



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

Distr.: General
17 May 2010

Original: English

Committee against Torture
Forty-fourth session

Summary record (partial)* of the 942nd meeting

Held at the Palais Wilson, Geneva, on Thursday, 6 May 2010, at 10 a.m.

Chairperson: Mr. Grossman

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* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10 a.m.

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

Fourth and fifth periodic reports of Austria (continued) (CAT/C/AUT/4-5; CAT/C/AUT/Q/4-5 and Add.1)

1. *At the invitation of the Chairperson, the members of the delegation of Austria took places at the Committee table.*
2. **The Chairperson** invited the delegation to reply to the questions raised by the Committee at its 940th meeting.
3. **Mr. Tichy** (Austria), referring to the Committee's question about diplomatic assurances, confirmed that where there was a risk that a person to be extradited might be subjected to torture or inhuman or degrading treatment, diplomatic assurances would not be accepted, and had never been accepted, as a means of offsetting the risk.
4. In the case of Mr. Bilasi Ashri, Austria had requested the Egyptian authorities to guarantee, inter alia, that he would be able to receive visits by Austrian officials and that he would enjoy freedom of movement in the event of acquittal. The request had been submitted in the form of diplomatic notes. The experience gained in dealing with the case had helped to clarify Austria's general position since 2006 on diplomatic assurances.
5. In response to the question about extraordinary renditions and secret detention centres, he said his Government had consistently emphasized that the fight against terrorism must be conducted in strict compliance with international human rights and humanitarian law and that such an approach was a prerequisite for its success in the long run. It had participated in the efforts of the Council of Europe to clarify the circumstances pertaining to secret detention and the transport of detainees by air. There had been no negative reference to Austria in the relevant reports. The European Parliament had also stated its conviction that the Austrian authorities had not been involved in any cases of extraordinary rendition. A recent report on secret detention centres (A/HRC/13/42) by four special procedures of the Human Rights Council, including the Special Rapporteur on torture, had referred to Austria's close cooperation with the Council of Europe.
6. The Committee had asked whether the Austrian national action plans against human trafficking also addressed child-trafficking. He confirmed that there was a strong focus on the issues of child-trafficking and child sex tourism. Victims had access to assistance and counselling services provided by the youth welfare institutions. There was a crisis centre in Vienna called *Drehscheibe* (revolving disc) which assisted victims of child-trafficking and unaccompanied foreign minors. All the institutions, together with the competent ministries, were represented in the Task Force on Human Trafficking chaired by the Director-General for Consular Affairs at the Ministry of Foreign Affairs. The Task Force was also actively involved in campaigns against sex tourism organized by the international NGO End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes and actively supported by the cosmetics firm Body Shop. Unaccompanied minors could request asylum and section 69 (a) of the Federal Residence Act provided for special protection of such minors, entitling them to stay in Austria for a six-month period, which could be extended if necessary.
7. He assured the Committee that even under the current difficult budgetary circumstances Austria would continue to contribute to the United Nations Voluntary Fund for Victims of Torture.
8. He regretted that no Austrian NGOs had been present to brief the Committee before its meetings with his delegation. However, the authorities had regular contacts with many

human rights organizations, especially in connection with the forthcoming appearance of Austria before the Human Rights Council for the universal periodic review. NGOs had also engaged actively with the European Committee for the Prevention of Torture and the European Commission against Racism and Intolerance (ECRI) in the context of their visits to Austria in 2009.

9. **Mr. Bogensberger** (Austria) said that his Government's work programme for the legislative period 2008–2013 included the amendment of criminal law with a view to implementing the substantive provisions of the Rome Statute of the International Criminal Court and the incorporation of a definition of torture in the Criminal Code. As the Criminal Code already contained a provision concerning genocide, the amendments stemming from the Rome Statute would largely concern crimes against humanity, war crimes, and possibly aggression in due course. The Government's work programme explicitly referred to the Committee's recommendations regarding the definition of torture. In 2010 the Austrian parliament's human rights committee had endorsed amendment plans and requested the Minister of Justice to submit draft legislation. Both bills were likely to be tabled in 2010. The wording would be based on the provisions of the Convention and the Rome Statute, and the penalties prescribed would reflect the gravity of the offences and signal in unambiguous terms that the underlying behaviour was absolutely prohibited.

