



**International Covenant on  
Civil and Political Rights**

Distr.: General  
7 October 2013

Original: English

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**Human Rights Committee**

**Consideration of reports submitted by States  
parties under article 40 of the Covenant**

**Fifth periodic reports of States parties due in 2012**

**Austria\* \*\***

[17 June 2013]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document has not been edited.

\*\* The annex can be consulted in the files of the Secretariat.

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## I. General

1. The report was drawn up based on the guidelines issued by the Human Rights Committee in 2008 covering specific issues related to the individual provisions of the International Covenant on Civil and Political Rights (hereinafter: ICCPR). It is predominantly limited to information about legal and factual changes that have occurred since the previous report (fourth report). Where appropriate, several issues are dealt with jointly in one article, by taking into account the respective recommendations of the Human Rights Committee from the year 2007. The annex to the report of the State party provides statistical data supplementing the report.

## II. Information relating to articles of the Covenant

### Article 2

#### Responsibility for implementing Covenant rights

2. Based on the 2012 amendment of the law on the administrative judicial system, which will take effect on 1 January 2014, a two-tier administrative judicial system will be introduced in Austria. This will enable Austria to meet its obligations under article 5, 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, Federal Law Gazette No. 210/1958, (hereinafter: ECHR), EU legislation and article 47 of the Charter of Fundamental Rights of the European Union. At the same time, administrative organization will be streamlined and the administrative appeal stages harmonized. In the future administrative courts of first instance will generally decide on appeals against decisions made by administrative authorities. Each individual federal province will have a provincial administrative court. At federal level a federal administrative court and a federal finance court will be set up. After establishing the eleven administrative courts, around 120 special authorities acting as quasi-courts, with which appeals could be lodged in the past, will be abolished. The Court of Asylum will become part of the Federal Administrative Court. Appeals against decisions made by administrative courts of first instance may be lodged with the existing Administrative Court and the Constitutional Court.

#### Measures taken to raise levels of awareness among public officials and State agents

3. **Judiciary:** Trainee judges undergo special training in matters concerning fundamental and human rights. They are examined in this subject in qualifying tests for judges (Section 16, para. 4, sub-para. 6 and sub-para. 8 of the Act on the Judges' and Public Prosecutors' Service (*Richter- und Staatsanwaltschaftsdienstgesetz*), Federal Law Gazette No. 305/1961 as amended in Federal Law Gazette I No. 35/2012. Since the beginning of 2008, all trainee judges have therefore been obliged to attend the interdisciplinary three-day human rights module "Fundamental Rights Curriculum" developed by the Fundamental Rights Group of the Association of Austrian Judges (*Fachgruppe Grundrechte der Vereinigung der Österreichischen Richterinnen und Richter*). It is organized jointly by the Vienna Ludwig Boltzmann Institute for Human Rights, the European Training and Research Centre for Human Rights and Democracy in Graz (ETC) and the Austrian Human Rights Institute Salzburg (*Österreichisches Institut für Menschenrechte Salzburg/ÖIM*). This module covers the ICCPR and other international human rights conventions.

4. Judges and public prosecutors have an obligation to undergo continued training (Section 57 of the Act on the Judges' and Public Prosecutors' Service). Numerous well-

attended further training events address the rights defined in article 2, article 3 and article 7 of the ICCPR. The following seminars have been or will be held: 13 June 2012: equal treatment law; 15 to 17 October 2012: assessing levels of dangerousness of perpetrators of domestic violence and stalking; spring 2013: dynamic of the protection of fundamental rights – challenges to national and European jurisdiction; 21 to 22 March 2013: treatment of underage victims of abuse in civil and criminal procedures; 19 to 20 September 2013: Fundamental Rights Day 2013 “Future of the Sexes” (compare the recommendation contained in paragraph 6 of the concluding observations (CCPR/C/AUT/CO/4)).

5. **Security administration:** In the Federal Ministry of the Interior, targeted education and training measures are offered to employees to ensure the non-discriminatory exercise of official duties. It is a key objective to provide police officers with comprehensive knowledge about human rights.

6. Since 2001, the Federal Ministry of the Interior has participated in the programme “*A World of Difference*” run by the global human rights organization *Anti-Defamation League*. All police officers must participate in this anti-discrimination training. The aim of these practice-oriented workshops is to help eliminate ethnic, religious and social prejudices. The programme has not only become part and parcel of basic training but must also be attended by long-serving police officers (compare also the recommendation contained in paragraph 9 of the concluding observations).

7. Other examples of anti-discrimination measures can be found inter alia in the National Action Plan on Integration, which was adopted in 2010 (compare p. 24 et seq. of the National Action Plan on Integration).

8. All integration policy measures of the federal provinces, municipalities, cities, social partners and the Republic of Austria were for the first time collected and condensed into the National Action Plan on Integration. The NAP is the result of a comprehensive working process in 2008 and 2009. Besides the relevant federal ministries, all the federal provinces, the Austrian Association of Cities and Towns, the Austrian Association of Municipalities, the social partners, the Federation of Austrian Industries and the organizations of the civil society were involved. Progress on implementation is evaluated based on integration indicators in annual integration reports (compare for 2012 [http://www.bmi.gv.at/cms/BMI\\_Service/Integration\\_2012/Integrationsbericht\\_2012\\_Band\\_3\\_ANSICHT.pdf](http://www.bmi.gv.at/cms/BMI_Service/Integration_2012/Integrationsbericht_2012_Band_3_ANSICHT.pdf), [http://www.bmi.gv.at/cms/BMI\\_Service/Integration\\_2012/migration\\_integration\\_2012\\_72dpi.pdf](http://www.bmi.gv.at/cms/BMI_Service/Integration_2012/migration_integration_2012_72dpi.pdf)). Support is provided by an independent expert panel on integration.

#### **Compensation for ICCPR violations**

9. In accordance with the Federal Constitution Act (hereinafter: Federal Constitution Act, Federal Law Gazette No. 1/1930, as amended), the Austrian Ombudsman Board, an independent body responsible only to Parliament, has the duty to examine complaints about alleged grievances in the federal administration, particularly allegations of human rights violations (art. 148a of the Federal Constitution Act). It was accepted as a competent and impartial forum by the United Nations Human Rights Committee. In the wake of views identifying a human rights violation, it is responsible for establishing communication with the claimant on the one hand and the relevant governmental bodies on the other. Its aim is to facilitate an adequate out-of-court settlement. The Human Rights Committee concluded the follow-up procedure regarding *Perterer v. Austria*, Communication No. 1015/2001 on the grounds that “in the light of the State party’s response and despite the author’s dissatisfaction with the quantum of compensation proposed by the Ombudsman, the Committee considers the State party’s offer of compensation as a satisfactory response to the views of the Committee on the Communication of Dr. Paul Perterer, No. 1015/2001” (compare the recommendation contained in paragraph 7 of the concluding observations).

10. Regarding the prohibition of discrimination, please refer to articles 3 and 26.

### Article 3

11. Vienna is used as an example illustrating the anti-discrimination legislation of the Austrian federal provinces. According to the Vienna Anti-Discrimination Act (*Wiener Antidiskriminierungsgesetz*; Provincial Law Gazette for Vienna No. 35/2004, as amended in Provincial Law Gazette for Vienna No. 44/2010), any direct and indirect discrimination as well as harassment of natural persons and their family members is forbidden (inter alia) on grounds of sex with regard to the following issues falling within the competence of the federal province of Vienna: social affairs, education, access to and supply of goods and services made available to the public (including housing) as well as access to self-employment (Section 1, para. 1 and Section 2 paras. 1, 3 and 4 of the Vienna Anti-Discrimination Act). An anti-discrimination body has been set up. Besides combating discrimination, it is also responsible for conducting arbitration procedures (Sections 7 and 7a of the Vienna Anti-Discrimination Act). This Act (Section 4, para. 1) also grants a right to damages for material loss as well as adequate compensation for any personal impairment suffered.

12. In accordance with the Vienna Equal Treatment Act (*Wiener Gleichbehandlungsgesetz*; Provincial Law Gazette for Vienna No. 18/1996), nobody may be directly or indirectly discriminated against on grounds of sex in connection with an employment relationship with the City of Vienna, particularly not with regard to pay. Pursuant to Section 43a of the aforementioned Act, the executive city councillor for personnel is responsible for preparing an anonymized report on an analysis of the pay of permanent employees of the City of Vienna by 1 October of every year, to be published on the Internet.

#### The status of women in society

13. The status of women in society has changed radically over the past few decades. Today, a large proportion of women are employed and are involved in public and political life. Nevertheless, traditional attitudes to gender roles, e.g. that of the man as the breadwinner, are partly still upheld. This is reflected in the pay gap between men and women.

14. The labour force participation rate of women has increased sharply over the last decades. At 69.5 per cent (2011) it is, however, lower than that of men. The percentage of female full-time workers was 55 per cent in 2011, while the percentage of female part-time workers stood at 45 per cent. While women continue to be predominantly employed in a limited number of usually lower-paid occupations, the number of women in upper management and decision-making echelons in politics, business, science and administration is increasing.

15. The 2010 Report on Women (<http://www.bka.gv.at/site/7207/default.aspx>) gives an overview of the development of the situation of women and men in Austria in the last ten years in key areas such as education, income and economic activities. It shows that today women do not only have considerably better education than in the past but have also overtaken men as far as the level of educational attainment is concerned (particularly at tertiary level; about 55 per cent). A significantly higher number of women than men took school-leaving exams in the past few years. According to the latest available data, the proportion of women stood at 58 per cent. (In the 1960s the proportion of women was below one third.) In Austria the percentage of those dropping out of school and training programmes in the age group 18 to 24 years has been decreasing since the mid-1990s (slightly more significantly among women). At 8.3 per cent, Austria's drop-out rate was

below the 2011 EU average (EU-15: 15.4 per cent; EU-27: 14.1 per cent). (Statistics: <http://www.bmukk.gv.at/medienpool> and [http://www.statistik.at/web\\_de/statistiken/bildung\\_und\\_kultur/formales\\_bildungswesen/fruehe\\_schulabgaenger/index.html](http://www.statistik.at/web_de/statistiken/bildung_und_kultur/formales_bildungswesen/fruehe_schulabgaenger/index.html)).

16. As in the past, very few girls decide to undergo training in engineering and natural sciences (about 20 per cent), and women get paid up to 18 per cent less than men for doing the same job. In Austria the rate of women at risk of poverty is therefore 25 per cent above that of men (women 13 per cent; men: 11 per cent). Single parents are affected to a particularly large degree – about one quarter of them are at risk of poverty (EU: 17 per cent of the women, 16 per cent of the men). Women perform two thirds of all childcare and household tasks.

### **Measures promoting women's equality**

17. The National Action Plan on Gender Equality in the Labour Market was published in June 2010. It contains a package of 55 measures to improve the position of women in the labour market on a long-term basis. It is an important strategic goal of the National Action Plan to reduce the income gap between women and men. The growing diversification of training programmes and occupational choices, increasing women's economic activity and full-time employment rates as well as women's growing share of leadership positions are all expected to help close the gender-specific income gap.

18. Emphasis should be placed on the following measures:

- In November 2010 an information campaign on paternity leave was launched in the economic sector to encourage fathers to take parental leave.
- Since 1 January 2011 in the public sector, fathers have been entitled to take the so-called "Dad's month" of leave within the first two months after the birth of a child. This means that fathers have a legal right to a minimum of one week and a maximum of one month of leave immediately after their child's birth, allowing them to take care of their offspring. During the "Dad's month" fathers are not paid but remain entitled to health insurance or pension coverage.
- As of 1 March 2011, a legal requirement was introduced to prepare income reports (based on a plan by stages) so as to enhance income transparency. In a first step, enterprises with more than 1,000 employees were required to draw up income reports from 2011 onwards. Companies with more than 500 employees have had to meet this requirement since 2012.
- The minimum pay based on collective agreements and, if applicable, pay above that minimum level must be stated in job advertisements and vacancy notices. The District Administrative Authority will reprimand the company the first time this requirement is not met; repeated non-compliance will be sanctioned with fines of up to € 360.00.
- Since October 2011 an Online Pay Calculator has been made available ([www.gehaltsrechner.gv.at](http://www.gehaltsrechner.gv.at)) to identify the average pay of women and men for comparable jobs.
- In April 2011 the federal government agreed to introduce a women's quota for supervisory boards of enterprises close to the state (state ownership of at least 50 per cent). The share of women in supervisory board members appointed by the Federal Republic of Austria has to increase to at least 25 per cent in 2013 and at least 35 per cent by 2018. The first progress report reviewing the results of this self-obligation was presented in April 2012. In the 55 enterprises in which the state holds a stake of more than 50 per cent there were 73 women

among the supervisory board members appointed by the Federal Republic. At 26 per cent, the target for the first stage of the quota system has been met. In six out of nine federal provinces similar rules have been introduced for enterprises partially owned by the provincial governments.

- A means-tested childcare allowance was introduced for children born on or after 1 October 2009. At the same time, the number of childcare facilities was increased, for which the Federal Republic of Austria has made available a total budget of € 100 million until 2014.

19. In Austria, the Federal Republic, the federal provinces and municipalities have been required to promote de facto equality between women and men in budgeting (“gender-responsive budgeting”) since 2009. This concept will be applied more vigorously to the federal budget in the framework of performance-oriented budgeting as from 2013. Gender budgeting makes gender-specific effects of budget decisions visible, both on the income side (taxes and levies, etc.) and expenditure side of the budget (subsidies, allocation of funds, etc.); in other words, the different life realities of women and men are taken into consideration and gender relations are systematically taken into account in budget management. The aim of this approach is to ensure a fair distribution of financial resources between the sexes. Based on the budget law of the Federal Republic of Austria, all federal ministries and the supreme organs of the state have been requested to develop equality objectives for all social fields of action and activity since 1 January 2013. Furthermore, they have to specify equality measures to achieve the equality objectives and to develop appropriate indicators to review achievement. Hence, equality aspects will explicitly be taken into account in all phases of governance – from formulating and implementing targets to evaluating effectiveness. Equality objectives and measures provide the National Council and interested public with basic information about the priorities set by the individual federal ministries for the next financial year.

#### **Measures promoting income equality**

20. In its current government programme the federal government (2008-2013, <http://www.austria.gv.at/DocView.axd?CobId=32965>) committed itself to promoting women and equal opportunities for women in employment and occupation. The legal obligation to draw up income reports was enshrined in the Federal Equal Treatment Act, Federal Law Gazette No. 100/1993, as amended in Federal Law Gazette I No. 120/2012, as well as in the Equal Treatment Act for the Private Sector, Federal Law Gazette I No. 66/2004, as amended in Federal Law Gazette I No. 7/2011. The pay system for federal civil service employees, i.e. the application of legally defined salary schemes, does not allow any income-related unequal treatment between women and men in recruitment. The gender pay gap (adjusted for working hours) in the federal civil service is, however, still 15 per cent; this can be attributed to the number of extra hours worked, the level of qualification, age or to leadership positions held. In comparison, the income gap between women and men employed on a full-time basis all year round in Austria is 21 per cent.

21. Vienna – which is used as an example to illustrate the measures taken in the federal provinces – has made consistent efforts to close the income gap. Publications such as “Salary Negotiation Tips for Women” (“*Gehaltsverhandlungstipps für Frauen*”), the “Manual on Company-Based Plans for Women’s Advancement” (“*Handbuch zur betrieblichen Frauenförderung*”), information on entry-level salaries in women- or men-dominated jobs in the “Role Model Book” (“*Rollen-Bilder-Buch*”), the “2008 Situation Report on the Income Gap Issue” (“*Situationsbericht zum Thema Einkommensunterschiede 2008*”) as well as the annual Daughters’ Day to reduce gender-specific stereotypes in career choices are some typical examples of such measures.

### Combating stereotypes

22. To combat stereotypes the following information measures have been or are being taken:

- The campaign “Finding your Own Way” (“*Finde deinen eigenen Weg*”) has been launched countrywide. Its aim is to inform girls and young women aged between 14 and 19 years about the various educational pathways and earning opportunities as well as to encourage them to choose non-traditional occupations (for more information: <http://www.findeeinenweg.at>).
- The Girls' Day is held in the federal civil service every year to spark girls' interest in technical and future-oriented jobs, to raise the awareness of enterprises of the girls' potential and to sensitize parents and the public to this issue (compare <http://www.girlsday-austria.at>).
- In the media sector the “Gender Award in Advertising” was granted for the first time in 2012. Its aim is to pay tribute to gender-sensitive advertising from Austria and to raise social awareness of gender-oriented and non-discriminatory advertising with a view to reducing gender role stereotypes (compare <http://www.frauen.bka.gv.at/site/7723/default.aspx>).
- Since 2008 the Boys' Day has been staged across Austria to prevent role clichés and traditional job profiles as well as to help sensitize young people, parents, vocational trainers and the public. It plays an important role in widening occupational choices for young men and helps to spark their interest in educational and nursing jobs.
- An example at provincial level worth mentioning is the setting up of an expert panel, “Werbewatchgroup Wien” (“Vienna Advertising Watch Group”), in February 2012. It is responsible for examining citizens' complaints about sexist advertising in Vienna and surroundings. The decisions taken by this group are published on the website [www.werbewatchgroupwien.at](http://www.werbewatchgroupwien.at).

