Human Rights Committee
115th session

Summary record of the 3206th (Chamber A) meeting
Held at the Palais Wilson, Geneva, on Tuesday, 20 October 2015, at 3 p.m.

Chairperson: Mr. Vardzelashvili (Vice-Chairperson)

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Fifth periodic report of Austria
In the absence of Mr. Salvioli, Mr. Vardzelashvili, Vice-Chairperson, took the Chair.

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

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Fifth periodic report of Austria (CCPR/C/AUT/5; CCPR/C/AUT/Q/5 and Add.1)

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

2. Ms. Ohms (Austria) said that the biggest human rights challenge facing Austria at present was the extremely high, and increasing, number of asylum seekers, refugees and migrants both passing through and settling in the country. On average, 6,000 persons currently arrived in Austria every day, 400 of whom applied for asylum. Asylum applications filed from 1 January to 30 September 2015 totalled 85,000, compared with 28,000 for the entire year 2014. With the help of aid organizations and civil society, the Government was endeavouring, despite the strains placed on its infrastructure, to assist all the migrants arriving in the country including those who required special assistance. Such assistance included the organization of accommodation and a procedure to clarify their legal status in a timely manner. The high numbers of unaccompanied minors arriving posed a particular problem. The State was able to provide basic supplies for approximately two-thirds of them, but it also tried to bring them into a child-friendly environment and to enable them to attend school regardless of their legal status. Refugees over 17 years of age were able to work with NGOs, improving their professional skills while gaining familiarity with Austrian life.

3. Among the steps taken to protect women’s rights and promote gender equality of late, she cited the adoption of an action plan against violence against women and amendments to the Criminal Code to prohibit forced marriage and the violation of sexual self-determination. Gender mainstreaming and gender budgeting had proved to be powerful instruments for evaluating the impact of laws and policies. The gender-specific objectives for 2015 included improved protection of women against violence and a higher proportion of women on the boards of State-affiliated companies. The right to a month’s paid paternity leave had been extended to same-sex couples and registered partnerships.

4. Persons with disabilities who required care received financial assistance that could be spent according to their individual needs. The employment of persons with disabilities was promoted through a range of measures, such as funding for the adaptation of workplaces and assistance in obtaining qualifications.

5. A simplified two-stage administrative system had been introduced to help individuals exercise their human rights; claims were lodged with an administrative body and then referred to administrative courts, whose judges held the same powers as those in ordinary courts, thus expediting proceedings.

6. Ms. Seibert-Fohr, noting that the International Covenant on Civil and Political Rights was not directly applicable in Austria, said that references in domestic legislation to the European Convention on Human Rights alone were insufficient; the Covenant was more comprehensive. She asked how the State party ensured that the rights enshrined in the Covenant were duly taken into account in the application of domestic law. Did judges have the competence to refer to the Covenant, even if it was not invoked by the parties to cases before them? She would welcome examples of specific cases in which the courts had referred to the Covenant and where it had had a practical impact. Referring to paragraph 7 of the replies to the list of issues
(CCPR/C/AUT/Q/5/Add.1), she asked why redress of human rights violations cited by the Committee in its Views was made on an ex gratia basis, in potential violation of article 2, paragraph 3, of the Covenant.

7. Turning to concerns surrounding the mandate and independence of the Austrian Ombudsman Board, she asked what steps had been taken to ensure that it received a status accreditation and why candidates for membership of the Board were nominated by political parties.

8. In relation to the ill-treatment of detainees, she expressed surprise that the prison guard involved in an incident in the Suben prison had been offered the possibility of a settlement; was such a sanction proportional to the abuse committed? She invited the delegation to comment on general concerns about lenient sentences for ill-treatment by law enforcement officials and asked whether there was an independent mechanism to investigate such ill-treatment? She requested disaggregated statistical data on torture and ill-treatment in prisons and asked whether the State party’s repeated failure to provide those statistics in the past owed to a lack of an effective system to gather such information.