10. With regard to racism, racial discrimination, xenophobia and related intolerance, the Government had adopted a bill in April 2010 amending section 283 of the Criminal Code, which prohibited incitement to hostile acts. Parliament would discuss it shortly and hoped to enact the legislation before the summer break. The bill would reflect European Union (EU) Framework Decision No. 2008/913/JI on combating racism and xenophobia and recommendations by ECRI and the United Nations Committee on the Elimination of Racial Discrimination. The amendment would render the legislation less restrictive and cover all acts which incited others to perpetrate hostile acts against groups or individual members of groups on grounds of race, colour, language, religion or belief, nationality, descent, national or ethnic origin, sex, disability, age or sexual orientation. It would also prohibit public incitement to hatred in a manner that violated human dignity. The amendment would thus give full effect to article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.

11. The Government had submitted draft legislation to parliament in April 2010 concerning the prevention of terrorism. The bill constituted a response to obligations stemming, inter alia, from the EU Framework Decision on combating terrorism, the Council of Europe Convention on the Prevention of Terrorism and recommendations of the Financial Action Task Force on Money Laundering. The proposed amendment of Austrian counter-terrorist legislation referred to participation in terrorist training camps, financing of terrorism, public incitement to commit terrorist offences, and recruitment and training for purposes of terrorism. It was a very delicate issue, since the proposal stood on the borderline of fundamental rights and freedoms, such as freedom of expression, assembly or association. The need to strike the correct balance would probably be one of the main issues raised in the parliamentary debate.

12. Austria was actively engaged in discussions concerning two proposed EU directives. One adopted a holistic approach to the problem of trafficking in human beings and the other was aimed at combating sexual abuse and exploitation of children and child pornography.

13. Turning to the question of procedural safeguards, in particular access to legal aid, the right to confer with a lawyer and the prohibition of the use of torture, he said that every detainee must be informed of his or her right to remain silent and to consult defence counsel. Detainees were given oral instructions and an information sheet, which was currently available in about 50 language versions. An attempt had been made to choose understandable wording but readability was not always compatible with the provision of

precise legal information. There was currently an EU project dealing with “letters of rights” for suspects. The European Commission would submit a legislative proposal concerning information about rights and charges in 2010 with a view to ensuring that the same approach was adopted in all member States.

14. With regard to the right of a detainee to have a lawyer present during police interrogation, he said that when suspects were apprehended, they must be informed immediately of their right to inform a defence lawyer of their detention. Contacts with the lawyer were in principle unrestricted. However, restrictions could be imposed in exceptional cases if they were considered necessary to prevent the investigation or the gathering of evidence from being adversely affected by the lawyer’s presence. There was sometimes a just cause for limiting contact with a lawyer, for instance if the defendant was suspected of being a member of a criminal organization, if other members of the organization had not yet been arrested and if the risk of collusion or suppression of evidence could not be prevented even by monitoring contacts with the lawyer. However, a mere presumption of the existence of such risks was not sufficient. There must be specific evidence supporting the assumption that the presence of counsel could interfere with the ongoing investigations. In legal terms, exceptions must always be narrowly and strictly interpreted and the detainee was entitled to raise an objection on the ground of a breach of section 106 of the Code of Criminal Procedure. The exception had been invoked in very few cases. If no lawyer was present, the detainee always had the right to remain silent. The other option was video recording. The Ministry of the Interior was currently evaluating two projects to ensure that such recordings were conducted in a professional manner. Section 166 of the Code of Criminal Procedure prohibited the use of evidence obtained by means of torture.