23. As far as public broadcasting is concerned, Section 13, paragraph 3, sub-paragraph 2 of the Federal Act on the Austrian Broadcasting System (*Bundesgesetz über den Österreichischen Rundfunk*) (Federal Law Gazette No. 379/1984, as amended in Federal Law Gazette I No. 15/2012) stipulates that advertising must not discriminate on grounds of race or ethnicity, sex, age, disabilities, religion or belief, nationality or sexual orientation. In accordance with Section 4, sub-paragraph 11 of the Federal Act on the Austrian Broadcasting System (*Bundesgesetz über den Österreichischen Rundfunk*), it is one of the key tasks of public broadcasting in Austria to take into account equality between women and men in an appropriate manner.

24. In 2010 the “Self-regulatory Association of the Austrian Press – Austrian Press Council” (“*Verein zur Selbstkontrolle der österreichischen Presse – Österreichischer Presserat*”; <http://www.presserat.at>) was re-founded. The Press Council has to prepare a Code of Conduct for journalistic work, which is based on the Media Act and provides ethical guidance for media professionals. It contains rules for the work of journalists to ensure professional ethics. It forbids for example discrimination on racial, religious, national, sexual or any other grounds. Furthermore, the advertising industry has established a self-regulatory institution, i.e. the association “Self-Regulatory Society of the Advertising Industry” also referred to as the “Austrian Advertising Council” (“*Gesellschaft zur Selbstkontrolle der Werbewirtschaft – Österreichischer Werberat*”; <http://www.werberat.or.at>). The aim is to avoid undesirable developments and abuse in the advertising sector. A Self-regulatory Code is available for the sphere of competence of the Advertising Council ([http://www.werberat.at/layout/neuer\\_per\\_cent20Kodex\\_7\\_12\\_09.pdf](http://www.werberat.at/layout/neuer_per_cent20Kodex_7_12_09.pdf))



to prevent advertising which is discriminatory or misleading or violates human dignity. A special section of the Code deals with gender-discriminatory (sexist) advertising (2.1.). Everybody who feels harassed, hurt or misled by any advertising measure is entitled to submit a complaint to the Advertising Council.

### **Representation of women**

#### *Political institutions*

25. The proportion of women in the federal government is 33 per cent, in the National Council 28 per cent (see table in the annex). In October 2009 a parliamentary debate on matters of topical interest was held on the subject “Women in politics – more women in politics” with a view to increasing the percentage of women in the National Council. Some parties laid down women’s quotas for the National Council in their articles of association. The Social Democratic Party of Austria has for example committed itself to a women’s quota of at least 40 per cent. The Green Party introduced a women’s quota of 50 per cent (compare the recommendation contained in paragraph 10 of the concluding observations).

#### *Civil service*

26. A steady increase of the proportion of women in the civil service could be observed in the past few years, reaching 40.6 per cent in 2011. Furthermore, more women today hold jobs which used to be considered “male occupations” (police and military service). At the same time the proportion of women has been decreasing in fields of activities previously dominated by them (e.g. in the nursing sector).

27. The proportion of women holding senior positions in the civil service continued to increase between 2010 and 2011 (40.6 per cent). Due to the high percentage of women among “younger employees” the proportion of women holding leadership positions is expected to continue to grow. In June 2012 the percentage of women in top positions in the federal civil service stood at 23.2 per cent. 16 out of a total of 69 departments are currently led by women.

28. In the Ministry of Justice, for example, the percentage of women increased from 45.45 per cent to 53.23 per cent in the period from 1995 to 2012. Among judges and public prosecutors the percentage of women rose from 25.32 per cent to 52.06 per cent. In the same period the percentage of women occupying higher positions went up from about 9.5 per cent to roughly 35 per cent.

29. Vienna (as an example of the civil service employees of an Austrian federal province) also considers the implementation of the principle of equality between women and men – and consequently the promotion of women – to be a very important objective. A legally binding women’s quota (as a percentage of the total number of employees and senior staff members) of 50 per cent has been applicable since the 1990s. In the framework of the equality programme (previously: women’s promotion plans) introduced in 2011, strategic goals and measures are defined at three-year intervals to ensure that the women’s quota and continuing women’s promotion schemes are implemented.

30. Based on an amendment of the Vienna Equal Treatment Act (*Wiener Gleichbehandlungsgesetz*), the institution of the “Equal Treatment Officer” was reorganized with effect from 1 July 2011. The position of the Equal Treatment Representatives was upgraded in organizational terms, creating an independent department with all the necessary human and material resources. It was also granted additional, far-reaching rights (comprehensive rights of information and inspection, the right to report discrimination, etc.).

**Private sector**

31. Together with the Federal Economic Chamber of Austria and the Federation of Austrian Industries, the Federal Ministry of Economy, Family and Youth developed a leadership programme for women in Austria “Future. Women” (“*Zukunft.Frauen*”). The target group of the programme are qualified women who are regarded as potential candidates for senior positions in their enterprises and who are to be prepared for management and supervisory board positions. It consists of a combination of workshops, network building and mentoring. First-rate lecturers impart specific technical know-how as well as the necessary social skills for positions of great responsibility.

32. The first course “Future.Women” started on 9 September 2010; it was attended by 21 highly qualified female employees from renowned enterprises. In the meantime three further courses have been completed successfully by a total of 87 female participants. The fifth course started in autumn 2012 with 21 female participants, and a sixth course has been scheduled for spring 2013.

33. A publicly accessible database for female supervisory board members is an important element in supporting women advancing to the top. Besides women who completed the programme “Future.Women”, women currently holding supervisory board positions are registered in the database. With a current list of more than 284 women, the database facilitates the search for candidates for supervisory board positions (compare <http://www.zukunft-frauen.at> or [www.aufsicht.sraetin.at](http://www.aufsicht.sraetin.at)).

34. The percentage of women in research- and technology-intensive start-ups is considerably lower than in other companies founded. The programme “w-ffORTE” (<http://www.w-fforte.at/>) tries to counter this trend by promoting women who are top researchers, managers and owners of research- and technology-intensive companies. Moreover, it provides support for job returners in career planning as well as in realizing a successful career.

35. The introduction of two short-term childcare allowance options (i.e. the lump-sum option 12+2 [12 months if allowance is received by one parent or 14 months if allowance is received by 2 parents] and a means-tested childcare allowance) in 2010 has been a measure to support women wishing to work after the birth of their child. Since then the proportion of fathers sharing childcare responsibilities has increased considerably. As a public commitment to a work-family balance, the Federal Minister for Economy, Family and Youth, the Presidents of the Federal Economic Chamber, the Austrian Trade Union Federation and the Federal Chamber of Labour as well as the Secretary-General of the Federation of Austrian Industries signed the charter “Reconciling Family and Work” in 2012.

**Domestic violence**

36. The Federal Act on the Protection against Domestic Violence (*Bundesgesetz zum Schutz vor Gewalt in der Familie*), Federal Law Gazette, No. 759/1996) came into force on 1 May 1997. It laid a legal foundation for protecting victims of domestic violence speedily and effectively. It was amended in Federal Law Gazette I No. 146/1999, Federal Law Gazette I No. 31/2003 and, most importantly, through the Second Act on Protection against Domestic Violence, Federal Law Gazette I, No. 40/2009, which came into force on 1 June 2009.

37. The Protection against Domestic Violence Act empowers the police to evict a person from the home shared with the person threatened by him/her and to issue a barring order if it seems probable that he/she will commit a dangerous attack against the life or physical integrity of a person living in the shared home (Section 38 of the Security Policy Act [*Sicherheitspolizeigesetz*], Federal Law Gazette 566/1991, as amended in Federal Law

Gazette I, No. 50/2012). In each federal province an anti-violence centre and/or an intervention centre against domestic violence has been set up to provide comprehensive support to persons exposed to threats. If a more long-term protection from a person representing a threat is required, the person exposed to the threat may request the competent court to issue an injunction. Regardless of the situation involving violence and/or threat, this request for an injunction may have the effect that the person representing a threat:

- Is forbidden to enter the home and its vicinity during a specified period of time (“protection against violence in homes”, Section 382b of the Enforcement Regulation [*Exekutionsordnung*], Law Gazette of the Empire No. 79/1896, as amended in Federal Law Gazette I No. 50/2012 and/or;
- Is forbidden to stay in specific places during a defined period of time and to contact the threatened person (Section § 382e EO) and/or;
- Has to refrain from acts invading the privacy of the threatened person (Section 382g of the Enforcement Regulation).

38. The scope of protection covers all persons living in an apartment (or house), regardless of kinship and ownership (wife, partner, children, relatives but also subtenants, flatmates, etc.).

39. Eviction and barring orders may be issued in respect of every person constituting a threat, including the owner of the home as well as ex-boyfriends or ex-girlfriends “showing up” in the home. In these cases the police can immediately take away the keys of the person constituting a threat. The injunction prohibiting the person from returning to the home is valid for two weeks. Compliance is checked frequently by the police within the first three days. If an injunction in accordance with Section 382b of the Enforcement Regulation is requested from the court, the barring order enforced by the police is extended to four weeks.

40. As long as this barring order is valid, the person constituting a threat may not enter the flat (or the house) and the defined protected area, not even with the consent of the threatened person. If he/she tries to do so, he/she commits an administrative offence and will be fined up to € 360.00. If he/she threatens or injures the threatened person, this will be prosecuted under criminal law. Statistical data on eviction orders and procedures conducted under the Act on Protection from Violence are provided in the annex.

41. The so-called Second Act on the Protection from Violence, Federal Law Gazette I No. 40/2009 came into force on 1 June 2009. It extended the scope of protection from violence in the social proximity as well as of preventive measures protecting from violence in the social proximity. By establishing the criminal offence “continued exercise of violence” (Section 107b of the Penal Code), the typology of long-term violent relationships has explicitly been taken into account; individual violent acts are therefore no longer punished as individual crimes but the violent relationship per se has become punishable.

42. As shown by recent statistical data on the number of cases dealt with by the intervention centres against domestic violence (see annex), these institutions protecting victims have been used to an increasing extent. The budget of the intervention centres has been stepped up on an ongoing basis.

	<i>Persons receiving support</i>	<i>Changes compared with the previous year in %</i>	<i>Budget in €</i>	<i>Changes compared with the previous year in %</i>
2008	14,059		5,630,740.00	
2009	14,622	+4	6,179,740.00	+9.75
2010	14,983	+2.47	6,384,000.00	+3.31

	<i>Persons receiving support</i>	<i>Changes compared with the previous year in %</i>	<i>Budget in €</i>	<i>Changes compared with the previous year in %</i>
2011	15,533	+3.67	6,384,000.00	-
2012	not yet available		6,607,440.00	+3.5

43. The Women's Department of the City of Vienna offers around-the-clock crisis intervention, counselling, support and assistance in cases of sexualized, physical and psychological violence for women and girls (14+) through its "24-hour Women's Emergency Hotline" ("*24-Stunden Frauennotruf*"). In 2011 the 24-hour Women's Emergency Hotline of the City of Vienna registered 7,633 calls and 776 personal counselling sessions. In addition, 173 requests for advice were sent by e-mail to the counsellors of the Women's Emergency Hotline. 31 posts were made on violence-related topics in the forum of the hotline, which resulted in 16 counselling sessions. The counselling services of the Women's Emergency Hotline were used to a comparable extent in 2012 and before.

44. Another service provided by the Women's Department of the City of Vienna is the "Women's Helpline" ("*Frauentelefon*"). It offers basic legal and psycho-social information on "family law". Counselling is available from Monday to Friday (working days) and focuses on legal matters concerning marriage, registered partnership, divorce, separation, child custody and alimony. Counselling may take place by phone, in personal meetings and by e-mail; it is free of charge and anonymous, if requested.

45. By subsidizing the Association of Vienna's Women's Shelters (*Verein Wiener Frauenhäuser*), the Women's Department secures continuous financing for four women's shelters (with about 175 places) as well as 54 transitional flats and a counselling centre. The aim of this financing scheme is to provide assistance, counselling, protection and shelter to women and children in Vienna who are affected by violence. Furthermore, eight other associations were subsidized in 2011, providing counselling and partly also violence (including sexualized violence) prevention services for women and children. In 2009 and 2010 a sensitization campaign against violence was launched to raise public awareness of violence and advertise counselling centres. Together with the Association of Vienna's Women's Shelters, the Women's Department organized a two-day conference on sexualized violence against women.

46. Austria's first comprehensive "Study on the Prevalence of Violence 2011" ("*Gewaltprävalenz-Studie 2011*") closed a research and data gap on the actual prevalence of violence in the population. It introduced a new approach to European research on violence as the women and men surveyed were asked the same questions. Moreover, different types of violence (psychological, physical and sexual violence) were studied on the basis of three temporal stages (violence experienced between the age of 16 and 60, within the last three years as well as childhood experiences of physical and sexual violence of adults today). The key objective of the study was to gain as comprehensive an overview as possible of violence experienced by women and men.

#### **Violence against women based on harmful traditions**

47. In the framework of the Gender Days in 2008, an exhibition and workshops titled "Honour as a Motive" ("*Tatmotiv Ehre*") informed school pupils about harmful traditions against women. A study on this topic was published on the women's website (compare <http://www.frauen.bka.gv.at/site/5479/default.aspx>), which also provides legal information as well as a list of counselling centres and shelters for (potential) victims of harmful traditional practices.

48. Under the aegis of the President of the Austrian National Council, the “National Action Plan on the Prevention and Elimination of FGM in Austria” (“*Nationaler Aktionsplan zur Vorbeugung und Eliminierung von FGM in Österreich*”) was coordinated by the African Women’s Organization. It was presented to Parliament on 25 October 2008. (are [http://www.african-women.org/documents/FGM\\_NAP\\_DE.pdf](http://www.african-women.org/documents/FGM_NAP_DE.pdf)).

49. The Vienna-based women’s counselling centre Orient Express offers free and anonymous counselling services and assistance to women and girls with a migration background. On behalf of the Minister for Women’s Affairs, girls with a migration background received training in issues such as forced marriage, genital mutilation and generational conflicts (from 2010 to 2012). A second project allocated to the women’s counselling centre was geared towards persons confronted with the aforementioned problem areas at work, e.g. teachers, social workers, employees of youth facilities and family judges. Two-day seminars provided background information on violence based on tradition. Preventive and crisis intervention measures were explained by using concrete cases as examples.

50. To mark the International Day of Zero Tolerance to Female Genital Mutilation, the Minister for Women’s Affairs – together with the Women’s Health Commissioner of the City of Vienna and a paediatrician called for “zero tolerance to genital mutilation”. A new information folder (in five languages) developed by the platform stopFGM addressing parents who are considering authorizing FGM on their daughter was presented at the press conference.

51. The government’s programme provided for an emergency flat for girls and young women threatened with or affected by forced marriage, which will be established in spring 2013. The costs will be covered by the Federal Republic of Austria. The aim is to provide tailored consultation and assistance as well as adequate protective measures to ensure the protection and safety of those affected.

### **Equality in divorce**

52. Following an amendment to the law on parent and child, which came into force on 1 February 2013, custody of the child may be granted to both parents after a divorce. Protecting the best interests of minors, the new rules also take into account new social developments and the jurisprudence of the European Court of Human Rights (ECHR, *Sporer v. Austria*, application No. 35637/03) as well as of the Constitutional Court (G 114/11). See also article 23.

53. An empirical study based on the evaluation of 7,062 court case files identified and outlined the effects of divorce and separation on children, women and men by paying due regard to family role models (i.e. mother, father, child). [http://www.bmwfj.gv.at/Familie/Familienforschung/Documents/Familienbericht\\_per\\_cent202009/Band\\_per\\_cent20II\\_per\\_cent20- per\\_cent20Auswirkungen\\_per\\_cent20von\\_per\\_cent20Scheidung\\_per\\_cent20auf\\_per\\_cent20Kinder, per\\_cent20 Frauen\\_per\\_cent20und\\_per\\_cent20M\\_per\\_centC3\\_per\\_centA4nner.pdf](http://www.bmwfj.gv.at/Familie/Familienforschung/Documents/Familienbericht_per_cent202009/Band_per_cent20II_per_cent20- per_cent20Auswirkungen_per_cent20von_per_cent20Scheidung_per_cent20auf_per_cent20Kinder, per_cent20 Frauen_per_cent20und_per_cent20M_per_centC3_per_centA4nner.pdf).