9. The Committee had been informed of the need for more health-care staff and for continuous psychiatric care in Austrian prisons. She asked whether there was an efficient system that provided 24-hour professional nursing care in all places of detention and invited the delegation to comment on shortcomings in the treatment of persons with mental disabilities in correctional institutions. She wished to know what steps had been taken to respond to the serious concerns of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment regarding the detention of foreign nationals and remand prisoners. Lastly, in the light of cases of “voluntary” psychiatric patients at the Sigmund Freud Hospital who were, in fact, prevented from leaving the hospital, she asked how de facto involuntary deprivation of liberty without the necessary legal safeguards was prevented.

10. Mr. Seetulsingh said that the Committee was concerned that legislation on discrimination on grounds of disability remained fragmented, despite the recommendations of the Committee and other international bodies that it should be harmonized. He requested more information on the obstacles to such harmonization and on the progress made in drafting relevant guidelines. He would also welcome information on the effectiveness of the Anti-Discrimination and Intolerance Hotline.

11. Ms. Jelić said that she would like to know what progress had been made towards achieving its main goals by the newly opened Extremism Information and Advice Centre. She would be especially grateful for any indicators, qualitative or quantitative, of the results of efforts to raise awareness among prison staff of radicalization and recruitment by extremists in prisons. It would also be interesting to know which of the many initiatives to combat radicalization that the State party had listed in its replies to the list of issues had had the most successful measurable outcomes. In connection with combating anti-Semitism and xenophobia, she wondered whether Criminal Law Amendment Act 2015, which was to enter into force by 1 January 2016, would address advocacy of hatred on the Internet.

12. What was being done to combat workplace discrimination on the basis of ethnic origin? The appointment of integration commissioners at the Austrian Embassies in Turkey and Serbia was a welcome development, but she wished to know what specific steps had been taken to help bolster immigrants’ sense of self-worth, thus empowering them to preserve their identities. She also wished to know when the National Action Plan on Human Rights would be implemented and whether its development had involved consultations with civil society and the groups most vulnerable to discrimination.
13. It was her understanding that family reunification was possible only for the members of immigrants’ nuclear families. She therefore wondered whether there were any plans to allow beneficiaries of international protection living in the State party to benefit from a more flexible interpretation of the relevant rules and whether the State party cooperated with the Office of the United Nations High Commissioner for Refugees in that respect.

14. She asked how recent amendments to criminal law had affected the disproportionately high share of foreign nationals in detention in Austria and requested a comment from the delegation on that disproportionality. She wished to know whether senior police officers had the opportunity to attend modules on basic rights similar to those offered to prospective officers during their training and whether such training heightened the sensitivity of officials to gender issues. It appeared, for example, that female asylum seekers were not entitled to have their asylum interviews with female officials and interpreters.

15. It would be interesting to know how many complaints had been processed under the new regulations on the handling of complaints against the police. Information on any plans to strengthen the independent system of investigating allegations of police misconduct would also be welcome, as would an indication of the effectiveness with which the Austrian Ombudsman Board addressed such misconduct.

16. She would appreciate information, including any relevant statistics, on court cases involving discrimination in access to public places. What steps had been taken to strengthen the capacity of the State party’s institutions to combat discrimination, especially against Africans, Latin Americans and the Roma; to implement court decisions on bilingual signs in Carinthia and the use of Slovenian by local authorities; and to ensure that representatives of national minorities were consulted on any proposed amendments to legislation affecting their rights. Lastly, she asked what programmes had been developed to promote the participation of national minorities, especially the Roma, in all spheres of public life.

17. Mr. Muhumuza said that he had read reports that since early September 2015, some 250,000 refugees and migrants had arrived in Austria from Hungary and Slovenia. The latest figures provided by the State party, however, referred to the presence of some 41,000 asylum seekers in its territory — a large discrepancy.

18. Mr. Iwasawa pointed out that by attaching to its ratification of the Covenant what was referred to as an “Erfüllungsvorbehalt”, a reservation that prevented the direct application of the Covenant in the domestic legal order, the Austrian Parliament had deprived the Austrian courts of the opportunity to develop a body of case law interpreting the Covenant.