15. With regard to access to legal aid in the context of police custody, provision had been made since November 2008 for a standby legal counsel. Every criminal investigation department was obliged to inform an apprehended person about the standby legal counselling service. The suspect could communicate by telephone or request a personal consultation with a lawyer. Legal assistance could be provided during the interrogation and the court could appoint a legal aid lawyer. The Austrian Bar Association provided a hotline for the purpose which operated 24 hours a day, seven days a week. The first call and first telephone conversation with a lawyer was free of charge. The internal guidelines of the Bar Association required a lawyer who was requested to come personally to a police facility where a suspect was detained to do so as soon as possible and in any event within three hours. During the period from November 2008 to March 2010, about 600 persons had contacted the service. In 50 cases a personal counselling meeting had taken place. In 115 cases (one fifth of all cases) a defence counsel had been present during the interrogation. There had not been a single case in which the lawyer sent by the standby legal counselling service was denied access to the interrogation.

16. The Austrian authorities were well aware that special protection was required for juveniles in detention. The investigating authorities were required to protect juveniles ex officio. The right of juveniles to have a defence lawyer present during the interrogation was not subject to any restrictions. If they did not request access to a lawyer, a trusted person must be present. The juvenile was to be informed of those rights as soon as possible and at the latest prior to the beginning of the interrogation. He himself had served as a juvenile court judge and knew from personal experience that the safeguards were scrupulously respected. If a parent or legal guardian was not accessible, a representative of one of the youth welfare institutions or the probation service was always called upon to serve as a trusted person.

17. Detention was a last resort for juveniles. As of 1 April 2010, Austria had only 82 juveniles in pretrial detention and 83 juveniles were serving a term of imprisonment, which

represented about 5 per cent of all detainees, although juveniles accounted for up to 20 per cent of all offences.

18. Since the mid-1980s restorative justice procedures were frequently applied in the case of juveniles. There were four main paths: suspension of the case for a probationary period of between one and two years, with or without certain constraints; termination of the case on the basis of a financial transaction; termination of the case on performance of some form of community service; and termination of the case following reconciliation between the victim and the offender. The restorative approach had proved quite effective since it furthered the offender's understanding of the consequences of criminal behaviour and offered support to the victim in the form of material compensation and sometimes even the healing of emotional wounds. Formal penalties were the exception for juveniles, and imprisonment the extreme exception.

19. The 1997 Federal Act on Protection against Domestic Violence had been followed by the 2009 Protection against Violence Act, which had expanded the protective mechanisms. The legislation was based on the principle that victims of violence should be able to stay in their homes and that perpetrators, irrespective of ownership, should leave. The 2009 Act focused on the State's obligation to protect women and children in their homes. When the police issued an expulsion order, the perpetrator was required to stay away for 14 days. Injunctions under civil law extended the period for six months or until divorce or separation proceedings had been completed. All victims of domestic violence were entitled to free psychosocial and legal assistance during criminal proceedings. Victims' right to information, considerate treatment and participation in the proceedings had also been expanded. Shelters in all provinces actively assisted those affected by violence after expulsion orders had been issued by the police. In 2008, some 6,600 persons had received an expulsion order.

20. The two main legislative instruments for combating racism were the National Socialism Prohibition Act and section 283 of the Criminal Code (Incitement to hatred). The former prohibited various activities inspired by National Socialism. In particular, it banned National Socialist or neo-Nazi organizations and incitement to neo-Nazi activity, and also the glorification or praise of National Socialist ideology. It also prohibited public denial, approval or justification of National Socialist crimes, including the Holocaust. It therefore addressed both historical models of Nazi ideology and neo-Nazism. There had been 18 convictions under the Act in 2005 and 32 in 2008. Section 283 of the Criminal Code, which prohibited incitement to hostile acts, was currently being amended in order to broaden the scope of its provisions. The number of convictions under that section was expected to rise as a consequence.

21. His Government strictly enforced its hate crime legislation. The Ministry of Justice had offered high rewards for catching the fugitive Nazi criminals Alois Brunner and Aribert Heim. Sanctions had also been imposed in the political sphere. Susanne Winter, a member of the Austrian Freedom Party, had been convicted on charges of incitement to hatred and degradation of religious symbols.