### **Marital rape**

54. An amendment has been planned to adjust the level of penalty for sexual offences (the bill is currently under review). Rape (Section 201 of the Penal Code, Federal Law Gazette I, No. 60/1974, as amended in Federal Law Gazette I No. 61/2012) will be punished with one year to ten years of imprisonment (previously: six months to ten years). As mentioned in the previous report, the privilege of the husband in rape cases in accordance with Section 203 of the Penal Code was abolished after adoption of the Criminal Law Amendment Act 2004 (*Strafrechtsänderungsgesetz*), Federal Law Gazette I

No. 2004/15; hence, it is no longer possible to distinguish between rape and marital rape (in statistical terms). The number of convictions for rape is provided in the annex.

55. The Criminal Records Act (*Strafregistergesetz*; Federal Law Gazette I No. 277/1968, as amended in Federal Law Gazette I No. 50/2012) introduced “special labelling” for all convicted and detained sexual offenders. The criminal records will also contain orders of judicial supervision, instructions imposed on an offender convicted for a punishable act violating the sexual integrity and self-determination of another person as well as enforceable prohibitions from working in specific occupations.

56. After an amendment to Section 70, paragraph 1 of the Penal Code, Federal Law Gazette I No. 142/2009, victims of violent and sexual offences may now submit a request to be notified when the offender leaves prison unguarded for the first time and is discharged from prison. The victim will be informed of this procedure during the hearing.

57. Regarding the recommendation contained in paragraph 18 of the concluding observations (questioning of asylum seekers by officials), it should be noted that gender-specific aspects are in principle taken into account in the asylum procedure. In particular Section 20 of the Asylum Act (*Asylgesetz*) 2005, Federal Law Gazette I No. 100/2005, as amended in Federal Law Gazette I No. 87/2012 contains special provisions concerning the hearing of victims of offences against the right to sexual self-determination, which apply to both female and male asylum seekers. Hence, an asylum seeker has to be questioned by a person of the same sex if his/her fear of being persecuted is due to violations of his/her right to sexual self-determination. The asylum seeker has to be informed demonstrably of this right as well as his/her right to the services of an interpreter.

#### **Transfer of citizenship to children**

58. Austria’s legal system is based on the principle that the child’s citizenship is determined by his/her parents’ citizenship (*ius sanguinis*). Thus children born in wedlock obtain Austrian citizenship upon birth if one parent holds or a deceased parent held Austrian citizenship on that date. Children born out of wedlock obtain Austrian citizenship when the mother is or was an Austrian citizen upon giving birth. An underage alien born out of wedlock acquires Austrian citizenship upon legitimization provided that the father is an Austrian national at that date. Persons younger than six months found on the territory of the Republic are in principle treated as citizens by virtue of *ius sanguinis*. Based on a decision of the Constitutional Court (G 66/12, G 67/12), a legal reform of this area is being discussed.

### **Article 4**

#### **Implementing United Nations sanctions**

59. In meeting the obligations of sanctions imposed on it by the Security Council of the United Nations, Austria always pays due regard to all its human rights obligations, including those under the ICCPR. Austria has advocated the rule of law in accordance with the values of the ICCPR (e.g. fair hearing, fairness of procedures, effective remedy) in listing and delisting procedures for many years (e.g. by establishing an ombudsperson during its Security Council membership in 2009/10 as the chair of the 1267 Committee and as a member of the group of like-minded countries in New York). Decisions on sanctions of the Security Council of the United Nations (e.g. 1267/1989 sanctions regime concerning Al-Qaida) are implemented jointly by the Member States of the European Union based on EU Council decisions (e.g. prohibition to travel and arms embargo) as well as directly applicable EU Council regulations (e.g. financial and economic sanctions). By participating in relevant legal acts of the EU regarding sanctions and listing proposals, Austria also takes

into consideration its obligations under the ICCPR, e.g. to ensure that minimum procedural standards are observed (e.g. sufficiently justified reasons; notification of the persons concerned; the right to recourse before the European courts).

60. The obligation under resolution 1373 (2001) of the Security Council of the United Nations to criminalize terrorist financing is implemented through the penal provisions on terrorist financing in accordance with Section 278d of the Penal Code and Section 11 of the Sanctions Act (*Sanktionengesetz*) 2010 (Federal Law Gazette I No. 36/2010, as amended in Federal Law Gazette I No. 50/2012). No convictions for these two offences have been known to date.

### **Definition of terrorism**

61. Austria does not have any special anti-terrorist laws but there are a number of penal provisions which may be applied to combat terrorism, e.g. Section 275 of the Penal Code (“threat of offences to disturb the peace”), Section 278c (“terrorist offences”) or Section 278d (“financing of terrorism”).

## **Article 6**

### **Use of weapons and violence in the police forces**

62. The use of weapons by the Austrian federal police (and other security forces) is regulated comprehensively in the Act on the Use of Weapons 1969 (*Waffengebrauchsgesetz*), Federal Law Gazette No. 1969/149, as amended in Federal Law Gazette I No. 113/2006. Just like the use of coercive powers in general, the use of weapons is subject to the principle of proportionality, which is an essential part of the basic and continuing training of police officers. Strategies – from hearing techniques and tactical options to withdrawal (until the arrival of special forces) – are practised in the so-called “scenario training” module.

63. Complaints against police officers due to unlawful use of violence are dealt with by the Federal Bureau of Anti-Corruption. If a police officer is suspected of having committed a crime in the process of fact finding, the relevant public prosecutor has to conduct a criminal investigation, which may lead to filing a criminal charge with the court. In parallel, the facts of the case will be subject to a disciplinary investigation by an independent commission. Depending on the severity of the offence, disciplinary penalties may consist of a reprimand, a financial penalty, a fine or dismissal (Section 92 of the Civil Servants Employment Act [*Beamten-Dienstrechtsgesetz*] 1979, Federal Law Gazette No. 333/1979, as amended in Federal Law Gazette I No. 120/2012).

64. If allegations of ill-treatment, bodily harm and the like are made against members of the public security service, the criminal police and the public prosecutor are required – based on the principle of an ex officio investigation (Section 2, para. 1 of the Penal Code) – to conduct ex officio investigations to clarify any suspicion of ill-treatment. In compliance with the requirement of objectivity within the meaning of Section 3 of the Penal Code, investigations must be conducted by bodies deemed to be unbiased (Section 47, para. 1 sub-para. 1 and sub-para. 3 of the Penal Code) unless official action has to be taken without delay. Since 1 January 2013 civil servants facing investigations or charges for torture have had to be suspended from duty (Section 112, para. 1 of the 1979 Civil Servants Employment Act; facts defined as torture in Section 312 were incorporated into the Penal Code; they correspond to the definition of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment/CAT).

65. No fatalities caused by excessive use of violence in the Austrian Federal Army have been reported in recent years.

## Article 7

### Prohibition and prevention of torture

66. To implement the OPCAT, the Austrian Ombudsman Board was appointed as Austria's central point of contact to prevent torture and to examine all allegations of torture under the OPCAT Implementation Act, Federal Law Gazette I No. 1/2012, which came into force on 1 July 2012. Due to the assignation of the tasks of the National Prevention Mechanism (NPM) within the meaning of OPCAT to the Austrian Ombudsman Board and its committees, existing structures can be used. The OPCAT Implementation Act clarified that grievances to be examined by the independent Austrian Ombudsman Board may also involve human rights violations. The Austrian Ombudsman Board has therefore come to fulfil the crucial tasks of a national human rights institute. In its capacity as the NPM, the Austrian Ombudsman Board examines whether human rights are complied with in "detention facilities". In doing so it also checks the work of the respective executive public agencies. Facilities to be examined are not limited to prisons and police offices but include reception centres for asylum seekers, military barracks, mental institutions, homes for the elderly, nursing homes, crisis intervention centres as well as shared apartments for young people. The Austrian Ombudsman Board also monitors institutions and programmes for persons with disabilities to prevent exploitation, violence and abuse. The estimated number of – public and private – institutions thus supervised amounts to about 4,000. Since 1 July 2012 the Austrian Ombudsman Board has had the right to report observations on a case-by-case basis separately to the National Council and the Federal Assembly.

67. The Ombudspersons are supported in performing their new task by the Human Rights Advisory Council as well as six newly set up committees.

68. These committees, composed of experts of different disciplines, perform inspections without prior warning and collect information and facts which they assess based on the criteria defined in international treaties. They have to be given access to all documents as well as the opportunity to communicate with individuals without interference. The committees report on these inspections directly to the Austrian Ombudsman Board. The records of these inspections serve as a basis for decision-making of the Austrian Ombudsman Board. They include recommendations which are expected to help prevent human rights violations.

69. Furthermore, the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of the Council of Europe (hereinafter referred to as: CPT) pays regular visits to Austrian detention centres and prisons.

70. The Austrian penal system tries to ensure that the persons accommodated in multi-person prison cells are compatible. If inmates complain they will be allocated to another cell. Any alleged ill-treatment by prison staff will be examined promptly. If allegations are substantiated, the case is not only reported to the public prosecutor but disciplinary proceedings will also be instituted without delay. The employee(s) involved will be suspended from work. The Federal Ministry of Justice has access to statistical data on the number of procedures, charges and convictions concerning torture only in respect of individual offences. Since torture was recognized as a special offence in the Penal Code only with effect from 1 January 2013, no statistical data are available on torture.

### Medical trials

71. Any medical treatment requires the prior consent of the patient. Adequate information by the physician is a prerequisite for a patient's legally effective consent to a concrete medical measure. In accordance with Section 10 of the Hospital and Sanatorium Act (*Kranken- und Kuranstaltengesetz*, Federal Law Gazette No. 1/1957, as amended in



Federal Law Gazette I No. 147/2011), hospitals have to draw up medical records in which the patient information must be documented.

72. In accordance with Section 43, paragraph 1, of the Medical Products Act (*Medizinproduktegesetz*, Federal Law Gazette No. 657/1996, as amended in Federal Law Gazette I No. 143/2009), the clinical testing of a medical product is not permissible unless the test person was informed by a physician about the purpose, meaning, consequences, benefits, risks and harmful effects of the clinical test and gave his/her consent to participating in the clinical tests. Ethics committees have been set up to protect the rights as well as the safety and well-being of participants in clinical trials.

73. Legal custodians are in general responsible for taking decisions on behalf of persons with disabilities who cannot manage their own affairs due to a mental disease or mental disability. In accordance with the Act Amending Law on Legal Custody (*Sachwalterrechts-Änderungsgesetz* 2006, Federal Law Gazette I No. 92), which came into force on 1 July 2007, alternatives to legal custody were created by introducing a right of legal representation by close family members as well as advance health care directives. A person placed under legal custody may make his/her own decisions on medical treatment (or on his/her place of residence) provided that he/she has suitable cognitive capacity and competence to judge.

#### **Harmful traditional practices against women**

74. In accordance with Section 90, paragraph 3, of the Penal Code it is unlawful to give consent to mutilation or any other injury of genitals which could lead to a long-term impairment of sexual feelings. Mutilation or any other injury of genitals is therefore punishable. For further details see article 3.

#### **Corporal punishment**

75. Against the background of recently disclosed cases of violence against young people in youth welfare facilities, a special contact point was set up by Vienna's Children's and Youth Ombuds-Office in March 2010. It is available to persons who became victims of violence in children's residential homes run by the City of Vienna. A "Historians' Commission" composed of independent scholars (historians, psychologists, pedagogues and legal experts) was established. Its mandate is to carry out research into and confront the history of institutional care of children and of Vienna's welfare system for children. In June 2012 it presented a report analysing the pedagogical concepts and structural conditions allowing ill-treatment in institutions. The report will also be used as a basis for identifying offences punishable under criminal law. Furthermore, a special working group of the Vienna Youth and Family Office (Municipal Department 11) develops improvements and measures for existing structures and mechanisms.

76. Furthermore, the independent victims' protection institution "*Weisser Ring*" has been given a mandate to serve as a point of first contact for the persons affected. The victims also receive financial indemnification. A Europe-wide unprecedented special ombuds-office for children and young people living in the socio-pedagogical institutions of the City of Vienna was set up within the Children's and Youth Ombuds-Office in March 2012. This ombuds-office promoted a structural change from large-scale residential facilities to smaller family-like structures in the framework of the "First Vienna Home Committee 1971" ("*Erste Wiener Heimkommission 1971*") and the subsequent reform "Home 2000" ("*Heim 2000*").

77. Regardless of these measures, the persons affected may also take legal action. In accordance with Section 66 of the Penal Code, Federal Law Gazette I No. 631/1975, as amended in Federal Law Gazette I No. 61/2012, the victims of criminal offences have

far-reaching rights to information and as a party to the procedure (e.g. right to information on procedural rights, right of access to court files, right to reach an understanding with the other party, participation in separate hearings of witnesses and the defendant). Pursuant to Section 66, paragraph 2, of the Penal Code, victims have to be granted psycho-social and legal support during the proceedings. Victims meeting the respective requirements have the right to free legal advice in the framework of the legal aid system (in accordance with Section 67, para. 7 of the Penal Code) unless they have to receive legal support during proceedings in accordance with Section 66, paragraph 2, of the Penal Code.

## **Article 8**

### **Prohibition of slavery**

78. With a view to preventing all types of slavery and servitude as well as forced and compulsory labour, Austrian legislation provides inter alia for the following offences which may be enforced before the courts: slavery (Section 104 of the Penal Code; punishment of 10 to 20 years), trafficking in human beings (Section 104a of the Penal Code, punishment of up to 10 years) as well as offences of deprivation of liberty, kidnapping, coercion and foundation of (or participation in) a criminal organization (Sections 99, 100, 101, 102, 105, 106, 107 and Section 278 of the Penal Code).

### **Combating trafficking in human beings**

79. Supported by the Austrian Institute for International Affairs (*Österreichisches Institut für Internationale Politik*) and in cooperation with the International Organization for Migration (IOM), Austria has participated in the regional initiative “Preventing and combating all types of human trafficking: improving transnational coordination and cooperation; developing and strengthening networks and partnerships with third countries” since 2010. In the framework of this initiative, international round table discussions on trafficking in human beings for labour exploitation were held in September 2011 and 2012, where intensive exchanges of experience between the participating experts from different countries took place. One of the major goals of these events was to facilitate the identification of victims and improve cooperation between Austria and the neighbouring countries.

80. In the years 2010/2011 Austria was one of the first European countries to be evaluated by the Group of Experts on Action against Trafficking in Human Beings (GRETA). The report on Austria, as well as the recommendations of the Group of Experts, was adopted by the Committee of the Parties on 26 September 2011. The Group of Experts came to a favourable conclusion regarding the measures taken by Austria to combat trafficking in human beings. The United Nations Human Rights Council examined Austria in 2011 (“universal periodic review”/UPR) and issued recommendations concerning the combat against trafficking in human beings/children.

81. The National Action Plan (hereinafter: NAP) on the Combat against Human Trafficking (compare <http://www.frauen.bka.gv.at/DocView.axd?CobId=36423>) comprises various measures related to national coordination, prevention, protection of victims, prosecution and international cooperation. The recommendations made in the framework of the aforementioned international monitoring processes to Austria are taken into account in the NAP on the Combat against Human Trafficking for the period 2012 to 2014.

82. By virtue of the resolution of the Council of Ministers of November 2004, the Task Force on Human Trafficking was set up in Austria (hereinafter: TF-HT). In this TF-HT, representatives of all ministries (including spun-off entities) bearing responsibility in this issue, of the federal provinces and non-government organizations work together closely in

the TF-HT. A main task of the TF-HT is to develop and implement Austrian NAPs on Combating Human Trafficking as well as to monitor their implementation. Since great importance has been attached to close cooperation with the federal provinces, it was possible to establish new points of contact for “human trafficking issues” in all federal provinces in 2011.

83. In 2007 a special working group within the TF-HT was set up to tackle issues concerning child trafficking. According to the third NAP on Combating Human Trafficking (2012 to 2014), this working group will be continued. The report prepared by the working group on child trafficking for the period 2009 to 2011 was adopted by the Austrian federal government on 20 March 2012 (see [http://www.kinderrechte.gv.at/home/upload/50\\_per\\_cent20thema/bericht\\_der\\_ag\\_kinderhandel\\_2009-2011.pdf](http://www.kinderrechte.gv.at/home/upload/50_per_cent20thema/bericht_der_ag_kinderhandel_2009-2011.pdf)).

