (Austria), replying to several earlier questions, said that the State was responsible for injury caused by public officials in the performance of their duties. The pilot phase of “Vienna Needs You” had been positive and the project had been expanded nationwide. Tasers had been tested for six years before being issued to special police units. The use of the 200 tasers in circulation was stringently regulated, those in police detention centres were kept locked and were taken out only in cases of emergency, and all authorized personnel were required to ascertain whether a less dangerous method was appropriate before discharging their taser.

42. In 2011, there had been two cases of ill-treatment in which the victims had been awarded compensation and in 2012 the Federal Ministry of the Interior had issued a public apology to one victim who had also received a six-figure award. There had been no cases in 2013 or 2014, and both proceedings initiated in 2015 were ongoing. State entities were under constant monitoring by the courts and any person could bring an action against public officials free of charge. There had been no deaths in centres for persons awaiting deportation, and asylum procedures were subject to the oversight of the Ombudsman Board, in addition to scrutiny by the media and NGOs.

43. **Ms. Pfleger** (Austria) said that an independent civilian body had been set up on 1 January 2014 to deal with all issues relating to migrants, including asylum seekers and persons in an irregular situation. Its decisions took into account the principle of non-refoulement and the right to a family life and could be challenged. Persons involved in proceedings before the body were assigned free legal counsel. The federal administrative court had taken over the remit of the asylum court, its decisions were appealable and counsel was also provided for the oral hearings. The police had no authority whatsoever over asylum procedures.

44. **Mr. Tichy** (Austria), referring to a question about the lack of data disaggregated by ethnic origin, said that the minorities did not appreciate being counted. Past attempts to do so had been unsuccessful.

45. **Mr. Fruhmann** (Austria), replying to earlier questions, said that a university human rights institute in Vienna had undertaken an assessment of the basic training of prison guards in 2014; findings were pending the completion of the assessment. The case of the 74-year-old man who had suffered a severe foot injury while incarcerated at Stein prison had led to the establishment of an interdisciplinary group on the issue of the detention of mentally challenged persons in prisons. It had recommended that offenders who could not be held responsible for their actions should be detained in psychiatric facilities for a minimum of 3 years. The 5-year maximum should be extended only if a person was deemed at high risk of reoffending. As a result of the group’s report, a feasibility study had been undertaken on the release of such persons into the care of their family, current facilities were being improved, and mentally ill

persons held in preventive detention centres would be moved to separate, open facilities that would be fully staffed.

46. Regarding the Josefstadt prison, the juvenile wing was being reorganized and night services reinforced, and work to overhaul the facility, including the medical unit, would be completed by 2020. Prison guards attended medical examinations only in the case of violent inmates or at the request of the doctor. All offenders underwent a comprehensive medical and psychological examination upon admission to prison and, where necessary, were referred to specialists for further checks. Officials of the Ministry of Defence who were transferred to the Ministry of Justice received specific training to prepare them for their new functions. The staffing changes had helped lessen the workload of the Ministry of Justice and, of the 130 additional posts opened, 30 were for specialists such as psychologists and social workers.

47. **Ms. Klein** (Austria), replying to a series of questions, said that all injuries sustained by detained persons, however minor, were documented, which was why the number of cases of alleged police brutality was much higher than the number of cases that went to trial and led to convictions. The use of pepper spray was regulated and required prior notification. The only case of a person's eyesight being damaged by pepper spray had been reported to the State prosecutor despite the fact that no complaint had been lodged. In an effort to encourage the population to file complaints, a decree had been adopted in 2009, clearly prohibiting any intimidation against complainants. The argument that a complainant might be sued for defamation was moot given that, in order to convict on a defamation charge, the prosecution had to prove intent, which was very difficult to achieve. The courts could initiate investigations into police misconduct only when accusations were made against high-ranking officials. Regarding jurisdiction in cases of human trafficking, she said that, if a suspect was not extradited to a requesting country, the Austrian authorities launched legal proceedings, regardless of the nationality of the alleged traffickers and victims. Free legal aid was available during criminal trials and, while statistics did not show why 10 per cent of applications were denied, in principle anyone could apply for legal aid.

48. **Mr. Tichy** (Austria), correcting an earlier statement, said that the open-door system operated seven days a week, not only on weekdays.

49. **Mr. Aigner** (Austria), referring to a question on net beds, said that it was a much longer process to amend a law than to repeal an internal regulation and that legislation often lagged behind medical advances in the treatment of patients. In 2013, an expert group on juveniles had issued a statement that sex reassignment surgery should be postponed as long as possible until the person concerned was capable of making a decision regarding gender identity. Doctors in Austria, like in many other countries, had a degree of discretion in that domain.

50. **Mr. Tichy** (Austria), recalling that measures to abolish torture had been in force in Austria for 200 years, thanked the Committee members for their interest and incisive questions.

51. **The Chair** thanked the delegation of the State party for its detailed answers.

The meeting rose at 6 p.m.