22. The Government appreciated and valued the efforts of the Simon Wiesenthal Centre to promote remembrance of the Holocaust. However, it was unhappy with unsubstantiated allegations in reports published by the Centre suggesting that Austria had not done enough to pursue former Nazi collaborators and criminals. In fact, between 1945 and 1955 2,000 persons had been convicted, 341 of whom had received long terms of imprisonment and 43 had been sentenced to death. Furthermore, the political will still existed to pursue Nazi criminals.

23. Turning to questions raised on the subject of extradition, he said that an extradition request by a persecuting State was inadmissible under the provisions of section 33 of the

Extradition and Mutual Legal Assistance Act, according to which the request must be reviewed by an independent court, in particular with regard to the existence of obstacles to extradition under international law, notably the European Convention on Human Rights and the United Nations Convention against Torture. Extradition would be declared inadmissible by the competent court if the person to be extradited was at risk of persecution owing to his national origin, race, religion, ethnicity, social status, nationality or political views in the requesting State.

24. The rule on reciprocity applied where there was no agreement with the requesting State. In such a situation, extradition was decided on a case-by-case basis in accordance with the provisions of the Extradition and Mutual Legal Assistance Act and on condition of reciprocity.

25. The Committee had asked how Austria could ensure that a person extradited would not be transferred to a third country where he would be at risk of being subjected to torture. In that situation the principle of “specificity” applied, which meant that an individual could only be prosecuted for those offences which constituted the basis of the extradition request. Such a person could not be prosecuted for other offences or transferred to another country without the prior consent of the Austrian authorities. There had been some instances in which the principle had not been respected with regard to the prosecution of the same offences in the requesting State, but there had been no case of a person being transferred to another country without prior consent.

26. In a number of cases, extradition had been denied because of the danger of torture or ill-treatment in the requesting State. Those cases had included extradition requests from the Russian Federation, Uzbekistan, Belarus, Kazakhstan and Brazil.

27. In reply to the question about “caged beds”, he said that their use had been prohibited within prisons but some still existed in psychiatric institutions. However, they could only be used as a measure of last resort and any decision regarding their use was subject to judicial review. It was very likely that that practice would be abandoned in the near future.

28. A question had been asked about the voluntary nature of training for members of the judiciary. Judges and prosecutors were required by law to participate in training, and indirect incentives also existed, since opportunities for promotion depended on the completion of training programmes.

29. **Ms. Köck** (Austria) said that it was not possible to totally prevent inter-prisoner violence in Austrian prisons. However, the prison authorities took measures to keep the number of cases as low as possible. As there was spare capacity in most prisons, it was generally possible to place particularly violent prisoners on their own in individual cells. In the event of their being accommodated in shared cells, steps were taken to avoid potential problems, for example by keeping prisoners of certain ethnic backgrounds apart from other inmates with whom they were likely to have difficulties. It was also important that prisoners should not remain locked up in cells for long periods. Consequently, efforts were under way to ensure that time spent by prisoners outside their cells was more than the one hour a day provided for by law. A positive trend in the overall level of inter-prisoner violence had been observed, with the number of recorded cases falling from 216 in 2008 to 153 in 2009. No statistics were available on the incidence of sexual violence among prisoners.

30. Prison overcrowding was not a problem. Prisoner numbers had remained constant at around 8,500 and the average prison occupancy rate was below 100 per cent. The detention centres with rates of over 100 per cent were custody institutions, such as Vienna’s Josefstadt prison. Although the occupancy rate was very high in those centres, the average time spent in custody was only two months. In cases of very high levels of overcrowding,

detainees were relocated to other facilities in order to ease pressure. Plans to build a new custody institution in Vienna had had to be postponed for budgetary reasons.

31. She acknowledged that the six deaths of prisoners referred to by the Committee had given rise to some misunderstandings. She would therefore provide detailed replies concerning those cases.