84. In June 2007 the working group on prostitution was set up. According to the third NAP on Combating Human Trafficking (2012-2014), this working group will be continued.

85. The sensitization of the Austrian population is an important objective in combating human trafficking. To mark the EU Anti-Trafficking Day on 18 October, the Federal Ministry of Foreign and International Affairs organized all-day public events at the Vienna Diplomatic Academy in the years 2009, 2010 and 2011. The experts of the TF-HT put together the touring exhibition “Human Trafficking – Slavery of the 21<sup>st</sup> Century”, addressing pupils and teachers in Austria.

86. Adequate training of the respective occupational groups is necessary to facilitate the identification of victims of human trafficking. Numerous training programmes were held in the period from 2009 to 2011. The Federal Ministry of Foreign and International Affairs addresses “human trafficking issues” in its ongoing personnel training programme. It organizes lectures and workshops for the consulate staff. The Federal Ministry of the Interior organized training workshops for its staff members, including those working in alien and asylum authorities as well as for NGOs. In 2011 the Federal Ministry of Justice staged the seminar “Becoming active against Human Trafficking” (“*Aktiv gegen Menschenhandel*”) for judges and public prosecutors. The theme is also comprehensively tackled in meetings of the heads of youth welfare offices held at regular intervals. All training programmes were organized in close cooperation with Austrian NGOs, e.g. the Intervention Centre for Those Affected by Trafficking in Women (*Interventionsstelle für Betroffene des Frauenhandels/LEFÖ-IBF*), the Ludwig Boltzmann Institute for Human Rights (*Ludwig Boltzmann Institut für Menschenrechte/BIM*) and the Austrian branch of the Working Community for the Protection of Children against Sexual Exploitation (*Arbeitsgemeinschaft zum Schutz der Kinder gegen sexuelle Ausbeutung/ECPAT*). Great importance is attached to measures to protect victims. The main objectives are to identify alleged victims of human trafficking, to provide them with comprehensive advice and support and to facilitate their social integration.

87. In Austria the victims’ protection facility LEFÖ-IBF funded by the Federal Ministry of the Interior and the Federal Ministry of Women’s Affairs and Civil Service is the most important support centre for victims of trafficking in women. The work of LEFÖ-IBF focuses on promoting the mental, physical and social integrity of the women and girls affected. After crisis intervention, LEFÖ-IBF offers psycho-social counselling and support and ensures medical treatment. The victims are also provided with the psycho-social and legal support prescribed by the law during court proceedings against traffickers in human beings. The Federal Ministry of the Interior grants LEFÖ-IBF a subsidy for this purpose. The budget of LEFÖ-IBF has been increased steadily since 2008 (more details on budgetary funds and on projects are provided in the annex).

88. “Drehscheibe Wien” run by Municipal Department 11 of the City of Vienna serves as a “crisis intervention centre” for unaccompanied foreign minors, some of whom are

victims of child trafficking (mainly begging children, underage prostitutes). In the past few years “Drehscheibe Wien” has succeeded in establishing successful cooperation with Romanian and Bulgarian authorities. It organizes the repatriation of the children affected to their countries of origin provided that the children will receive comprehensive support and protection against the perpetrators in their native country. Between 2009 and 2011 assistance was provided to 315 foreign minors; 118 cases of suspected child trafficking involving children younger than 14 years were examined.

89. In accordance with Section 69a of the Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz*), Federal Law Gazette I No. 100/2005 as amended, victims of trafficking in human beings in Austria have to be issued a residence permit granting them special protection to ensure that punishable acts, particularly in the context of human trafficking will be prosecuted. Due to the amendment of the Settlement and Residence Act, Federal Law Gazette I No. 38/2011, which came into force on 1 July 2011, this residence permit may be converted into a “Red-White-Red-Card plus” (“*Rot-Weiß-Rot-Karte plus*”) if specific conditions are fulfilled. Victims of human trafficking are entitled to compensation for exploitation suffered in Austria. Due to the amendment of the Aliens’ Employment Act (*Ausländerbeschäftigungs-gesetz*), Federal Law Gazette No. 218/1975, which entered into force on 1 July 2011, victims as well as witnesses of human trafficking are granted facilitated access to the Austrian labour market (Section 4 of the Aliens’ Employment Act).

90. In the reporting period, the TF-HT paid particular attention to the aspect of prosecution. The Federal Ministry of the Interior conducted several successful investigations against human traffickers in the period 2009 to 2011. In October 2011 a special department was set up at the Vienna Regional Court, which has special jurisdiction for human rights cases and employs judges with special training in human trafficking issues. In addition, steps were taken to promote close cooperation between the prosecuting authorities and NGOs. This cooperation has proven helpful when victims of human trafficking have to be supported in providing evidence in court against perpetrators.

91. A large proportion of measures carried out in Austria in this field aim at improving the situation in the countries of origin. This goal is taken into account in the activities performed in the framework of Austrian Cooperation with Eastern Europe/Austrian Development Agency. The Austrian Foreign Ministry also supported projects of international organizations launched with a view to intensifying cooperation between Austria and the countries of origin. Moreover, other Austrian federal ministries, above all the Federal Ministry of the Interior, are involved in bilateral and regional projects with neighbouring countries and countries of origin. International cooperation in this field is supported through liaison officers of the Ministry of the Interior, who are posted in most countries of origin and transit countries.

92. Within the framework of the International Labour Organization, Austria ratified Convention No. 29 (1930) concerning Forced or Compulsory Labour, Federal Law Gazette No. 86/1961, and Convention No. 105 (1957) concerning the Abolition of Forced Labour, Federal Law Gazette No. 81/1958. It reports regularly on these issues to ILO. Furthermore, the TF-HT plans to set up a working group on labour exploitation with tasks such as the development of indicators to identify cases of labour exploitation.

93. In 2010 the City of Vienna conducted a sensitization and awareness-raising campaign on forced prostitution. It provided information on forced prostitution (particularly to men using sexual services) as well as on counselling centres for the women affected. The special facility “Drehscheibe Wien” set up by Vienna’s child welfare office is responsible for ensuring protection and support of underage victims of child trafficking (see above (83)).

### **Training of police forces regarding human trafficking**

94. Within the framework of the basic training of Austrian police officers, issues related to human trafficking are treated in the “criminology” course. Special programmes are also offered in continuing and advanced training programmes. In police detention centres the following measures are taken to combat human trafficking:

- Continuous improvement of the identification of victims of human trafficking (potential victims of human trafficking from third countries may have contact with authorities for the first time in Austrian police detention centres);
- Special discussions and target-group-specific as well as practice-oriented sensitization events for the personnel of police detention centres;
- Ongoing evaluation of the approach used and/or applicability of laws regarding prosecution for police officers responsible for first intervention.

95. Regarding the recommendation contained in paragraph 14 of the concluding observations (statistical data on human trafficking and progress of the NAP on Combating Human Trafficking):

- The number of convictions for the criminal offences of human trafficking (Section 104a of the Penal Code) and transnational prostitution trade (Section 217 of the Penal Code) in the period 2007 to 2011 is provided in the annex.
- Austria supports all activities within the EU to develop better guidelines and standards for collecting reliable and comparable data on human trafficking in all the EU Member States. The Austrian administration uses the number of victims assisted by LEFÖ-IBF and “Drehscheibe Wien” (a total of between 300 and 400 annually) as a basis for calculating the number of cases in Austria. However, a much higher number of unknown cases has to be assumed. To improve data availability on human trafficking is one of the objectives of the NAP on Combating Human Trafficking for the period 2012-2014.

## **Article 9**

### **Legal standards concerning personal liberty and security**

96. In accordance with the Federal Constitution Act on the Protection of Personal Liberty (*Bundesverfassungsgesetz über den Schutz der persönlichen Freiheit*) (Federal Law Gazette No. 684/1988, as amended in Federal Law Gazette I No. 2/2008), which is complementary to the rights under the ECHR (in particular article 5) and the Charter of Fundamental Rights of the European Union (in particular article 6) any deprivation of liberty is prohibited, except for the reasons mentioned in the Federal Constitution Act and in the manner prescribed by the law.

### **Data on detention pending trial**

97. In 2011, prisoners on remand spent an average of 78.6 days in detention pending trial (see 2011 Security Report, p. 96, [http://www.bmi.gv.at/cms/BMI\\_Service/SB\\_2011/SB\\_2011\\_Druckversion.pdf](http://www.bmi.gv.at/cms/BMI_Service/SB_2011/SB_2011_Druckversion.pdf)). The percentage of prisoners on remand compared to the total number of prisoners is as follows: in 2011 an average of 1,743 persons were remanded in custody, representing 19.8 per cent of the total average number of 8,816 persons detained (compare 2011 Security Report, p. 93). No data are available on the duration of detention without charges for terrorism suspects.

**Keeping registers**

98. Final convictions by Austrian criminal courts and specific final convictions by foreign criminal courts are recorded in a central register, i.e. the Criminal Register. Each person may request an extract from the Criminal Register, i.e. a “criminal record”. This right is also granted to specific governmental agencies. Private persons do not have access to the criminal records of other individuals.

99. The “Integrated Prison Management System” has been in place since 1 January 2000. It is a countrywide application for EDP-supported administration of relevant data of inmates of the penitentiary system. It is not only used for keeping a register of inmates and for prison cell administration, but also supports all core functions of a state-of-the-art prison system, in particular planning, the administration of transfers of inmates to other prisons, calculating prison terms and deadlines, calendar management, doctors’ and medication modules, prisoners’ compensation for work, plans for prison service and, more recently, the electronic monitoring of house arrest. Employees of the judicial system who are responsible for performing tasks of the penitentiary system have access to the application or register.

100. **Reasons for deprivation of liberty/access to a lawyer:** Regarding the recommendation contained in paragraph 15 of the concluding observations, emphasis has to be placed on the fact that in accordance with article 4 of the Federal Constitution Act on the Protection of Personal Liberty each person detained has to be informed promptly, if possible upon detention, about the reasons and the allegations made against him/her in a language which he/she understands. He/she has the right to request that a family member and lawyer chosen by him/her have to be informed of the arrest without delay.

101. If the public prosecutor orders an arrest based on a court authorization, the court authorization of the arrest has to be delivered to the defendant immediately or within 24 hours after arrest; if the person was arrested by the criminal police, he/she must also be provided with written reasons for the suspicion and the reason for arrest. The defendant has to be informed immediately after his/her arrest that he/she has the right to contact a family member or any other confidential person as well as a defence counsel, to request support by a defence counsel of the public legal aid system, to submit a complaint or protest against his/her arrest and/or to request release (Section 171 of the Penal Code).

102. Defendants who cannot communicate adequately in the language of proceedings are entitled to an interpreter (Section 56 of the Penal Code).

103. The Austrian lawyers have been offering a free 24-hour hotline to persons arrested in each federal province since 2008. Through this hotline financed by the Federal Ministry of Justice a lawyer entitled to representation and defence in all criminal matters can be contacted promptly. The defence services offered in the framework of this hotline include legal advice by telephone or, at the request of the defendant, a personal meeting. If required, a lawyer will provide support during a hearing or any other assistance required to ensure effective defence (e.g. an application for a lawyer under the legal aid system for representation before the court). At the request of the defendant, the defence counsel should provide legal assistance to him/her personally and in situ as soon as possible, but no later than within three hours. If required, interpretation services have to be provided. The defendant is informed of the helpline through an information sheet (including instructions on legal rights), which is made available by the Federal Ministry of Justice in different languages. It has to be handed over to the arrested person immediately after the arrest by the criminal police. The first call is free of charge for the defendant. The legal instructions given to the defendant and his/her response have to be recorded in the arrest report of the criminal police (i.e. whether he/she contacted the service or not).

### Detention in psychiatric institutions

104. The deprivation of liberty of mentally ill persons and persons in need of care and assistance is governed by the Hospitalisation Act (*Unterbringungsgesetz*), Federal Law Gazette No. 155/1990, as amended in Federal Law Gazette I No. 18/2010. Restrictions of liberty are admissible only insofar as the type, scope and duration of any restriction on the freedom of movement imposed is indispensable in the individual case to avert a threat to the life or health of the patient or the life or health of another person as well as to provide medical treatment and care – provided that these measures are not disproportionate with regard to the objective pursued. In accordance with Section 8, paragraph 1 of the Hospitalisation Act, a person may be committed to a psychiatric ward only against his/her will or without his/her consent if a physician of the public healthcare service or a medical officer of the police examines him/her and attests that the legal requirements are met by stating the reasons for his/her decision. Both the patient and the person appointed to represent him/her may request a court to take an immediate decision on the admissibility of this restriction of liberty.

105. In 2011 a total of 23,200 cases of commitment to psychiatric institutions without the patient's request (Section 8 of the Hospitalisation Act) were reported to the district courts. About half of these cases are examined for admissibility in the framework of a court hearing. This hearing has to take place within four days after admission to the institution. As an outcome of this procedure, detention in a psychiatric institution without the patient's request is lifted in about half of these cases. In about one third of all cases detention without the patient's request is lifted between the hearing and the oral proceedings; the patient's stay does not therefore exceed 18 days. In 5.5 per cent of the cases in which there is a hearing and in 4.6 per cent of the cases in which oral proceedings are initiated, detention is lifted on grounds of inadmissibility (compare "Analysis of Hospitalisation Act 2010" [*Analyse Unterbringungsgesetz 2010*], p. 26 [http://www.goeg.at/cxdata/media/download/berichte/analyse\\_ubg\\_2010.pdf](http://www.goeg.at/cxdata/media/download/berichte/analyse_ubg_2010.pdf)).

106. Other rules regarding restrictions of personal liberty of mentally ill persons are laid down in the Act on the Protection of Home Residents (*Heimaufenthaltsgesetz*; Federal Law Gazette I No. 11/2004, as amended in Federal Law Gazette I No. 18/2010). The aim of the Act on the Protection of Home Residents is to protect the personal liberty of persons in need of nursing care or assistance due to their age, a disability or disease. In accordance with Section 4 of the Act on the Protection of Home Residents, these persons may be deprived of their liberty only if they are mentally ill or disabled and therefore represent a serious and substantial threat to their own life or the lives of other persons, if deprivation of liberty is indispensable and appropriate to prevent this risk and if the duration and intensity of this measure is proportionate to this risk. Furthermore, it must be impossible to prevent this risk through other measures, in particular more moderate nursing and care measures. An order issued by a person authorized under Section 5 of the Act on the Protection of Home Residents is a prerequisite for such a restriction of liberty. The reason, type, beginning and duration of the restriction of liberty have to be stated in writing in the order. The locally responsible association appoints representatives of the home residents. They will in particular have the right to visit the institution without prior notice, to obtain a personal impression of the residents, to discuss the question whether the requirements for a restriction of liberty are met with the person entitled to issue such an order and the employees of the institution, to ask questions of the persons representing the residents' interests as well as to inspect the nursing documentation, the medical history and other records on the resident to the extent necessary to fulfil their tasks. Both the resident and his/her representative are entitled to submit an application for a judicial review of the restriction of liberty. Insofar as the court declares the restriction of liberty admissible it has to set a specific deadline not exceeding six months and to define precise circumstances as

well as the admissible scope of the restriction of liberty ensuring the highest possible level of protection; otherwise it has to repeal the restriction of liberty immediately.

### **Detention of asylum seekers**

107. The legal basis for restricting the personal liberty of non-citizens (detention pending expulsion) is defined in Section 76 of the Aliens' Police Act (*Fremdenpolizeigesetz*; Federal Law Gazette I No. 100/2005 as amended in Federal Law Gazette I No. 50/2012). In general detention pending expulsion or arrest after an official order for arrest is always the *ultima ratio*. It is admissible only to ensure the expulsion of the person from the country. If detention pending expulsion is ordered and in the event of arrest based on an official order for arrest, the person affected is to be immediately informed of the reason for his/her arrest. If medical support is required, it will be made available immediately.

108. In accordance with article 4, paragraph 7, of the Federal Constitution Act on the Protection of Personal Liberty, each person arrested has the right that at his/her request a family member and lawyer will be informed of the arrest without unnecessary delay. These constitutionally guaranteed rights are specified in greater detail in Section 40 of the Aliens' Police Act (information of the person affected about the reasons of detention and notification of the consular representation) as well as in Section 40 of the Alien's Police Act in conjunction with Section 36, paragraph 4, of the Administrative Criminal Act (*Verwaltungsstrafgesetz*; Federal Law Gazette No. 52/1991 as amended in Federal Law Gazette I No. 50/2012 [visit of lawyers and consular representative]) and Section 47 Security Police Act (*Sicherheitspolizeigesetz*; Federal Law Gazette No. 566/1991, as amended in Federal Law Gazette I No. 53/2012 [information on arrest to legal counsel and family member]).