19. Ms. Cleveland asked whether federal states other than Vienna had adopted quotas for the representation of women in their civil services and if not, whether they were planning to do so. She would likewise welcome information on whether any steps had been taken to increase female participation in the lower house of the Austrian Parliament and in the legislative bodies of the Austrian states.

20. Referring to paragraphs 79 to 81 of the replies to the list of issues, she said that the decree banning the use of net beds and other cage-type beds was a welcome development. She nonetheless wished to know whether the ban applied to all facilities, whether it had been fully implemented, whether other kinds of physical restraints were used and, if so, what regulations, training and oversight applied in respect of such restraints. She would welcome information on the action the authorities had taken to implement the recommendations made by the Committee on the Rights of Persons with Disabilities to the effect that the State party should abolish the use of restraints and other non-consensual practices.
The meeting was suspended at 4 p.m. and resumed at 4.25 p.m.

21. Ms. Ohms (Austria) said that that many international instruments, not only the Covenant, could not be applied directly in the Austrian legal system. Although the rights enshrined in the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union were not identical to those in the Covenant, they overlapped to a large extent, and people were thus afforded an equivalent degree of protection. Although the European Convention on Human Rights did not have an article equivalent to article 26 of the Covenant, the country’s anti-discrimination legislation was comprehensive and highly effective.

22. The authorities responded to the Committee’s Views on individual communications on a case-by-case basis. Discussions were held on how to prevent the type of violations involved and what remedy to offer the complainant. If a settlement could not be reached, the complainant was free to turn to the Austrian Ombudsman.

23. The parliamentary procedure for selecting the members of the Ombudsman Board was entirely consistent with democratic principles. She apologized for her inability to grasp the Committee’s objection to that procedure. The Board, with its expanded mandate, was well placed to persuade the authorities to address administrative failings. Its annual reports to Parliament ensured its public visibility.

24. Mr. Fruhmann (Austria) said that the abuse of a Suben Prison inmate by a prison guard was regrettable. Independent investigations of such cases of misconduct were handled by prosecutors, and penalties were imposed by the courts. The Ministry of Justice also instituted disciplinary proceedings.

25. Over the past seven years, a total of 78 disciplinary proceedings had been initiated against law enforcement officials. Of those, 22 had not resulted in any sanctions, 46 had resulted in fines and 19 had been suspended. One case in 2011 had led to the dismissal of the official in question. It was true that there was a shortage of prison staff, and personnel from the Federal Ministry of Defence and Sports were called on to fill those gaps.

26. There were two prisons in the country where 24-hour medical services were provided to prisoners. In all other detention centres, local doctors in the community remained on call throughout the night and could respond within 30 minutes to any emergency.

27. A task force had been established in early 2015 to raise awareness among law enforcement officials about the problem of radicalization. The results of its efforts had not yet been evaluated.

28. Mr. Ruscher (Austria) said that, while hundreds of claims of ill-treatment had been filed against State officials from 2011 to 2014, only six cases had been prosecuted during that period, and only three of the accused officials had been found guilty. No disaggregated data was available on the alleged victims in those cases.

29. Dealing with claims of ill-treatment was a high priority for the Ministry of the Interior, and all signs of ill-treatment were reported to the public prosecutor’s office. A decree had been issued by the Ministry in 2009 establishing procedures for handling such allegations, and efforts were currently under way to amend the decree to distinguish between two types of misconduct: the use of violence when it was unnecessary and the use of excessive violence when some level of violence was necessary. The new regulations would call for more extensive documentation, including by a professional photographer. They were being developed in cooperation with the Ministry of Justice and in consultation with civil society.
30. The Federal Bureau of Anti-Corruption was part of the Ministry of the Interior but was separate from the police force. It was an independent body and took action ex officio whenever it was informed of a case of alleged misconduct by police officers. A new directive had been issued in August 2014 on the handling of complaints of ill-treatment. All police stations were required to receive and deal with such complaints, and written complaints must be answered in writing. Complaints could be brought before a federal administrative court and before the Constitutional Court in last instance.

31. The Ministry of the Interior was taking various operational, strategic and preventive measures to combat racist and xenophobic conduct — for example, visits to school classrooms to talk with students about the trend toward radicalization.