32. The case of a prisoner killed by a train on 5 February 2009 had occurred following an escape and had been an act of suicide. There had been two cases of death from suffocation. The first, which had taken place in Garsten prison, had been the result of a suicide and the second had occurred as a result of vomiting. As to the detainee who had died from a shot to the head, his injuries had been sustained during arrest and he had subsequently died in custody in hospital. The drowning incident in Göllersdorf psychiatric institution concerned an inmate who had died in a bath as a result of a circulation disorder. Lastly, the incident involving a woman prisoner who had fallen out of a window had been an act of suicide by an escapee at her home.

33. Steps had been taken to prevent prison suicide. Prisoners at risk of suicide were not accommodated alone in separate cells. A measure known as the “listener model” was also used, whereby trusted prisoners acted as confidants to prisoners deemed to be suicide risks. All cases of prison deaths were automatically investigated by the public prosecutor. To date, no public officials or detainees had been convicted in relation to those deaths.

34. Following incidents involving the use of tasers in Canada and other countries, the Minister of Justice had suspended their use in prisons in February 2008. The results of a study subsequently commissioned by the Minister showing that the taser was safe had led to its being reintroduced in June 2009. However, no taser had actually been fired since its reintroduction, as the mere threat of its use had been sufficient for preventive purposes. Under Austrian law, a taser could be used only in circumstances that justified the use of a lethal weapon. Extensive training had been provided for law enforcement officials and guns had a built-in video camera to document their use. Amnesty International had praised Austrian regulations in that regard.

35. With regard to the promotion of women within the justice system, it had been decreed that women in general and ethnic-minority women in particular should be given priority in recruitment to the prison service. Women currently accounted for 10 per cent of prison officers overall and 20 per cent of prison staff in higher administrative positions. At Schwarzau women’s prison, many of the officers were women and there was even an on-site kindergarten for officers’ children.

36. **Mr. Ruscher** (Austria) said that the asylum procedure in Austria was carried out in accordance with best practice and rigorous quality standards as recommended by UNHCR. The first-instance authority, the Federal Asylum Office, had an extensive quality-management system, while the second-instance authority, the Asylum Court, was, to the best of his knowledge, the first court of its kind in Europe to have earned ISO 9000 certification. To obtain that certification, the Court had been required to draft, implement and adhere to very precise administrative procedures.

37. The Austrian authorities received a high number of asylum applications from unaccompanied minors. In 2008, they had accounted for 706 out of a total of 12,841 applications. In the same year, pursuant to the Dublin II Regulation, Austria had been found not to be the competent State in 1,264 cases. Handouts with equivalent figures for 2009 and the first quarter of 2010 were available for distribution to the Committee, as well as copies of the guidance information distributed to asylum-seekers upon receipt of their applications. The Austrian authorities produced that information in all United Nations languages, and any other languages for which a need had been indentified.

38. Upon receipt of an asylum application, under the Dublin II Regulation the first step was to determine whether Austria was the State responsible for substantive examination of the case. Where Austria was confirmed as the responsible State, the examination began immediately; otherwise, contact was made with the other Dublin State and, if necessary, a transfer made. While their applications were considered, all asylum-seekers had access to basic assistance, including pocket money, board and lodging. The authorities were especially careful to ensure that they adequately catered for asylum-seekers with special needs, such as wheelchair-users and persons with specific health disorders.

39. He regretted that the delegation was not able to provide the Committee with the requested figures regarding the number of cases in which the Asylum Court had denied applications for suspensive effect, because no statistics of that kind were kept. However, in cases where asylum applications were rejected because Austria was not the competent Dublin State, suspensive effect was permitted only in the brief period during which the applicant awaited removal to the competent State. However, in the case of substantive decisions, Austrian asylum law provided for application of the suspensive effect pending appeal and/or deportation.