109. Detention pending expulsion should always be as short as possible. Adults may be detained in general for up to four months. If expulsion cannot be implemented, detention pending expulsion may last up to ten months. Regarding the recommendation contained in paragraph 18 of the concluding observations mention should be made of the fact that no detention pending expulsion may be imposed on persons younger than 14 years. Persons aged between 14 and 18 years may be detained for up to two months but – unlike with adults – extension is not admissible (Section 80 of the Aliens' Police Act).

110. In 2011 in Austria a total of 5,155 persons were placed under detention pending expulsion. Detainees have the right to a free lawyer (see Section 85 of the Aliens' Police Act). Each alien may lodge a complaint against detention pending expulsion with the Independent Administrative Senate (*unabhängiger Verwaltungssenat*) and – as of 2004, after the reform of the administrative court system – with the administrative courts of first instance. The authority extending the duration of detention pending expulsion has to conduct an ex-officio review of its decision every four months.

## **Article 10**

### **Legal standards concerning the treatment of persons deprived of their liberty**

111. Article 1, paragraph 4, of the Act on the Protection of Personal Liberty provides that detainees have to be treated humanely and with the greatest possible consideration. This constitutional principle is implemented in all legal standards concerning the arrest and detention of persons.

112. More detailed rules on the treatment of persons who have been detained in the cell of a security authority after arrest by members of the public security service or on the basis of an arrest decision are laid down in the Ordinance of the Federal Ministry of the Interior regarding the Detention of Persons by the Security Authorities and Members of the Public



Security Service, hereinafter referred to as “Detention Ordinance” (*Anhalteordnung*), Federal Law Gazette II No. 128/1999, as amended in Federal Law Gazette II No. 439/2005. The Act on the Execution of Sentences (*Strafvollzugsgesetz*), Federal Law Gazette I No. 144/1969, as amended in Federal Law Gazette I No. 50/2012 is the legal basis for the treatment of prisoners in Austrian prisons. It provides rules for executing prison sentences and preventive measures related to the deprivation of liberty.

### **Control of deprivation of liberty and complaints mechanisms**

113. The internal control of the infrastructure and material conditions of deprivation of liberty is subject to administrative and technical supervision. If shortcomings are identified which can be remedied immediately, prompt action will be taken to eliminate them. If there are severe shortcomings or shortcomings requiring more time to be remedied, the respective cells will be closed (partially) and the detainees will be transferred to other detention facilities. The cells will be reopened only after proper conditions have been re-established.

114. External and independent control is ensured by the Austrian Ombudsman Board and its various committees as well as by the Council of Europe and the European Committee for the Prevention of Torture (see information regarding article 7).

115. Persons who have been deprived of their liberty may lodge a complaint against their treatment with the Independent Administrative Senates and as of 1 January 2014 with the administrative courts of first instance. Persons who have been deprived of their liberty are informed of their rights and complaints mechanisms with the aid of multilingual information sheets (particularly if their rights have been violated).

### **Training of prison staff**

116. Employees of police detention centres receive specialized in-house training and have to complete additional training programmes (particularly on human rights) at the Security Academy (*Sicherheitsakademie*). Fundamental and human rights also form an integral part of the basic and advanced training programmes of employees of the penitentiary system and forensic psychiatric establishments. See also article 2.

### **Treatment of juvenile prisoners**

117. In accordance with the Youth Courts Act, Federal Law Gazette I No. 599/1988, as amended in Federal Law Gazette I No. 111/2010, “juveniles” are persons who have reached the age of 14 but not the age of 18. “Young adults” are defined as persons between the age of 18 and 21.

118. In accordance with Section 36, paragraph 3, of the Youth Courts Act, juvenile prisoners have to be separated from adult prisoners unless an exception has to be made due to their physical or mental state. They must in any case be separated from prisoners who have a potential negative influence on the juvenile prisoners. As a rule, juvenile and adult prisoners are therefore detained separately. Juvenile and adult prisoners may share a common cell only in special exceptional cases, e.g. if the juvenile prisoner is suicidal or if he/she speaks a very uncommon foreign language and there is only an adult prisoner speaking the same language. But even in these cases the juvenile prisoner may share a cell with the adult only if the latter is not expected to have a negative influence on him/her. If possible, juveniles should be detained in a special section of penitentiary establishments. If there are sufficient single prison cells, juvenile prisoners will be accommodated in a single cell subject to their consent. In accordance with Section 36, paragraph 3, of the Youth Courts Act, single cell accommodation is not admissible if this is likely to be to the detriment of the detainee and if he/she may be accommodated in a shared cell without any danger to the other prisoners.

119. In providing support to juvenile offenders three priorities are set, namely training, therapy and leisure activities (meaningful occupations such as sports, etc.). The personnel of the juvenile penitentiary system have special qualifications and training. In accordance with Section 54 of the Youth Courts Act, they have to have pedagogical skills as well as knowledge of pedagogy, psychology and psychiatry relevant to their work.

120. In accordance with Section 58, paragraph 4, of the Youth Courts Act, juvenile prisoners should only be given work fulfilling educational purposes. They should in particular be used for outdoor work. However, juvenile prisoners may only be used for work outside the establishment if they are not exposed to the public in a manner that might affect their sense of honour. The daily working time has to be interrupted by at least two longer breaks and must amount to 7.5 hours net on average. In accordance with Section 58, paragraph 5, of the Youth Courts Act, juvenile prisoners must receive regular education in juvenile prisons. Other penitentiary institutions where young people serve prison sentences must provide education to the extent possible and useful. The amount of time used for lessons has to be taken into account in calculating working hours.

121. In the case of young people, detention pending trial must, if possible, be replaced by orders under family law (such as accommodation in homes, assisted living facilities or granting child custody to different persons), which may be combined with measures that are less severe than detention pending trial. Moreover, detention pending trial may be imposed only if harmful effects on the personality development and the juvenile's future life are not disproportionate to the significance of the offence and the expected punishment (Section 35 of the Youth Courts Act).

122. Juvenile prisoners may receive at least one visitor for one hour per week (adult prisoners: at least one visit of the duration of at least half an hour per week).

#### **Compliance with United Nations standards**

123. The Act on the Execution of Sentences complies with the prison-related standards adopted by the United Nations, in particular with the "*Standard Minimum Rules for the Treatment of Prisoners*".

#### **Detention pending trial**

124. Prisoners and persons awaiting trial are detained in different sections of the prison and treated differently. The principle of being presumed innocent until proven guilty is applied to detainees awaiting trial. Unlike prisoners, they do not have the duty to work.

#### **Reintegration measures for former prisoners**

125. In accordance with Section 44 of the Act on the Execution of Sentences, prisoners fit for work have an obligation to work. The compensation for work is based on the wages fixed under the collective agreement for metal workers. 75 per cent of the compensation for work is retained as a contribution to the costs of imprisonment. In 2011 a prisoner in an Austrian prison received an average compensation of € 5 per day (after deduction of the contribution to the cost of imprisonment and unemployment insurance). All prisons have their own companies and workshops (e.g. for various trades) to ensure adequate work opportunities. If the requirements for a less severe enforcement regime are met, work outside the establishment is also possible.

126. There are different possibilities for education and training for persons serving prison sentences, e.g. completing an intensive training programme for skilled workers or shorter apprenticeships in various trades. In these cases practical training takes place in the training institutions of the prison, while theoretical training is provided by external and internal instructors. Furthermore, specialized courses are organized (mostly in cooperation with

vocational training institutes). In many prisons it is possible to acquire the European Computer Driving Licence or other computer-related skills. The project “Tele-Learning for Inmates of Penitentiary Establishments” (“*Telelernen für Insassen von Justizanstalten*”) is conducted in several prisons. A smaller number of prisoners take advantage of distance learning programmes or participate in various educational and training measures during day release.

127. These (work and training) measures are taken to prepare inmates during imprisonment for release from prison and to promote reintegration into a life in freedom. Former prisoners facing difficulties in finding a job and/or accommodation are supported by the probation service (“Neustart”association) within the framework of the assistance system for persons released from prison (see also presentation of conditions in the judgement of the ECHR (Grand Chamber) of 7 July 2011, *Stummer v. Austria*, Appl. 37452/02).

### **Treatment of elderly or sick persons in care facilities**

128. Regarding the legal requirements at federal level concerning restrictions of liberty imposed on mentally ill persons and persons in need of care and/or assistance, see article 9 above.

129. As far as legislation at provincial level is concerned, the following information for the federal province of Lower Austria can be provided as an example.

130. According to the Lower Austrian Social Assistance Act, Provincial Law Gazette for Lower Austria 9200, homes for the elderly and nursing homes as well as institutions for people with special needs are subject to supervision by the provincial government. Nursing homes are therefore checked regularly by competent persons (“supervision of nursing services”). Furthermore, it is the task of the Lower Austrian Patient and Nursing Advocacy (set up under the Lower Austrian Hospital Act, Provincial Law Gazette for Lower Austria 9440) to safeguard the rights and interests of persons in need of care in nursing homes situated in Lower Austria as well as to receive and deal with complaints about all forms of exploitation, violence and abuse in facilities for persons with special needs. The Lower Austrian Patient and Nursing Advocacy has a mandate to clarify shortcomings and grievances in hospitals as well as in homes for the elderly and nursing homes in Lower Austria.

131. In the federal province of Upper Austria, for example, the accommodation of persons in homes for the elderly and nursing homes is governed inter alia by the principles of respect for individuality and personal integrity as well as the right to self-determination in accordance with Section 17, paragraph 3, of the Upper Austrian Social Assistance Act 1998, Provincial Law Gazette for Upper Austria No. 82/1998, etc.

132. Regarding the detention of asylum seekers, see the information provided in article 9.

## **Article 12**

### **Freedom of movement**

133. In accordance with Section 13 of the 2005 Asylum Act, an asylum seeker whose asylum procedure has been found admissible in Austria is entitled to move freely within the federal territory until an enforceable decision is issued, the procedures are terminated or annulled or until the right of abode is withdrawn. As comprehensive procedural and administrative steps have to be taken at the beginning of the asylum procedure, in which the asylum seeker has to participate, a “special duty of cooperation of the asylum seeker” was introduced in Section 15 of the 2005 Asylum Act with effect from 1 October 2011.

According to this provision, the asylum seeker has to stay on the premises of the centre of first reception in the initial phase of the asylum procedure. This obligation is limited to 120 hours; in special cases it may be extended once by 48 hours. During this period asylum seekers may leave the centre of first reception only subject to special conditions. This measure does not constitute detention nor does it impose any restriction on the liberty of the asylum seeker as he/she is at no time prevented from leaving the centre of first reception; if he/she complies with all procedural requirements, the asylum seeker will not face any legal consequences.

#### **Treatment of non-citizens**

134. In accordance with Section 32 of the Aliens' Police Act, non-citizens are required to have their travel documents with them while staying in Austria or to keep them in a place that is sufficiently near to allow them to get them without unnecessary delay (approx. up to one hour). EEA citizens, Swiss citizens as well as favoured third-country nationals enjoy the same status as Austrian citizens; they have to have a travel document with them only when Austrian citizens are required to.

#### **Expulsion of Austrian citizens**

135. Section 2 of the Act of 3 April 1919 concerning the expulsion from the country of members of the House of Habsburg-Lothringen and the assumption of their assets, State Law Gazette No. 109/1919, by virtue of which the members of the House of Habsburg-Lothringen who do not renounce their membership in this House and all claims to power derived from it, has become inapplicable as all persons previously belonging to this House have made such a declaration.

### **Article 13**

#### **Admission of non-citizens to the territory of the State**

136. In accordance with Section 15 of the Aliens' Police Act, the entry of persons not holding the Austrian nationality in Austria is lawful if they hold the necessary travel documents and entry permit. This may be a residence permit, a visa or an inter-governmental agreement. Pursuant to the 2005 Asylum Act, the stay of persons who have entered Austria illegally and subsequently apply for asylum is deemed to be lawful from submission of the application for asylum for the duration of the asylum procedure.

#### **Mandated departure of non-citizens from the territory of the State**

137. In accordance with Section 10, paragraph 1, of the 2005 Asylum Act, non-citizens who have not entered Austria lawfully and who have not been granted international protection have to depart from the Austrian federal territory. If they fail to meet this obligation, an expulsion procedure will be initiated based on the Aliens' Police Act, which is finalized through an official order (administrative decision). In the respective procedure the right to family life within the meaning of article 8, of the ECHR has to be taken into account.

138. Statistical information on measures terminating a residence is provided in the annex of the report of the State party.

#### **Remedies against expulsion**

139. An appeal against an expulsion decision issued by an administrative authority may be lodged with the Independent Administrative Senates or as of 1 January 2014 with the administrative courts of first instance. During the term granted to lodge an appeal and the

subsequent procedure, enforcement of the expulsion decision is inadmissible. A complaint may be filed against the decision of the Independent Administrative Senates with the supreme courts (i.e. Administrative and Constitutional Court) provided that specific legal requirements are met. These courts may decide that the complaint has a suspensive effect.

140. In accordance with Section 84 et seq. of the Aliens' Police Act, non-citizens have to be provided with access to a lawyer *ex officio* and free of charge by the authorities in a procedure for issuing a return decision or a return prohibition as well as in the event of expulsion, detention pending expulsion or a less severe enforcement regime or in the context of any other mechanisms issuing orders or executing coercive measures. The same applies to appeal procedures.

## Article 14

### Organization of the judiciary

141. The regular court system has four levels. The tasks of the judiciary are performed by 141 district courts (at present the court system is undergoing restructuring; the number of district courts is being reduced to about 115), 20 provincial courts, four provincial courts of appeal and the Supreme Court. 17 public prosecutor's offices, four supreme public prosecutor's offices and the Chief Public Prosecutor's Office (*Generalprokuratur*) represent public interests in the criminal justice system.

142. As far as civil law is concerned, the district courts are responsible for issuing decisions at first instance regarding all cases involving an amount in dispute of up to € 10,000 as well as specific types of cases (in particular family and tenancy law matters) – irrespective of the amount in dispute. In the area of criminal law, the district courts are competent for prosecuting all offences that are punishable by fines only or carrying a maximum sentence of one year (e.g. physical injury due to negligence, theft).

143. The provincial courts (courts of first instance) are responsible for issuing decisions at first instance regarding all cases not referred to district courts. At second instance they have to deal with appeals against decisions issued by the district courts.

144. The four provincial courts of appeal are located in Vienna (having jurisdiction for Vienna, Lower Austria and Burgenland), Graz (for Styria and Carinthia), Linz (for Upper Austria and Salzburg) as well as Innsbruck (for Tyrol and Vorarlberg). These second-instance courts decide in civil and criminal matters always as appellate courts. In addition, these courts play an important role in the judicial administration. The president of a provincial court of appeal is the head of the judicial administration for all courts located within his/her court district; in this capacity he/she reports directly to the Federal Ministry of Justice.

145. The supreme instance in civil and criminal matters is the Supreme Court in Vienna. There are no (domestic) appeals procedures against its decisions. The judicature of the Supreme Court plays a decisive role in ensuring legal uniformity in the entire federal territory. Although the lower courts are not bound by its decisions, they usually take into account the case law of the Supreme Court.

### Training and appointment of judges

146. Persons wishing to become judges for civil and criminal cases have to apply first of all for a position as a trainee judge (*RichteramtsanwärterIn*). The most important requirements are laid down in Section 2, paragraph 1, of the Act on the Judges' and Public Prosecutors' Service (*Richter- und Staatsanwaltschaftsdienstgesetz*) and are as follows: Austrian citizenship; full capacity to act; unlimited personal and professional capabilities,

including the social skills necessary for carrying out the tasks related to the position of a judge; completed university studies of Austrian law; completed court internship as a legal trainee (five months).

147. Candidates then complete a training programme (generally taking four years) and take the judge's exam (in writing and orally). They may apply for a vacant, established judge's post only after passing this exam. In accordance with article 86, paragraph 1, of the Federal Constitution Act, judges are appointed by the Austrian Federal President; with regard to the majority of established posts this right was transferred to the Federal Minister of Justice.

148. Details on the percentage of women in the total of judges were provided in article 3. Considering the available statistical data, the question on how many persons with a migration background are employed in the judiciary may be answered only to a limited extent, especially since there are no separate statistical data about persons with a migration background holding Austrian citizenship. Statistically reliable information can be provided only on the number of employees in the judiciary not holding Austrian citizenship. As of 1 January 2013, a total of 115 persons who were not Austrian nationals were active in the judiciary. Judges and public prosecutors must be Austrian citizens.