32. Ms. Pampalk (Austria) said that an external institution was to be tasked with evaluating claims of ill-treatment at the hands of police officers to determine why there were so many complaints and so few convictions. A new article in the Criminal Code prohibited incitement to hatred and violence and provided for the prosecution of hate speech, regardless of the medium by which it was disseminated. That included racist content posted on the Internet, provided that it was accessible to at least 30 people. Investigations into hate speech posted on Facebook were currently under way. Reduced penalties for property offences were to be introduced and were bound to have an effect on the number of non-citizens in detention, including pretrial detention, but they would not come into effect until 2016.

33. Mr. Kienl (Austria) said that since the adoption of the National Action Plan on Integration in 2010, hundreds of projects had been carried out to raise awareness, and public attitudes had shifted considerably. In the past two years, welcome centres had been established throughout the country, where migrants and refugees could seek help in making their first steps towards integration. German language classes were increasingly being offered in communities throughout the country, and funding had been increased for early language support in kindergartens. A law was currently being drafted on the recognition of qualifications obtained abroad.

34. The Extremism Information and Advice Centre had been established in early December 2014, and as of August 2015 its hotline had received about 400 calls, including from teachers requesting preventive workshops as well as concerned individuals who saw signs of radicalization in their friends or family members.

35. Ms. Fehringer (Austria) said that further progress was still needed to ensure equal substantive and procedural protection against all prohibited grounds of discrimination. For example, the protection in place regarding access to goods and services covered only discrimination on the grounds of gender and ethnic origin, not on the grounds of age, sexual orientation or religion.

36. The Government was aware of the gap between law and practice in respect of protection against discrimination on the grounds of ethnic origin and had launched a number of awareness-raising and information campaigns. The Government provided funding to a number of NGOs for the purpose of conducting additional awareness-raising activities. The Ombuds-Office for Equal Treatment, while subject to certain legal constraints, functioned effectively and could take part as a third party in legal proceedings relating to cases of discrimination. Ethnic origin was the most common ground of discrimination invoked in complaints filed with the Equal Treatment Commission, which showed that some awareness-raising efforts were working. The empowerment of migrants was one of the main goals of the Public Employment Service, which offered services such as skills training, mentoring and language classes, especially for young people ready to enter the labour market for the first time.
37. Asylum seekers were eligible for employment permits for seasonal work, which covered a broad range of jobs in the tourism, forestry and agricultural sectors. They were given preferential treatment over other third-country nationals and were also eligible for apprenticeships in certain fields.

38. She did not have updated statistical data on the number of complaints filed regarding denial of access to public places.

39. The Government, in cooperation with the European Social Fund, had recently launched a new project aimed at improving the access of the Roma community to the labour market. For many years, it had also been working closely with an NGO specializing in the empowerment and inclusion of the Roma community.

40. Ms. Niavarani (Austria) said that the Government strongly supported the proposal for a European Union Directive on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures. A quota system had been in place in the public service since 1993. Public service employers were required to give equally qualified female candidates preference over their male counterparts until gender parity was achieved in the service category concerned. A similar quota system was also in place in many of the provinces. A quota system had also been introduced in State-owned companies with a view to raising the representation of women on boards of directors to 35 per cent by 2018. The Government had taken a number of measures to increase the number of women in decision-making positions and to combat gender stereotypes, including training programmes for female political candidates and initiatives to increase the involvement of fathers in childcare.

41. Ms. Ohms (Austria) said that, in 2012, the law had been amended to prohibit and criminalize discrimination in access to public places or services on the grounds of race, national or ethnic origin, religion or disability. A set of policy measures aimed at promoting integration and reducing the marginalization of the Roma community had been introduced in 2012. A national focal point for the Roma community had also been appointed in order to facilitate dialogue between representatives of the Roma community and the administrative authorities on the implementation of the aforementioned policy measures.