40. In borderline cases it might be necessary to precisely establish an applicant's age before issuing or enforcing a substantive decision. Verifying that an applicant was still a minor was often difficult, especially since malnutrition was a recognized cause of delayed maturity. Asylum-seekers of uncertain age therefore underwent a three-part examination, consisting of a clinical examination, followed by X-rays of their hands and teeth. A working group composed of German, Swiss and Austrian forensic medical experts then made an overall assessment on the basis of those three stages, resulting in a very precise determination of age.

41. Asylum-seekers had access to a comprehensive range of services, including health care and psychological counselling if required. Medical examinations were available in accommodation centres, and any asylum-seekers affected by HIV/AIDs, tuberculosis or other conditions were offered appropriate treatment. Applicants claiming to be victims of torture might be required to undergo further examination, including, in the case of allegations of rape or sexual violence, an examination of their sexual organs. In relevant cases a specialist doctor would always be called in. Medical examiners and interpreters assigned to victims of sexual abuse were required by law to be of the same gender, unless otherwise requested by the victims themselves.

42. With regard to the topical issue of custody while awaiting deportation, Austrian asylum law stipulated that applicants must cooperate with the authorities during that period, for example, by attending meetings and furnishing documents when asked to do so. Unfortunately, past experience had shown that custodial measures could become necessary when applicants were not prepared to cooperate. However, the authorities ensured that detainees' rights to due information and care continued to be respected despite the infringement of their liberty. The pre-deportation orders of failed asylum-seekers who left Austria while awaiting deportation remained effective.

43. Lastly, Austrian asylum law provided that an independent legal adviser must be present at all stages of the asylum process where unaccompanied minors were involved, and that legal counselling must be offered to all applicants of full age. Also, with regard to applications passed on to another Dublin State, it was important to note that Austria was a contracting party to the Council of Europe Convention on the Avoidance of Statelessness.

44. **Ms. Sporrer** (Austria), referring to the specific role of constitutional law in Austrian asylum procedure, reiterated the statement in the report that there were three levels of jurisdiction in asylum cases: the Federal Asylum Agency, the Asylum Court and the Constitutional Court, with which appeals could be lodged in cases where the constitutional

rights of asylum-seekers were deemed to have been infringed in the application process. In Austria, foreign nationals were guaranteed equal treatment pursuant to a special Constitutional Act implementing the International Convention on the Elimination of All Forms of Racial Discrimination; asylum-seekers could therefore invoke that particular right as grounds for appeal against a failed application. If the appeal was successful, the Constitutional Court would overturn the wrongful decision and either refer the case back to the lower instances for reconsideration or grant the right to asylum directly. To substantiate their applications, asylum-seekers also had the possibility of invoking any of the rights enshrined in the European Convention on Human Rights and its Protocols — particularly Convention article 8 on the right to respect for family life, given the importance of family considerations in asylum cases — as those instruments also had constitutional rank in Austria.

45. The rights enshrined in the United Nations Convention on the Elimination of All Forms of Discrimination against Women had also been successfully invoked to support asylum applications on gender-specific grounds. Around 15 applications to the Asylum Court had been granted in recent years to women seeking to escape the threat of female genital mutilation (Africa), forced marriage (Iran and Afghanistan), and forced prostitution (Kazakhstan and Serbia). In one particularly interesting recent case, an Afghan woman had been granted asylum on the grounds that, because she lived alone and led a Western-orientated lifestyle, she would be exposed to threats to her physical security and integrity, including rape, and restrictions on her freedom of movement if forced to return, and that the Afghan legal framework did not afford effective protection against such threats and restrictions.

46. In another recent case demonstrating the Constitutional Court's important role in asylum cases, a Cameroonian woman who had allegedly been raped and sexually harassed by law enforcement officials after participating in a trade union demonstration had initially been refused asylum by the Asylum Court. However, on 27 April 2010 the Constitutional Court had overturned that decision, ruling that the Asylum Court had not adequately examined the further threat to which she would be exposed if she returned, and had referred the case back for reconsideration, with clear guidance regarding the rights that must be respected.