### **Status of judges**

149. The independence of judges is guaranteed under article 87 of the Federal Constitution Act. In accordance with article 88 of the Federal Constitution Act, the transfer of a judge to another post or compulsory retirement is possible only in the cases prescribed by the law and requires a formal court decision. Upon reaching the legal pensionable age, the judge retires permanently (no prior court decision is required). At present, Section 99 of the Act on the Judges' and Public Prosecutors' Service stipulates that a judge retires permanently at the end of the year in which he/she reaches the age of 65. Setting aside retirement, the term of office of judges is unlimited.

150. The remuneration of judges is mainly governed by Section 66 of the Act on the Judges' and Public Prosecutors' Service. There are separate salary scales for district courts, provincial courts and provincial courts of appeal as well as the Supreme Court. Judges advance *ex lege* to the next salary grade. The presidents of the provincial courts of appeal and the president of the Supreme Court as well as the vice president of the Supreme Court receive a fixed salary.

151. There is no "promotion" for judges but they may apply for established posts at a higher court. A person's individual skills and knowledge have to be taken into account in the procedure for appointing judges.

152. As stated above, any transfer to another post against a judge's will or even removal from office require a formal court decision. In accordance with a general principle of criminal law (Section 27 of the Penal Code), a judge will be removed from office after having been convicted by a domestic court of one or several offence(s) committed intentionally provided that: the prison sentence exceeds one year; the period of imprisonment not suspended for probation exceeds six months; conviction was partly or exclusively due to an offence of abuse of an authority relationship (Section 212 of the Penal Code).

153. Section 101, paragraph 1, of the Act on the Judges' and Public Prosecutors' Service also stipulates that a disciplinary penalty has to be imposed on judges and public prosecutors violating their professional or official duties, e.g. if the gravity of punishable offences which are prosecuted in criminal courts is not fully reflected in the court's decision. In accordance with Section 104, paragraph 1, of the Act on the Judges' and Public Prosecutors' Service, possible disciplinary penalties are reprimands, fines amounting to up

to five monthly salaries or transfer to another place of employment without entitlement to compensation for the costs of moving home and dismissal. Based on Section 112 of the Act on the Judges' and Public Prosecutors' Service, a disciplinary court consists of three judges; or five judges at the Supreme Court. All preliminary fact-finding procedures and disciplinary investigations have to be conducted by a member of the disciplinary court in his/her capacity as the commissioner of investigations. However, the commissioner of investigations must not be a member of the disciplinary senate in the same case.

#### **Organization of the lawyers' interest representations**

154. Each federal province has a chamber of lawyers, of which all lawyers and trainee lawyers whose office is located in the respective federal province are members. The Chambers of Lawyers are public law organizations and independent self-governing bodies. They also have to fulfil governmental tasks within their own purview. They are managed by freely elected committees and represented by a president elected by all members. Within their sphere of responsibility, they have to represent and promote the best interests of their members such as the independence of the lawyers' profession as well as the supervision of their members' duties.

155. Within the framework of professional self-regulation, the Chambers of Lawyers are inter alia responsible for the disciplinary rules. The Disciplinary Council – set up at the seat of the Chambers of Lawyers and elected by the members of the profession – is responsible for conducting disciplinary procedures. The disciplinary sanctions imposed by it even include removal from the list of lawyers (i.e. prohibition to work as a lawyer in Austria). The Supreme Appeals and Disciplinary Committee decides at second instance. It is composed of two judges of the Supreme Court and two lawyers. The representation of the lawyers at federal level is the Austrian Bar Association (*Österreichischer Rechtsanwaltskammertag*); its members are the Chambers of Lawyers of the federal provinces. The mandate of the Austrian Bar Association is to promote the rights and affairs of the lawyers' profession as well as to represent it in matters that affect the Austrian lawyers' profession as a whole or that go beyond the sphere of competence of individual Chambers of Lawyers.

#### **Military courts**

156. In accordance with article 84 of the Federal Constitution Act, military jurisdiction has been revoked in Austria – except in times of war. Military criminal law is enforced by the civilian criminal court.

### **Article 15**

157. The principle of non-retroactive jurisdiction of ordinary criminal laws is enshrined in the Constitution (art. 7 of the ECHR). Furthermore, it is expressly applicable to military criminal law (Section 1 of the Military Criminal Act, Federal Law Gazette No. 344/1970, as amended most recently in Federal Law Gazette I No. 112/2007, in conjunction with Section 1 of the Penal Code).

### **Article 16**

158. The birth of a child has to be notified to the competent registry office within one week (Section 18 of the Marital Status Act [*Personenstandsgesetz*] Federal Law Gazette No. 60/1983, as amended most recently in Federal Law Gazette I No. 16/2013). Upon

request, a birth certificate is issued, which is inter alia necessary for the residence registration of the newborn. It states the child's name, sex and date and place of birth.

159. As of 1 January 2008, birth certificates may be applied for and issued free of charge provided that they are made out within two years of the child's birth.

160. The following persons have the right to have a birth certificate issued and, in general, to inspect the civil status records: persons to whom the entry in the records is related, as well as other persons affected by the entry; persons who can establish a legal interest unless there is an overriding interest worthy of protection of the persons to whom the entry refers; authorities and corporations under public law in the framework of implementing the laws; persons who present the original of a power of attorney of the owner of the birth certificate or other certificates.

161. All births are entered into birth records kept by the local registrar. As of 1 November 2013, all births will be processed electronically on the basis of a central civil register (*Personenstandsregister*), which will provide countrywide electronic access to the data.

## **Article 17**

### **Data Protection Commission**

162. Statistical data on complaints received by the Data Protection Commission in the reporting period are provided in the annex to the report of the State party. Regarding the outcome of the individual complaint procedures, please refer to the website <http://www.ris.bka.gv.at/Dsk/>; all decisions issued by the Data Protection Commission since 2000 are available for download.

163. In its judgement of 16 October 2012, C-614/10, the European Court of Justice came to the conclusion that the current structure of the Austrian Data Protection Commission does not fully comply with the criterion of "complete independence" in accordance with article 28 of the Data Protection Directive. This is due to the fact that the managing member of the Data Protection Commission is an employee of the federal civil service subject to administrative supervision, the Data Protection Commission is structurally integrated into the Federal Chancellery and the Federal Chancellor has an unlimited right to information concerning the management of the Data Protection Commission. A bill for implementing this judgement has been passed by Parliament (amendment of Data Protection Act 2013, Government Bill 2131, Shorthand Minutes XXIV. Legislative Period).

### **Video and acoustic surveillance**

164. Personal (image) data within the meaning of the 2000 Data Protection Act (*Datenschutzgesetz*), Federal Law Gazette I No. 165/1999 are created by video surveillance of places, objects and persons – provided that persons can be recognized. So far only the general provisions of the 2000 Data Protection Act were applied to this infringement of the right to privacy of personal data in accordance with Section 1, paragraph 1, of the 2000 Data Protection Act. Based on the amendment of this Act in Federal Law Gazette I No. 133/2009, explicit rules were incorporated into Section 50a et seq. of the Act, which make video surveillance through private persons in specific cases and under certain conditions (e.g. to protect property or in the framework of legal diligence requirements) admissible. These rules apply only to recordings and transmissions of images but do not cover any (personal) sound recordings or transmissions. "Eavesdropping" by private persons recording the conversations of video-monitored persons are therefore not covered by this regulation and generally forbidden.



## Article 18

165. In Austria there are currently 14 legally recognized Churches and religious communities (compare [http://www.bmukk.gv.at/ministerium/kultusamt/ges\\_ankr\\_krg.xml](http://www.bmukk.gv.at/ministerium/kultusamt/ges_ankr_krg.xml)) as well as 11 denominational communities (compare [http://www.bmukk.gv.at/ministerium/kultusamt/eingetr\\_rel\\_bekg.xml](http://www.bmukk.gv.at/ministerium/kultusamt/eingetr_rel_bekg.xml)). Moreover, some religious communities are active as different civil law entities.

166. There are no special restrictions regarding the publication and circulation of religious material.

167. Religious freedom is protected under criminal law, in particular by Chapter 8 of the Penal Code (“Punishable offences against religious freedom and peace in death”, Sections 188 to 191 of the Penal Code).

168. The Act Amending the Federal Act on the Legal Personality of Religious Denominational Communities (*Bundesgesetz über die Rechtspersönlichkeit von religiösen Bekenntnisgemeinschaften*), Federal Law Gazette I No. 78/2011 introduced flexible rules for furnishing proof of the sustained existence of a religious community and the required minimum number of members. While the religious community had to have existed for at least 20 years (including at least 10 years as a denominational community) under the previous rules, a denominational community must now meet the following requirements: (a) it must have existed for at least 20 years in Austria (including 10 years as an organization) and at least 5 years as a denominational community or (b) it must be integrated into an internationally active religious community which has existed for at least 100 years and has been active as an organization in Austria for at least 10 years both in terms of its organization and teachings or (c) it must be integrated into an internationally active religious community which has existed for at least 200 years both in terms of its organization and teachings. Evidence of the number of members of this community (at least 2 of every 1000 of the Austrian population) may be provided in any other adequate way if no data are available after the latest census.

169. In the reporting period legal recognition was refused in one case for formal reasons; the applicant has in the meantime filed a new application complying with formal requirements.

170. Religious instruction is a compulsory subject and is offered by the respective Church or religious community. Pupils may, however, drop this subject without giving any reason; no statistical data are collected. Education in the public educational system is neutral in terms of belief. There are, however, denominational private schools providing compulsory and continuing education and training. The school-leaving certificates are equivalent to those of public schools if all legal requirements are met.

171. Contributions to legally recognized Churches and religious communities are tax-deductible up to € 400.00 annually.

## Article 19

### Media and broadcasting

172. In the wake of implementing the EU Audiovisual Media Services Directive as well as meeting the requirements of subsidy law regarding the legal framework for public broadcasting, the Austrian broadcasting laws were subject to comprehensive amendments in 2010.

173. Furthermore, the Austrian Communications Authority (*Kommunikations-behörde Austria/KommAustria*), which was a regulatory body subject to instructions, was re-established as an independent administrative board with judicial functions (*Kollegialbehörde*) with effect from 1 October 2010. Its five members are appointed for a period of six years by the Federal President based on the proposal of the federal government. The members are independent in performing their duties and not subject to any instructions; they may be dismissed only by the plenary meeting of the Austrian Communications Authority. Its sphere of responsibility comprises administrative management and regulatory tasks in the field of electronic audio-media and electronic audio-visual media, including supervision of the public broadcasting corporation ORF and its subsidiaries (since 2010).

174. The Federal Communications Board (*Bundeskommunikationssenat*) acts as an appeals authority until the end of 2013, deciding as the supreme instance on appeals against decisions of KommAustria. Its responsibilities will then be assumed by the Federal Administrative Court, which will be set up with effect from 1 January 2014.

175. The changeover from analogue transmission systems to the digital transmission technology DVB-T was completed on 7 June 2011. In the wake of digitalizing terrestrial transmission, the TV channels receivable via outdoor or indoor antennae is tripling, enhancing pluralism. Currently, the following channels may be received in Austria (as of November 2012): ORF1, ORF2 and ATV (98 per cent coverage); Puls4, ServusTV, 3Sat, ORF3, ORF Sportplus (90 per cent coverage); in addition, there are local channels in some regions.

176. The number of private broadcasters has been increasing steadily during the reporting period. As of June 2012, 76 licenses were available for private channels (including Kronehit, a countrywide private radio channel). This number also includes almost 15 non-commercial broadcasters (“free radio stations”), whose programming is not profit-oriented, does not contain any advertising and allows the general public to create programmes. Eight broadcasters distribute their radio programmes (partly additionally) via cable and four broadcasters via satellite.

177. The establishment of a dual broadcasting system in Austria increased and promoted regional and local supply with broadcasting services (both TV and radio).

178. In the wake of an amendment of the KommAustria Act in 2009, two funds administered by Rundfunk und Telekom Regulierungs-GmbH (administrative structure of KommAustria) were set up to promote private (commercial and non-commercial) broadcasting. As from 2013, an annual budget of € 15 million (commercial) and € 3 million (non-commercial) will be allocated to them, covering the following categories of subsidies: content and project funding, training funding as well as financial support for audience reach surveys and quality studies.

179. As far as print media are concerned, the Austrian Press Council (*Österreichischer Presserat*) was re-founded in 2010. The Press Council is a self-regulatory entity in the press sector. Acting on the principle of voluntariness, its aims are to promote editorial quality assurance and to ensure the freedom of the press (see also article 3 above).

## **Article 20**

### **Incitement**

180. Statistical data on cases meeting the requirements of the criminal offence of incitement in accordance with Section 283 of the Penal Code and the Prohibition Act (Law

Gazette of the State No. 13/1945, as amended in Federal Law Gazette No. 148/1992) are provided in the annex to the report of the State party.

181. Regarding of the recommendation contained in paragraph 20 of the concluding observations, the following information may be provided: By virtue of the amendment in Federal Law Gazette I No. 103/2011, which came into force on 1 January 2012, the spectrum of offences punishable as “incitement” was widened under Section 283 of the Penal Code. Section 283, paragraph 1, treats incitement to violence against a Church or religious community or any other group of persons or a member of a group of persons on account of race, colour, language, religion or belief, nationality, descent or national or ethnic origin, sex, disability, age or sexual orientation as a punishable offence. The offence has to be committed publicly and in a manner that may pose a risk to public order or is perceptible to a wider public (about 150 persons). Encouragement or instigation must not necessarily be perceived by a broad public. This amendment has not only widened the scope of protection to include specific groups but also extends to individuals who are members of such a group. Furthermore, it introduced “perceptibility by a broad public” as an alternative to the requirement that the offence has to be committed in the public. The maximum penalty is two years of imprisonment. Insulting or verbal abuse of individuals is punishable as the offence of “insulting” in accordance with Section 111 of the Penal Code or as the offence of “defamation” in accordance with Section 115 of the Penal Code.

## Article 21

182. In Austria the freedom of assembly is protected as a fundamental right and enshrined in the Constitution. The legal basis at the level of ordinary law is the Assembly Act (*Versammlungsgesetz*) 1953, Federal Law Gazette No. 98/1953, as amended in Federal Law Gazette I No. 127/2002, in conjunction with the constitutional fundamentals of article 12 of the Basic Law of 21 December 1867 on the General Rights of Citizens, Law Gazette of the Reich No. 142/1867, as amended in Federal Law Gazette No. 684/1988, of the resolution of the Provisional National Assembly of 30 October 1918 on the Abolition of Censorship and the Establishment of Full Press Freedom and Full Freedom of Association and Assembly, Law Gazette of the State No. 3/1918, as amended in Federal Law Gazette No. 1/1920, and of article 11 of the ECHR.

183. In accordance with Section 2 of the Assembly Act, written notice has to be given to the relevant authority of any assembly accessible to the general public at least 24 hours in advance by stating the purpose, place and time. It is, however, not necessary to obtain official authorization.

184. Pursuant to Section 6 of the Assembly Act, assemblies may be prohibited in advance if they violate criminal laws. Orders to prohibit or dissolve an assembly may also be given during the assembly. In accordance with Section 13 of the Assembly Act, any (ongoing) assembly has to be dissolved by the authority if unlawful events take place while it is being held.

185. During an assembly, the security authorities have to act on the basis of the principle of de-escalation. They have the duty to protect assemblies which were not prohibited against third parties, if required.

## Article 22

186. In Austria the freedom of association is protected as a fundamental right and enshrined in the Constitution. In accordance with Section 11 of the 2002 Association Act (*Vereinsgesetz*), Federal Law Gazette I No. 66/2002, as amended in Federal Law Gazette I

No. 50/2012, the establishment of associations has to be notified in writing to the authority responsible for associations by its founders or statutory representatives by stating their name, date of birth, place of birth and address for communications. A copy of the articles of association agreed on, which must comply with specific minimum requirements, has to be attached to the notification. In accordance with Section 12, paragraph 1, of the Association Act, the authority responsible for associations has to issue an administrative decision prohibiting the foundation of an association if it is unlawful due to its purpose, name or organization provided that the requirements of article 11, paragraph 2, of the ECHR are met. In accordance with Section 29, paragraph 1, of the Association Act and subject to the requirements of article 11, paragraph 2, of the ECHR, any association may be dissolved if it violates criminal laws, exceeds the scope of activities defined in its articles of association or no longer complies with the prerequisites for its continued lawful existence.

187. In Austria trade unions are in general organized as associations. The framework conditions defined in the Association Act have to be taken into account. There are no special provisions for trade unions; hence, there is no obligation to register a trade union or notify the authorities of its formation. According to the Association Act, decisions on the organizational structure of a trade union as well as its occupational and individual sphere of activity are taken by the trade union itself.

