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Committee on the Elimination of Racial Discrimination
Eighty-first session
6-31 August 2012**Consideration of reports submitted by States parties under article 9 of the convention****Concluding observations of the Committee on the Elimination of Racial Discrimination****Austria**

1. The Committee considered the eighteenth to twentieth periodic reports of Austria (CERD/C/AUT/18-20), submitted in one document, at its 2189th and 2190th meetings (CERD/C/SR.2189 and CERD/C/SR.2190), held on 22 and 23 August 2012. At its 2200th meeting (CERD/C/SR.2200), held on 30 August 2012, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the timely submission by the State party of its eighteenth to twentieth periodic reports drafted in accordance with the Committee's guidelines for the preparation of reports. The Committee also welcomes the open dialogue with the delegation of the State party as well as its efforts to provide comprehensive responses and supplementary replies to issues raised by Committee members during the dialogue.

B. Positive aspects

3. The Committee notes with appreciation the various legislative and policy developments which have taken place in the State party since its last report to combat racial discrimination, including:

(a) The amendment to the Employment of Foreigners Act in 2011 which repeals section 8(2) that provided that foreign employees would be dismissed first from employment in the event of a redundancy;

(b) The amendments to the Equal Treatment Act and the Federal Act on the Equal Treatment Commission in 2008 which raise the amount of damages that can be claimed for human rights violations and the increase in the limitation period of cases of harassment from 6 months to 1 year;

(c) The adoption of a National Action Plan for Integration and the establishment of an Integration Advisory Committee in 2010;

(d) Various programmes, strategies and other initiatives aimed at raising the awareness of the population with regard to racial discrimination, integration, tolerance and multiculturalism; and

(e) The arrangement adopted on the issue of bilingual signage in German and Slovenian in Carinthia.

C. Concerns and Recommendations

Statistical data on the composition of the population

4. The Committee recalls its previous recommendation (CERD/C/AUT/CO/17, para. 9) and remains concerned at the absence in the State party's report of comprehensive statistical data on the ethnic composition of its population (art. 2).

In accordance with paragraphs 10 to 12 of its revised reporting guidelines (CERD/C/2007/1), the Committee reiterates its previous recommendations (CERD/C/AUT/CO/17, para. 9) that the State party collect disaggregated data, including on the basis of the use of mother tongues, languages commonly spoken or other indicators of ethnic diversity. The Committee furthermore recommends that such data collection activities, and other information derived from targeted surveys be conducted on a voluntary basis, with due respect for the privacy and anonymity of the individuals concerned, and should endeavour to obtain accurate information on all ethnic groups living in the territory of the State party.

Applicability of ICERD under domestic law

5. While taking note that the European Convention for the Protection of Human Rights and Fundamental Freedoms has the status of constitutional law in the State party and that it is directly applicable in domestic courts, as well as bearing in mind that the Federal Constitutional Law of 1973 on the implementation of the Convention has not incorporated the Convention in its entirety into the Austrian domestic legal order, the Committee is concerned at the lack of examples of cases of racial discrimination where the provisions of the Convention have been applied by domestic courts (arts. 2 and 6).

The State party should take all necessary measures to ensure that judges, prosecutors and lawyers have knowledge of the provisions of the Convention to enable them to apply the Convention in relevant cases. It

urges the State party to include in its next periodic report specific examples of the application of the Convention by domestic courts and access by individuals to remedies provided for in legislation on violations of rights contained in the Convention.

6. The Committee is concerned that different provisions on the prohibition of racial discrimination are dispersed in many laws, which do not seem to ensure the necessary coherence and consistency (art. 2).

The Committee recommends that the State party harmonise its legislation so as to cover all the provisions of the Convention, taking into account relevant General Recommendations.

7. The Committee notes the constitutional requirement that the *Länder* must implement the obligations of the State party under the Convention. However, it is concerned that the application of this rule is not uniform in the case of the Convention among the *Länder* (art. 2).

The Committee reiterates its recommendation that the State party ensures full compliance with the legal, administrative and policy requirements of the application of the Convention by its federal provinces.