47. Lastly, regarding Austria's preparations for ratification of the Optional Protocol to the Convention against Torture, she recalled that it had signed the Protocol in 2003. Following a series of conferences and stakeholder consultations, the current coalition Government had resolved to establish a national preventative mechanism, to mandate the Ombudsman's Board with the monitoring task, and to incorporate the existing Human Rights Advisory Board and its commissions into the new structure. A first legislative draft was expected to be finalized in the coming week, which would then be open to consultation by all stakeholders, including human rights institutions, academia and NGOs. It was hoped that a bill could be presented to parliament before the end of the year.

48. **Mr. Gallegos Chiriboga**, First Country Rapporteur, observed that the time available for consultation with States parties was always very limited, which meant that members of the Committee often had to ask their questions without being able to explain the background or reason for asking. As a first point, he would request that the Committee be kept abreast of new bills, as described by the previous speaker. The important factor was not only the final outcome, but also the parliamentary discussion along the way.

49. One of the major issues he had raised the day before was the need to change perceptions on matters of racism, xenophobia, discrimination and violence. That was not a matter for Governments but for societies: it was a need to bring about a profound change in the mores and values of society, so that people would no longer use those matters to incite violence which could lead to cruel and inhuman treatment, and even torture. For example,

he had sought information about the case of Mike B., an African-American teacher who had been beaten by undercover police officers who had mistaken him for a drug-dealer.

50. His third point concerned statistics. As the delegation was aware, it still needed to work on improving its statistics. For example, the fact that there were no statistics on sexual violence in jails was a serious gap, exemplifying the need for a more rigorous approach to data-gathering. It was important, too, that statistics be disaggregated by sex, race, religion and other factors in order to understand the situation to which they related.

51. He did not feel that he had had an adequate reply to his questions on compensation, and hoped that information would be forthcoming before the Committee began drafting its concluding observations.

52. He hoped, too, for a fuller answer on Austria's efforts to make the police force sexually and ethnically more representative of the Austrian population as a whole.

53. In the light of the Paris Principles, he considered it important that the Ombudsman's Board should be a completely independent mechanism, with full citizen oversight.

54. **The Chairperson**, speaking as Second Country Rapporteur, said he was concerned that there seemed to be an idea in certain parts of the Austrian justice system that lawyers could actually be a hindrance to the administration of justice, rather than an asset. The idea that they might be involved in perverting the course of justice, tampering with evidence and so on was highly troubling and at odds with lawyers' professional duties. Keeping them out of the process of justice, even in limited cases, risked opening the door to abuse of the system. He asked for more information on the types of cases in which the State party restricted the participation of lawyers.

55. Any statistics would be welcome, and in particular figures on cases in which there had been an appeal against restriction of the lawyer's participation.

56. He sought more clarification on the Bakary J. and Cheibani W. cases, in particular about the amounts of compensation paid and whether there was any dispute about the facts of the cases.

57. **Ms. Belmir** said that she was trying to understand what had been said about the use of tasers in the context of prison overcrowding and the issue of deaths in custody. The State party had justified the use of tasers on the grounds that they played both a preventive and self-defence role. But that raised the question of the right to life of the detainees: the use of tasers could be lethal. An officer who used such a weapon could have no knowledge of the state of cardiac health of the target person, and even if there had been no fatalities so far, they were still extremely dangerous and unpredictable weapons. She suggested that the State party might reconsider their use in prisons.

58. **Mr. Mariño Menéndez** said that most of his questions had already been answered comprehensively and well. He wished only to recall that he had asked if the granting of refugee status by another State party to a person, in conformity with the 1951 Convention, was taken into account by Austria in deciding on a request by a third State for the extradition of that person. In other words, did Austrian jurisprudence recognize the pre-existing refugee status and in consequence reject the request for extradition?

59. **Mr. Bruni**, observing that it had been said that two projects relating to the audio or video recording of interrogations were still under evaluation, asked whether it was possible that an interrogation could be held in the absence of the detainee's lawyer and with no recording being made.