188. As trade unions are not registered as such and define their organizational structure themselves, no comprehensive data on the structure, size and percentage of the total workforce belonging to a trade union are available. The most important trade union by far in Austria is the Austrian Trade Union Federation (*Österreichischer Gewerkschaftsbund/ÖGB*). It is an impartial interest representation of workers, which was founded in 1945. It has been established as an association and consists of seven sub-organizations. Based on data provided by the Austrian Trade Union Federation, currently about 1.2 million members are organized within it.

189. As far as the right to strike is concerned, the fact should be highlighted that the Austrian legal system does not provide for any legal right to industrial action. Furthermore, there is no general prohibition of industrial action under criminal or civil law. No distinction is made between a strike conducted by a coalition and a so-called “wildcat strike”. The principles of governmental neutrality and equality of arms are applicable.

190. In assessing the lawfulness of an industrial action, a distinction has to be made between industrial action as an overall campaign and individual conduct during a labour conflict. An industrial action per se may be unlawful due to violating general legal duties as to conduct; the lawfulness of industrial action will be examined in particular to determine whether it is *contra bonos mores*. Industrial action is considered to be *contra bonos mores* particularly if the negative effects caused to the opponent and the desired outcome of the labour conflict are grossly disproportionate.

191. Since 2005, no strikes in Austria have been recorded in the strike statistics (source: Austrian Trade Union Federation and Chamber of Labour).

192. In accordance with Section 1, paragraph 4, of the Political Parties Act (*Parteiengesetz*) 2012, Federal Law Gazette I No. 56/2012, political parties have to adopt articles of association, which have to be deposited with the Federal Ministry of the Interior and published in an adequate manner on the Internet. The articles of association have to meet minimum requirements. In accordance with the established case law of the Constitutional Court nobody – not even the Federal Minister of the Interior – may take a general binding decision whether a specific group of persons should be granted the legal personality of a political party or not. Instead, each authority and each court has to examine incidentally in concrete proceedings pending before it whether the allegation of a group of persons to have legal personality as a political party is true.

193. The general legal provisions for establishing private-law legal entities are also applied to non-governmental organizations (NGOs). They may therefore be established under different legal forms, in particular as associations or foundations.

194. Individual NGOs enjoy the status pursuant to the Federal Act on Granting Privileges to Non-Governmental International Organisations (*Bundesgesetz über die Einräumung von Privilegien an nichtstaatliche internationale Organisationen*), abbreviated hereinafter as “Act on NGOs”, Federal Law Gazette No. 174/1992. Based on this Act, an NGO may be granted legal personality by virtue of an administrative decision of the Federal Minister for European and International Affairs unless it has already been granted to it based on other legal provisions.

195. To date, the following NGOs have been recognized in accordance with the Act on NGOs:

- The Institute of Chinese Culture – Liaison Office with the International Atomic Energy Agency (IAEA) – Taipei Economic and Cultural Office;
- The International Press Institute (IPI);
- The International Council for Game and Wildlife Conservation (CIC);
- The International Biathlon Union (IBU);
- The Renewable Energy and Energy Efficiency Partnership (REEEP);
- The International Organization of Supreme Audit Institutions (INTOSAI);
- The International Federation for Information Processing (IFIP);
- The World Public Forum – Dialogue of Civilizations;
- The International Peace Institute (IPI);
- The World Institute of Nuclear Security (WINS);
- The Vienna Economic Forum (VEF); and
- The Vienna Center for Disarmament and Non-Proliferation (VCDNP).

196. As far as tax treatment is concerned, an NGO may be granted non-profit status in accordance with Section 6 of the Act on NGOs at the request of the Federal Minister of Finance after consultation with the Federal Minister for European and International Affairs provided that the requirements described in Sections 34 to 47 of the Federal Fiscal Code (*Bundesabgabenordnung*) are expected to be met based on the NGO’s articles of association. However, recognition as an NGO based on the Act on NGOs is not a prerequisite for non-profit status as it may be granted also to associations and foundations.

197. In concrete terms, non-profit status means:

- Preferential tax rate (10 per cent) or exemption from value-added tax;
- Exemption from corporate income tax;
- Possible exemption from municipal tax, which is part of non-wage labour costs, and, if applicable, a preferential real property tax rate.

198. Tax exemptions and tax benefits are granted to the organization per se but not its employees, regardless whether the NGO is recognized as an NGO based on the Act on NGOs or not. In addition, the Federal Minister for Labour, Social Affairs and Consumer Protection may exempt NGOs recognized under the Act on NGOs from application of the Aliens Employment Act (*Ausländerbeschäftigungsgesetz*) by virtue of an ordinance.

199. Moreover, NGOs active in the human rights area are subsidized by the government. The Federal Ministry of European and International Affairs supports NGOs, e.g. by granting printing allowances as well as subsidies for public relations work. The Federal Ministry of Education, Art and Culture granted for example the “THIS HUMAN WORLD” association for promoting and publicizing human rights issues subsidies to organize competitions for pupils on human rights issues amounting to € 5,000.00 and € 6,000.00 in 2011 and 2012, respectively. The Federal Chancellery granted subsidies of between € 1,500.00 and € 10,000.00 to the Austrian League for Human Rights (*Österreichische Liga für Menschenrechte*) and the Austrian Institute for Human Rights (*Österreichisches Institut für Menschenrechte*).

200. As of 31 December 2011, there were 117,828 associations in Austria. No data are available on how many of these associations are active in the human rights sector. Based on the latest data, the Federal Ministry of the Interior recorded about 930 depository procedures concerning articles of association within the meaning of Section 1, paragraph 4, of the 2012 Political Parties Act.

201. In accordance with Section 12 of the Association Act, 80 applications for recognition as an association were rejected as inadmissible. An appeal can be lodged against these decisions.

## **Article 23**

### **Legal options of changing name upon marriage**

202. The 2013 Act Amending the Child Custody and Naming Law (*Kindschaftsrechts- und Namensrechts-Änderungsgesetz*) which came into force on 1 February 2013, Federal Law Gazette I No. 15/2013, stipulates with regard to marriages entered into after 31 March 2012 that both spouses may adopt a double-barrelled surname using both surnames. If no common surname is selected by the couple, the woman will keep her own surname (i.e. it will not be changed automatically to her husband’s surname, as previously).

### **Child custody and visitation rights**

203. Moreover, key aspects of the child custody and visitation law were changed by the 2013 Act Amending the Child Custody and Naming Law:

- If the parents of a child are married with one another, they will – as in the past – have equal rights to custody. If the common household of the parents sharing the right to custody (today there is no difference between married and unmarried couples) is dissolved, the law stipulates (as did the previous wording) that both parents will continue to share custody of their child. However, they have to enter into an agreement on the custodial rights or predominant care-giving responsibilities. If such an agreement is not reached or if one parent requests sole custody, the law provides for a phase of “preliminary parental responsibility”. This period will show how the parents deal with the changed situation, which problems shared custody may lead to and which effects it has on the child. The court will then make a decision on child custody. It is entitled to order shared child custody even if the parents have not reached any agreement, if shared custody is in the child’s best interests.
- If the parents are not married at the time of the birth of their child, the mother will have sole custody. Shared custody of both parents is facilitated by allowing them to make formal statements requesting shared custody, which they may submit jointly and personally to the registry office. The registry office will serve as a ‘one-stop shop’ for the parents allowing them to deal with matters such as

birth certification, acknowledgement of paternity and custody arrangement. Furthermore, the amendment provides for the parents' right to submit a request to establish shared custody or sole custody – by taking into account the best interests of the child. A period of preliminary parental responsibility will also be arranged for this procedure.

204. In addition, the amendment has given the family court more powers to enforce court orders through a soft approach, i.e. with the help of a “visitation mediator”. Through his/her presence and supervision, the “visitation mediator” of the court helps to ensure that the child is collected and returned in a suitable manner. Moreover, it is possible to obtain court orders against a parent who has the right to contact the child but fails to maintain such personal contact to the detriment of the child.

205. In this connection, it should be mentioned that in the light of article 1 of the Federal Constitution Act on the Rights of Children (*Bundesverfassungsgesetz über die Rechte von Kindern*), Federal Law Gazette I No. 4/2011, “the well-being of the child must be a primary consideration in all measures affecting children that are taken by public and private institutions”. Article 2 leg. cit. enshrines the right of the child to regular personal relationships and direct contact with both parents unless this is detrimental to his/her well-being.

#### **Protection of children in conflict situations**

206. In accordance with Section 104a of the Non-Contentious Proceedings Act (*Außerstreitgesetz*), Federal Law Gazette I No. 111/2003, as amended in Federal Law Gazette I No. 111/2010 coming into force on 1 July 2010, children are supported by a “children’s advocate” in custody and visitation proceedings. Children’s advocates are not lawyers but are active in the psycho-social area, receive special training, provide assistance to the child and act as a mouthpiece for the child. The children’s advocate has a duty of confidentiality and may convey only those messages of the child to which he/she has been authorized explicitly by the child in and outside the proceedings.

#### **Family reunification**

207. Regarding the recommendation contained in paragraph 19 of the concluding observations, it should be pointed out that the 2005 Asylum Act implements the definition of “family members” according to article 2(h) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third-country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection to be granted, OJ L No. 304/12 of 30 September 2004.

## **Article 24**

#### **Changes of the naming law affecting children**

208. The 2013 Act Amending Child Custody and Naming Law provides that children may now have a double-barrelled surname formed by using the surname of two persons. First of all, the fact will be examined whether the parents have a common surname. If this is the case, this name will become the surname of the child upon birth; the law also stipulates that the double-barrelled surname adopted by one parent upon marriage may be used as the child’s surname. If the parents do not have a common surname, the surname of one parent may be used as the child’s surname; moreover, a child may receive a double-barrelled surname composed of the surnames of both parents if this is determined formally. See also the information provided in article 16.

**Criminal law relating to juvenile offenders**

209. Persons not having reached the age of 14 are minors (Section 1, sub-para. 1 of the Youth Courts Act 1988, Federal Law Gazette No. 599/1988 as amended most recently in Federal Law Gazette I No. 2/2013) and therefore not punishable (Section 4, para. 1 leg. cit.). The rule that young people and adults have to be accommodated separately during detention pending trial (Section 36 of the Youth Courts Act; see above article 10) must be applied also to young adults up to the age of 21 years (Section 46a of the Youth Courts Act). The court has to sentence juveniles arrested (just like adults) as quickly as possible. (Section 9 of the Penal Code).

**Protection of children outside the family environment**

210. As mentioned above in article 23, the Federal Constitution Act on the Rights of Children was passed in 2011. In accordance with article 2, paragraph 2, of this Act, each child permanently or temporarily deprived of its family environment is entitled to the special protection and assistance of the state.

211. The Youth Welfare Act (*Jugendwohlfahrtsgesetz*) 1989, Federal Law Gazette No. 161, as amended, provides the legal framework for a countrywide youth welfare system. The federal provinces concretize the national framework by implementing laws which have been adjusted to their specific requirements.

212. According to these laws, a child may be placed with a foster family or an institution (socio-pedagogical flat-sharing communities, children's villages, emergency accommodation, etc.) if the measures carried out to support child-rearing in the family are insufficient to ensure the child's well-being. These measures are taken on the basis of court orders (Sections 187 et seq. of the Austrian Civil Code).

213. The following information can be provided on measures that have to be taken to protect children placed outside the home by using the system of Lower Austria as an example.

214. In selecting suitable care outside the home for children and juveniles, the youth welfare institutions of Lower Austria have to pay due regard to the continuity of education as well as the religious, cultural and linguistic origin of the child or juvenile in question. Moreover, the type of care (foster parents or care facility) has to be selected by taking into account existing bonds, behavioural problems, mental and physical traumata as well as the expected outcome. The youth welfare institutions have to verify as a first step if the minor has suitable relatives who can provide care for him/her. The children, juveniles, parents affected or other persons responsible for care-giving and education must in any case be involved in taking decisions regarding the selection of suitable care outside the home.

215. All details regarding accommodation outside the family environment have to be planned and implemented carefully to prevent any secondary damage to the child through (re-) traumatisation. The transfer of the child to an institution has to be as smooth and painless as possible. If possible, the new environment will be visited with the minor and his/her parents before the planned transfer.

216. During accommodation in a care facility, the following measures of quality assurance are taken by the youth welfare institutions of Lower Austria to protect the children and young people accommodated:

- The female social worker responsible for the child has to maintain personal contact with the child;
- The female social worker involved has to inform herself of the educational attainments and development of the child. Particularly in those cases in which



the child's later reintegration into his/her original family is envisaged, the competent female social worker has to continue working with the parents towards facilitating the child's reintegration into his/her own family;

- The entity responsible for a care institution has to grant the representatives of the youth welfare system access to the facilities at any time, allow them to inspect written records to whatever extent necessary and provide them with required information. If grievances are identified, they have to be remedied within an adequate period of time. If they are not dealt with, an administrative decision will be issued stating that the institution is no longer suitable for performing its mandate.

217. Moreover, the representation of the Ombuds Office for Children and Young People of Lower Austria in provincial youth homes will serve as an independent and external point of contact during consultation sessions held for children and young people.

218. With regard to the placement of children with foster families, the following quality assurance measures are taken by the Youth Welfare Office of Lower Austria to protect children and young people:

- With a view to assessing the suitability of a person to become a foster parent, the Youth Welfare Office will examine the person's physical and mental capability to care for children with educational problems and/or traumatisation as well as the person's family environment.
- Foster parent applicants have to undergo a basic training programme. Basic and continuing training programmes as well as discussion rounds are also available to foster parents.
- As soon as a child is placed with suitable foster parents, supervision will ensure that the child placed in foster care develops properly and that his/her material, physical, mental and social needs are met. Supervision for foster carers is ensured through visits by the responsible female social worker at least once a year.
- Social workers accompany foster families and support foster parents in performing their tasks of care and education through counselling meetings.

219. In this connection, the following information may be provided for the federal province of Upper Austria.

220. The Youth Welfare Office of Upper Austria ensures responsible care of children and juveniles outside their family environment by taking the following measures:

- A quality assurance guideline for socio-pedagogical institutions was adopted on 1 January 2009. It defines standards for care services, the personnel used, infrastructure and documentation. This guideline serves as a basis for approval procedures of institutions and regular professional inspection by the Youth Welfare Office of Upper Austria.
- Compliance with the guidelines in these establishments is checked through comprehensive professional inspections performed without prior notice at least every two years. If deficiencies are identified, corrective measures will be initiated promptly and their implementation will be verified. In the framework of this professional inspection, personal meetings are held with the children or juveniles in the establishment.
- Complaints about inadequate care are examined immediately by conducting a professional inspection performed in respect of the concrete case – regardless

whether the complaint was submitted by children and/or juveniles, their parents or other persons.

- The Youth Welfare Office which initiated accommodation outside the home defines the key objectives of care in an assistance plan drawn up for each individual case. The responsible social worker will check the concrete development of out-of-home care at least every six months.

221. Young people in Upper Austrian residential educational facilities may also turn to persons or institutions providing support (e.g. social workers) when facing a problem. In addition, they may use the services of the Ombuds Office for Children and Young People, which not only offers confidential legal and psycho-social advice to children and juveniles but also promotes their best interests on a general level. The child protection groups set up in numerous hospitals help to ensure that during diagnostics more attention is paid to injuries which may have been caused by violence and abuse as well as behavioural changes or psychological disorders of the children and juveniles examined.

222. As far as new developments within the City of Vienna are concerned, it should be noted that a children's officer was appointed on behalf of the Vienna Youth Welfare Office with effect from 1 March 2012. He/she is responsible for children placed in socio-pedagogical shared flats or contracted facilities of the City of Vienna.

223. One of the measures taken at federal level to promote the protection of children placed in out-of-home care was a meeting of Austrian Ombuds Offices for Children and Young People exploring the issue of "How to empower children in out-of-home care" (22 and 23 November 2012). The aim of the meeting organized in cooperation with the Federal Ministry of Economy, Family and Youth was to identify strategies to remove all risks for children and young people placed in out-of-home care.

224. In addition, the Federal Act in Federal Law Gazette I No. 29/2012 improving the protection of children and young people against violence came into force on 27 April 2012. It allows public youth welfare institutions – subject to the provisions of provincial laws – to obtain extracts from the criminal record concerning a person posing a concrete threat in order to avoid or avert a concrete risk to a specific minor. The right to special information on sexual offenders pursuant to Section 9a, paragraph 2, of the Criminal Records Act (*Strafregistergesetz*) has been strengthened insofar as public youth welfare institutions are now entitled to obtain information on convictions which are specifically marked in accordance with Section 2, paragraph 1a, of the Criminal Records Act as well as on data in accordance with Section 2, paragraph 1, sub-paragraphs 7 and 8 of the Criminal Records Act. This measure will help them assess the suitability of potential foster and adoptive parents.