National human rights institution and policy frameworks

8. While welcoming the measures taken by the State party to broaden the mandate of the Austrian Ombudsman Board (AOB) to act as a national human rights institution and as a national preventive mechanism under OP-CAT, the Committee is concerned to note that the manner of the appointment of members of the AOB continues to raise issues regarding their independence. The Committee notes that the AOB has not been accredited with an A status by the International Coordinating Committee (art. 2).

The Committee recommends that the State party should ensure that the appointment of members of the AOB fully complies with the Paris principles as set forth in General Assembly resolution 48/134. The State party should adopt concrete measures to improve the status accorded to the AOB by the International Coordinating Committee under the Paris principles and to allocate the necessary resources in order to provide the means for fulfilling its mandate.

National Action Plan

9. Recalling its General Recommendation 28(2002) on the follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and its General recommendation no. 33 (2009) on follow-up to the Durban Review Conference, the Committee is concerned at the State party's position that it does not intend to adopt a National Action Plan against Racism as required by the Durban Declaration and Programme of Action adopted in September 2001 (art. 2).

The Committee reiterates its previous recommendation (CERD/C/AUT/CO/17 para. 28) and urges the State party to reconsider its decision and to adopt a National Action Plan against Racism in line with the Durban Declaration and Programme of Action. The State party should give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee further urges the State party to include in its next periodic report specific information on measures taken to implement the provisions on racism of the Durban Declaration and Programme of Action.

Incitement to racial hatred and violence

10. While welcoming the intention of the State party to withdraw its reservation to Article 4 and noting the State party's efforts to improve legislation proscribing incitement to racist hatred and violence, following the Committee's previous recommendation (CERD/C/AUT/CO/17 para. 15) such as the amendment to section 283 that repeals the mandatory nature of the requirement that there must be a possible threat to public safety in order to bring cases under this section, the Committee is concerned that the recent amendment to section 283 of the Criminal Code prohibiting some acts of racial hatred and discrimination which are perceivable as such by a "broad public" may have the effect of rendering permissible such acts of racial hatred and discrimination if the requisite number of individuals that needs to perceive the act as constituting an offence under the new provision in the revised law is not met (arts. 2 and 4).

The Committee recommends that the State party revise the scope of section 283 of the Criminal Code to clarify that it effectively proscribes all forms of racial hatred and discrimination as prescribed by article 4 of ICERD.

Right-wing extremism and neo-Nazism

11. While noting the efforts by the State party to improve public awareness on new forms of racism in the State party, the Committee is concerned at the resurgence of skinhead, far right wing and other groups that are inspired by extremist national socialist ideologies and neo-Nazism. The Committee is also concerned at reports of verbal abuse of football players of African descent and the display of anti-Semitic slogans in football stadia (arts. 2 and 4).

The Committee recommends that the State party take effective measures to prohibit incitement to racial hatred in its territory and redouble its efforts to promote tolerance towards persons of different ethnic origins. The Committee further recommends that the State party

should continue to work with sporting associations to eradicate racism in all sporting disciplines.

Political racist speech

12. The Committee regrets the use of inflammatory language by politicians during election campaigns that vilifies and promotes prejudices against persons of minority ethnic origins in the State party (arts. 4 and 5).

The Committee urges the State party to thoroughly investigate and prosecute, where appropriate, the use during election campaigns of statements by politicians that incite racial hatred against persons of minority ethnic origin. In this regard, the State party should take active steps to prevent candidates and organisations from promoting and inciting racial discrimination.

Administration of justice

13. The Committee is concerned at the disproportionately high rates of incarceration of non-citizens which according to the State party are partly attributable to the failure by most of those held in pre-trial detention to satisfy the conditions for conditional release such as the lack of a permanent residence and the risk of flight before criminal proceedings are completed. The Committee is also concerned at reports of racial profiling and the use of stops and searches on persons with ethnicities other than the majority. The Committee is further concerned at the failure by the State party to adequately prosecute and punish law enforcement personnel who commit offences against people with migration backgrounds and fail to provide them equal protection under the law as well as the failure to prosecute many violations of the prohibition of racial discrimination, considering them “petty offences” (arts. 2, 4, 5 and 6).