60. Referring to the list of 445 allegations of abuse by law enforcement officials in 2009 (written replies, para. 23), he asked for examples of the subjects of the allegations and the penalties imposed.

61. With reference to article 166 of the Code of Criminal Procedure, which guaranteed the prohibition of torture or even psychological pressure to obtain a confession, he asked whether that law had ever been invoked by a detainee.

62. Recalling the detailed information given on the cell allocation programme intended to reduce the number of suicides, he asked whether the State party could genuinely say that there had been an improvement in the suicide situation as a result of the programme.

63. **Ms. Sveaass** said she was pleased to hear that the use of the “cage beds” was being reduced, and hoped that the reduction would be applied in all prisons. Some more information on the independent complaint mechanisms would be useful.

64. She reiterated her request for information on how the consequences of kidnapping cases had been taken into account in both the training and practice of people working in the social services.

65. **Mr. Ruscher** (Austria) said that the Mike B. case resulted from a highly regrettable case of mistaken identity. The undercover officers involved had been convinced that they were arresting a wanted drug-dealer, to whom Mike B. bore a remarkable resemblance; for his part, when apprehended Mike B. had not realized that he was being seized by genuine police officers. The result had been a fistfight leading to injuries. There were no indications of intentional ill-treatment by the police officers. Nevertheless, all documents in the case had been submitted to the Public Prosecutor’s Office and the courts, and proceedings on the grounds of causing bodily harm through negligence were now pending.

66. The case of Bakary J. was also very regrettable: it was a clear case of intentional ill-treatment by four police officers during the deportation proceedings against him. All four officers had been found guilty of offences under article 312 of the Criminal Code. In addition to the judicial process, disciplinary measures were pending, although three of the officers had immediately been dismissed from the police, and the fourth, who had been less closely implicated, had been fined the highest possible amount, namely, five months’ salary.

67. The cases had been appealed, and were currently being examined by the Administrative Tribunal. Bakary J. had been awarded compensation of 3,000 euros within the context of the criminal proceedings; however, that judicial decision was not correct because the officers had been on duty at the time of the offences, and in such an event the Official Liability Act applied to the body to which the offending officers were ultimately subordinate, namely the Republic of Austria. However, although Bakary J. had been advised by a lawyer at all stages of the case, he had not submitted a claim for that Act to be applied against the Republic of Austria.

68. As a consequence of the incident very many training courses on deportation had been redesigned to give better guidance to police officers in such circumstances.

69. In the case of Cheibani W., at the time of his arrest he had been very aggressive and in some form of mentally disturbed state. He had been overpowered by several police officers and then restrained flat on his stomach, and a doctor had administered a sedative; but that, together with the extended period of being held down on his stomach, had caused death by asphyxia. The case had been examined by the courts: the doctor and one police officer had been found guilty, and five police officers found not guilty. As a consequence, all the rules on restraining violent and aggressive persons in such circumstances had been revised.

70. **Mr. Bogensberger** (Austria) confirmed that it was in fact possible that an interrogation could be held in the absence of the detainee’s lawyer and with no recording being made. It depended partly on the availability of recording devices, which were not present in all police premises owing to their high cost.

71. Section 166 of the Code of Criminal Procedure had not been invoked since its entry into force. With regard to the level of proof required, it was not necessary to have watertight proof that torture had occurred. However, any evidence to reinforce the allegation, such as visible injuries, would enhance its plausibility.

72. **The Chairperson** said there were so many topics to discuss, in the case of not only Austria but other States parties as well, that at least three hours were needed for each. The dialogue between the Committee and the States parties was an ongoing process. If the delegation of Austria considered that it had not had time to answer all the questions asked, it was welcome to submit further information in writing.

73. **Mr. Tichy** (Austria) thanked the members of the Committee for their interest in his country's efforts to comply with the Convention and undertook to keep them apprised of developments.

The meeting rose at 12.20 p.m.