42. Mr. Dreveny (Austria) said that Austria was under strong migratory pressure as a result of the current refugee crisis, as it was both a transit and destination country. The Government was working with civil society organizations to prepare for the large influx of new migrants that it was expecting to receive. When collecting data, the Government distinguished between migrants who had claimed asylum in the country and who were entitled to basic welfare support and migrants who were merely transiting through Austria on their way to another European country. In 2014, around 28,000 asylum applications had been received whereas, in 2015, more than 80,000 applications had already been received. Approximately 58,000 people were currently benefiting from basic welfare support. It was estimated that around 300,000 people were now transiting through Austria on their way to other European countries. Those migrants were housed in separate reception centres and were cared for primarily by the Austrian Red Cross.

43. Under the Asylum Act, persons who had been granted international protection were entitled to bring members of their immediate family to Austria. In 2015, around 5,000 applications for family reunification had been received. Beneficiaries of international protection who wished to bring more distant relatives to Austria had to apply through different channels. A humanitarian admission programme for Syrian refugees had been launched in 2013. Under the programme, the relatives of refugees
who had been unable to come to Austria because they were not of the immediate family could submit a request for family reunification.

44. Victims of sexual violence were guaranteed an interpreter or interviewer of the same gender upon request. However, given the large number of asylum applications received, such a request could not always be granted for victims of other types of abuse. In reception centres, single female asylum seekers were housed separately from males. Officials working in asylum and migration matters received training on gender issues. International protection could be granted on a case-by-case basis to persons claiming gender-based persecution.

45. Mr. Satzinger (Austria) said that, a few weeks previously, the Government had requested the assistance of the Austrian Armed Forces in dealing with the influx of migrants into the national territory. The Armed Forces had supported the national police in guarding the country’s borders and had aided the Austrian Red Cross and NGOs in providing medical care and other assistance to newly arrived migrants.

46. Mr. Ruhs (Austria) said that the Constitution provided for universal access to school for all children residing in the national territory, regardless of their nationality. Refugee children could therefore attend school, irrespective of their legal status or the length of their stay in Austria. School attendance was compulsory for all children aged 6 to 15. Children over the age of 15 were also entitled to continue their education. In Austria, children could attend public schools free of charge and received free books and transport. Attending school could help to restore a sense of normalcy in the lives of refugee children and allow them to become acquainted with Austrian culture.

47. The Government had taken a number of steps to improve the quality of German language teaching for migrants. During their first and second years in Austria, migrants who spoke no German received 11 hours of teaching per week. Mother-tongue instruction was offered in some 25 languages: approximately 30,000 persons were currently receiving it, the cost being borne by the State. The Ministry of Education had recently launched a digital application for language learning. In view of the large influx of migrants, the Government had deployed mobile intercultural teams comprising teachers, psychologists and social workers who were proficient in the language spoken by a certain group of migrants and who possessed cultural knowledge about their country of origin to facilitate their arrival and integration. As to teacher training, a number of seminars had been held to instruct teachers about the approach they should take to refugee children in the classroom, particularly those having lived through traumatic experiences. Refugee children also received a welcome pack and free dictionaries.

48. Ms. Seibert-Fohr, while taking note of the State party’s assurances that, although the Covenant was not directly applicable in the national territory, the rights enshrined therein were afforded the same level of protection by Austrian domestic law, said that the Covenant could not be substituted by or subsumed under any piece of domestic legislation. Recalling the primacy of the Covenant over all domestic legislation in the State party, she requested further clarification on the status of the Covenant in the domestic legal order.

49. Ms. Jelić questioned whether the new constitutional law on children’s rights could bring about positive change in the asylum procedure for children if one of its articles allowed the principle of the best interests of the child to be restricted under certain circumstances. She asked about the State party’s efforts to raise awareness of the need to apply the principle of the best interests of the child in the context of the asylum procedure. Lastly, she enquired as to the Government’s policy in respect of granting Austrian nationality to children who would otherwise be stateless.
50. **Ms. Ohms** (Austria) said that the measures taken under the national human rights plan were intended to give effect to the provisions of the Covenant. The Government worked closely with civil society in implementing the plan and always took the concluding observations of the human rights treaty bodies into account when doing so.

_The meeting rose at 6 p.m._