In the light of its General recommendation no. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee urges the State party to conduct a comprehensive study on the root causes of the overrepresentation of non-citizens in the system of criminal justice and racial profiling. The Committee recommends that the State party:

- a) **Take necessary steps to cease arrests, stops, searches and investigations based on appearance, colour or membership of national and ethnic groups;**
- b) **Investigate and punish cases of racial profiling and ensure that offences committed by law enforcement personnel including allegations of racial profiling are thoroughly investigated and punished with appropriate sanctions;**
- c) **Increase efforts to prosecute and punish all violations of the prohibition of racial discrimination in accordance with Articles 4, 5 and 6 of the Convention; and**

- d) **Intensify the training and sensitization of prosecutors, judges, lawyers, other judicial and police officers in the criminal justice system on the principles of the Convention.**

Direct and indirect discrimination

14. While welcoming reforms to increase the quantum of damages for acts of racial discrimination before the Equal Treatment Commission and other bodies, the Committee regrets the continued use of “foreign quotas” which managers of establishments use to restrict the access of persons with migration backgrounds to public places. The Committee further regrets that notwithstanding the existence of section 87 of the Austrian Industrial Code that empowers authorities to revoke a business licence in instances of gross violation of the prohibition against racial discrimination, this provision has never been applied to any business entity despite a number of allegations in this regard (art. 5).

The Committee reiterates its previous recommendation (CERD/C/AUT/CO/17 para. 21) and urges that the State party redouble its efforts to investigate allegations of arbitrary denial of access to public places by persons of migration background based on their appearance and punish such discrimination with appropriate sanctions.

Racist advertisements

15. The Committee regrets reports of racist advertisements in the media, particularly relating to housing and employment opportunities that require applicants to be “Austrians only”. The Committee is concerned that such advertisements foment existing racial prejudice and stereotypes against certain minority groups (arts. 2 and 5).

The State party should take measures to prevent such racist advertisements through investigation and imposition of appropriate sanctions. The State party should also intensify its awareness raising campaigns with a view to modifying existing prejudices and stereotypes against non-citizens.

Family reunification

16. While noting the recent efforts to abolish the one year waiting period for purposes of family reunification, the Committee is still concerned at reports on the use of quotas for each *Länder* such that once a quota is met, individuals still wait for several years to benefit from the policy on family reunification (arts. 2 and 5).

The State party should abolish the quota requirements for *Länder* so that family reunification is not dependent on the number of acceptable applications in a particular period and for each *Länder*.

Education

17. While noting the State party's efforts to improve accessibility and the quality of education, the Committee is concerned at the high dropout rates in schools among Roma students and children with a migration background. The Committee is also concerned at the over-representation of Roma and non-citizen children in special needs schools. The Committee also notes the absence of measures for the education of Roma children living outside the Burgenland area (art. 5).

The Committee recommends that the State party strengthen its special measures to increase the level of educational attainment of children of migrants in particular by preventing their marginalization and reducing drop-out rates. The Committee requests that the State party provide it with information in its next periodic report on specific measures taken to implement Circular No. 19/2008 issued by the Federal Minister of Education on 5 August 2008 requiring that the lack of proficiency in the language of instruction should not be the criterion for the assignment of students to attend special needs schools. The Committee also requests information about the education of Roma children living outside the Burgenland area.

D. Other recommendations

Ratification of other treaties

18. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct relevance to communities that may be the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and UNESCO Convention against Discrimination in Education.

Amendment to article 8 of the Convention

19. The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee cites General Assembly resolution 61/148, 63/243 and 65/200, in which the Assembly General strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

Dissemination

20. The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

Common Core document

21. Noting that the State Party has submitted its Core Document in 1992, the Committee encourages the State Party to submit an updated Core Document, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3).

Follow-up to concluding observations

22. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 8, 15 and 16 above.

Paragraphs of particular importance

24. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations in paragraphs 4, 5 and 13, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

Preparation of the next periodic report

25. The Committee recommends that the State party submit its 21 to 22 periodic reports in a single document, due on 8 June 2015, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60-80 pages for the common core document (see harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, para. 19).