#### **Protection against (sexual) violence**

225. Based on the so-called Second Act on Protection against Violence (*zweites Gewaltschutzgesetz*), Federal Law Gazette I No. 40/2009, which came into force on 1 June 2009, the viewing of pornographic images of minors on the Internet became a punishable offence even if they are not downloaded (Section 207a, para. 3a of the Penal Code). For specific sexual offences lower limits for punishment were introduced (Section 202, para. 1 of the Penal Code "sexual coercion" and Section 205, para. 1 leg. cit. "sexual abuse of a helpless or mentally impaired person"), while the level of punishment (Section 205, para. 2 and Section 207, para. 3 of the Penal Code "sexual abuse of minors") and possible penalties were raised (Section 207a, para. 2 of the Penal Code "minors in pornographic materials" and Section 214, para. 2 leg. cit. "procuring sexual contacts with minors against payment").

226. Furthermore, the period of limitation applicable to specific offences against minors has been extended once more. The period from the date of the criminal offence to the

victim's 28<sup>th</sup> birthday is not taken into account in calculating the period of limitation; the suspension of the limitation period (Section 58, para. 3, sub-para. 3 of the Penal Code) is not restricted to the offences expressly listed but is in general applied to punishable offences against life and limb, against freedom or sexual integrity and self-determination. Moreover, measures were taken to prevent the repetition of offences. On the one hand, offenders may now be prohibited from working in certain occupations (Section 220b of the Penal Code); on the other hand, the offender will be subject to court supervision (in accordance with Section 52a of the Penal Code) after the conditional release from a penitentiary institution. In the framework of court supervision, a judge may order probation or psychotherapeutic/ medical treatment.

227. The 2011 amendment of the Penal Code, Federal Law Gazette I No. 130/2011 introduced the criminal offence "grooming for the purpose of establishing sexual contacts with minors" (Section 208a of the Penal Code). This offence covers specific behaviours of a sex offender to prepare minors for sexual abuse; as purely preparatory acts ("grooming") they had not been punishable in the past. Furthermore, knowingly viewing pornographic performances of minors (Section 215a, para. 2a of the Penal Code) has become a criminal offence holding consumers responsible for what they consume. Possibilities for punishing offences committed abroad have also been improved. Going beyond the scope of previous provisions, the amendment ensures that any sexual abuse of juveniles (Section 207b of the Penal Code), the abuse of an authority relationship (Section 212 of the Penal Code) as well as human trafficking offences (Sections 104a, 194, 217 of the Penal Code) will be punished regardless of the laws of the place where the criminal offence was committed. Furthermore, steps to increase punishment were taken by establishing or raising minimum levels of punishment for punishable acts committed by an adult person against a minor using violence or making dangerous threats (Section 39a of the Penal Code).

### **Trafficking in children**

228. As far as measures to prevent child trafficking and sex tourism are concerned, the Federal Ministry of Economy, Family and Youth has published a folder to facilitate the identification of victims of child trafficking and has made it available to all relevant professional groups. A section of the website [www.kinderrechte.gv.at](http://www.kinderrechte.gv.at) (run by the Ministry) focuses on child trafficking, providing important information and educational material. The round table on "Ethics in Tourism" organized by the Ministry deals inter alia with the issue of sex tourism. Together with Germany and Switzerland, the tourism industry and NGOs, information material on the "sexual abuse of children in tourism" (e.g. the film "Witness" with support materials) as well as an online e-learning tool for experts from the tourism sector and special events at holiday fairs were published. For further information see article 8.

### **Child labour**

229. In accordance with article 3 of the Federal Constitution Act on the Rights of the Child, child labour is explicitly prohibited. Apart from the limited number of legal exceptions described in the following, the minimum age for starting work must not be below the age in which compulsory schooling ends.

230. Key provisions in this area are laid down in the 1987 Children and Youth Employment Act (*Kinder- und Jugendlichen-Beschäftigungsgesetz*), Federal Law Gazette No. 599, as amended in Federal Law Gazette I No. 35/2012, and the Ordinance on Employment Prohibitions and Restrictions for Young Persons (*Verordnung über Beschäftigungsverbote und Beschränkungen für Jugendliche*), Federal Law Gazette II No. 436/1998.

231. Section 2, paragraph 1, of the Children and Youth Employment Act defines “children” as minors not having reached the age of 15 or not having completed compulsory schooling. Child labour is also explicitly prohibited under the Children and Youth Employment Act (Section 5 leg.cit.). The following occupations are, however, permitted for children:

- In accordance with Section 5a of the Children and Youth Employment Act, children who have reached the age of 13 may be used for performing the following tasks: work in family companies, household work as well as running errands, giving a helping hand on sports fields and playing grounds, collecting of flowers, herbs, mushrooms and fruit and equivalent activities provided that these are easy and occasional jobs and that they are carried out neither in a business enterprise nor in the framework of an employment relationship. Any admissible activity will, however, require the consent of the child’s legal guardian. Furthermore, these activities are subject to specific temporal limitations, they must not have adverse effects on school attendance and the performance of religious duties, pose a risk to the child’s physical and mental health as well as his or her development or security. Accident risks or detrimental exposure to heat, cold or damp as well as to substances or rays, dust, gas or vapour harmful to health must be excluded.
- In accordance with Section 6 of the Children and Youth Employment Act, permission can be granted in individual cases to use children in musical, theatre and other performances as well as in photo, film, TV and sound recordings. Permission may be granted where a particular interest in art, science or education is identified or for advertising spots provided that the nature and type of the respective occupation justifies the use of children. The use of children in variety, cabarets, bars, sex shops, dance bars, discos and similar establishments may not be permitted. Any permission to use a child will require the written consent of his/her legal guardian. If a child is used in commercial performances, his/her physical fitness has to be certified by a medical officer. As far as a child’s participation in cinema and TV films or similar recordings is concerned, permission may be granted only if the expert opinion of an ophthalmologist certifies that this activity does not give rise to serious concern. In the event of commercial performances, the administrative decision authorizing the use of the child also has to specify details regarding working hours and breaks and, if applicable, work on Sundays and holidays. Children are inter alia prohibited to work during the night. In general, permission may be granted only if the organizer of the event has received a declaration of no objection from the municipality.

232. The working time provisions for juveniles (Section 2, para. 1a of the Children and Youth Employment Act) are applicable to minors not having reached the age of 15, who have completed compulsory schooling and are employed in the framework of an apprenticeship or a traineeship during their holidays, of a compulsory internship or of participation in integrative vocational training (the aim of which is to facilitate the integration of disadvantaged persons with personal obstacles into the world of employment as they are unable to serve a regular apprenticeship). “Juveniles” are persons not having reached the age of 18 who are no longer children (Section 3 of the Children and Youth Employment Act).

233. The administrative authorities of a district – in cooperation with the Labour Inspectorates, municipal authorities and school administrations – are responsible for monitoring compliance with these provisions. School teachers, physicians, private youth welfare bodies as well as all public corporations responsible for youth welfare tasks have a

duty to report any perceived violations of these provisions (Section 9 of the Children and Youth Employment Act).

234. In the framework of the International Labour Organization, Austria ratified the Convention (No. 138) concerning Minimum Age for Admission to Employment of 1973, Federal Law Gazette III No. 200/2001 and Federal Law Gazette III No. 201/2001, as well as the Worst Forms of Child Labour Convention (No. 182) of 1999, Federal Law Gazette III No. 41/2002. In this context, it reports regularly to ILO.

235. Regarding the recommendation contained in paragraph 18 of the concluding observations (treating children in asylum procedures like adults), the following information supplementing the aforementioned in article 3 and article 9 should be presented: The special situation of unaccompanied minor refugees has been taken into account in the 2005 Asylum Act by enshrining special provisions on the legal representation of unaccompanied minor refugees in the asylum procedure (Section 16 of the Asylum Act). During an admission procedure this task is in general performed by legal advisors. As they are required by law to have legal training or profound professional experience in the field of asylum law, they are able to represent the best interests of the minor. At a later stage, the responsibility for legal representation is transferred to the youth welfare authorities. This ensures that unaccompanied minor asylum seekers are supported by a legal advisor during the entire asylum procedure. Furthermore, there are special provisions concerning accommodation and care.

## **Article 25**

### **Active/passive electoral rights**

236. For general information on the Austrian electoral system see: [http://www.bmi.gv.at/cms/BMI\\_wahlen/english\\_version/start.aspx](http://www.bmi.gv.at/cms/BMI_wahlen/english_version/start.aspx).

237. The voting age in elections is 16 years (or above) on election day, the age to stand for elections is 18 (or above) on election day. In general, Austrian citizenship is a precondition for enjoying the active and passive rights to vote. Austrians permanently living abroad enjoy the right to vote if registered in the electoral register. This registration has to be renewed every ten years. EU citizens can participate in municipal elections if they have a permanent residence in Austria. Besides, EU citizens can participate in elections for the European Parliament in Austria, if they formally declare to vote for the Austrian MEPs.

238. Parliamentary elections take place based on the principles of proportional representation, a closed list system, and preferential votes. All campaigning groups need supportive signatures by three members of the National Council or 2,600 declarations of support in order to run nationwide for national parliamentary elections.

### **Amendments of the electoral law**

239. On 1 October 2011, amendments of the Austrian electoral law came into force, which took on a significant number of recommendations and suggestions raised in the OSCE/ODIHR Election Assessment Mission Report issued on the occasion of the 2010 Presidential Elections, particularly concerning the system of postal voting, the use of voting cards, and the abolishment of a provision that prevented members of formerly “ruling houses” from standing in presidential elections.

240. Moreover, section 22 of the National Council Elections Act 1992 was amended and a new provision was incorporated into the Code of Criminal Procedure of 1975, which stipulates that “disenfranchisement [...] [is to be] [...] decided [upon] in the criminal judgment” and that this decision, being taken on an equal footing with the sentence, “can be

appealed against” in order to implement the European Court of Human Rights’ judgment of 8 April 2010 in the case of *Frodl v. Austria* (Application No. 20201/04). In this judgment, the Strasbourg court had criticized the Austrian system of disenfranchising prisoners. Therefore, according to the 2011 amendments, disenfranchisement of prisoners in exercising their right to vote now only takes place if so decided in an individual sentence rendered by a criminal court. In their decision on disenfranchisement, judges have to consider the particular circumstances of the individual case. Judges can exclude individuals from the right to vote if they have been sentenced with final effect to a term of imprisonment of more than one year, assuming that there is a link between the offence committed and issues relating to elections and democratic institutions, or if they have been duly sentenced to a term of imprisonment of more than five years for criminal offences committed with intent. These new rules are applicable for elections on a federal, provincial and local level alike.

### **Facilitating voting**

241. Using the federal province of Salzburg as an example of measures taken in this area at provincial level, we may provide the information that tactile voting devices are made available in the polling stations to persons with motor impairment or blind persons. Persons confined to bed or immobile persons may also apply for a visit by the “special electoral authority” (i.e. the so-called “flying electoral authority”).

242. With regard to Vienna, the latest municipal council and district council elections held on 10 October 2010 are mentioned to inform on measures facilitating voting. The following measures were taken to motivate recently naturalized citizens to participate in the municipal council and district council elections on the one hand as well as to encourage non-Austrian EU citizens to vote in the district council elections on the other hand: preparation of the Vienna Dictionary of Election Terminology (“*Wiener Wahlwörterbuch*”) in 15 languages, development of electoral information in different languages, various media cooperation projects (e.g. with “Hello Austria, hello Vienna”) and articles in relevant magazines (e.g. “Welt und Stadt”, “biber”) as well as information tailored to the needs of non-Austrian EU citizens.

### **Access to the civil service**

243. **Recruitment:** Section 4, paragraph 3, of the 1979 Civil Servants Employment Act (*Beamten-Dienstrechtsgesetz*), Federal Law Gazette No. 333/1979, as amended in Federal Law Gazette I No. 120/2012 defines that “of all applicants meeting the appointment requirements only the applicant who can be expected to perform the tasks of an established post optimally based on his/her personal abilities and professional qualifications may be appointed to the position“. To ensure compliance, recruitment for the civil service has to comply with the provisions of the 1989 Act on Vacancy Announcements (*Ausschreibungsgesetz*), Federal Law Gazette No. 85/1989, as amended most recently in Federal Law Gazette I No. 120/2012, which defines vacancy announcements and recruitment procedures based on the principles of transparency and objectivity. In addition, the Federal Equal Treatment Act outlaws discrimination in establishing employment relationships and in career advancement, particularly in the context of transfers to a better-paid service category. In accordance with the established case law of the European Court of Justice, the civil service law of the Federal Republic of Austria stipulates that only those civil service posts requiring a specifically close relationship with Austria, which persons holding Austrian citizenship are expected to have, have to be assigned exclusively to employees who are Austrian nationals (“employment privilege for Austrian nationals”); this applies in particular to judges, police personnel and diplomats.

244. **Advancement:** The administrative and pay scheme of the federal civil service was changed from a system of service categories to a job-based system back in the mid-1990s. Vacancies for higher established posts (executive positions) must in general be filled with the best-suited candidate after public announcement of the vacancy and a recruitment procedure in accordance with the provisions of the Act on Vacancy Announcements.

245. **Notice of termination/dismissal/removal:** Civil servants (employees in public employment relationships) may only be removed from a position based on a disciplinary decision issued by an independent commission, after an independent commission has assessed their work performance as inadequate twice or if he/she has committed severe criminal offences, i.e. only after conducting a procedure based on the rule of law in which the civil servant is granted full rights as a party. Contractual employees may be given notice /dismissed only by observing the legal terms/dates of notice provided that a ground for termination/dismissal defined in the law (e.g. gross breach of duty) is applicable. Notices of termination/dismissal may be challenged before the labour and social courts. Contractual employees holding (highly visible) executive positions are entitled to employment under civil service law, which grants them the same level of protection as civil servants. Removal from a specific post is basically possible. If the employee is not assigned to a new post within two weeks or if the new post is not equivalent to the previous one, removal has to be treated like a transfer. Transfer is admissible only after conducting the respective procedure and if necessary to safeguard important service-related interests (e.g. violation of duty). A final administrative decision has to be issued for this purpose, which may be challenged by the employee affected by all ordinary and extraordinary appeals procedures and legal remedies.

## Article 26

246. The Austrian legal system provides comprehensive legal protection and legal certainty to prevent and combat discrimination in Austria.

247. As far as constitutional law is concerned, the prohibition of all forms of racial discrimination is enshrined in the Federal Constitution Act on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, Federal Law Gazette No. 390/1973. As a consequence, the scope of application of the equality principle originally applicable only to Austrian citizens (art. 7, para. 1 of the Federal Constitution Act and article 2 of the Basic Law on the General Rights of the Nationals) has been fundamentally expanded to include relations among non-citizens. In this context, mention should be made of the accessory prohibition of discrimination of article 14 of the ECHR. As far as ordinary laws are concerned, comprehensive regulations are available to prevent all forms of discrimination both at federal and provincial level.

248. Discrimination may be the subject of prosecution particularly on the basis of Section 283 of the Penal Code, the Prohibition Act as well as article III of the 2008 Introductory Act to the Administrative Proceedings Laws (*Einführungsgesetz zu den Verwaltungsverfahrensgesetzen*; Federal Law Gazette I No. 87/2008, as amended in Federal Law Gazette I No. 33/2013). The prohibition of discrimination under administrative criminal law was tightened in 2012 (Federal Law Gazette I No. 50/2012): Article III, paragraph 1, sub-paragraph 3, of the Introductory Act to the Administrative Proceedings Acts defines a prohibition of discrimination on grounds of race, colour, nationality or ethnicity, religious denomination or disability which is enforced through an administrative penalty. It is no longer decisive whether persons are “unlawfully discriminated against *solely* on grounds of their race, colour, their nationality or ethnicity, their religious denomination or a disability” but whether they are (also) “discriminated against on grounds

of race [...]”. The previously possible justification that “discrimination” occurred (for example) not solely on racial grounds, will no longer lead to impunity.

249. The Equal Treatment Act as well as the Federal Act on the Equal Treatment Commission and the Ombuds-Office for Equal Treatment (*Bundesgesetz über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft*) were amended in 2008 and 2011.

250. The aim of the amendment which came into force on 1 August 2008, Federal Law Gazette I No. 98/2008 is to implement Council Directive 2004/113/EC of 13 December 2004 applying the principle of equal treatment between women and men in the access to and supply of goods and services, OJ 373/37 of 21 December 2004. Regarding the recommendation contained in paragraph 8 of the concluding observations, the information may be provided that the amendment – based on the past experience of applying the Equal Treatment Act – also led to changes to the substantive law and procedural requirements to improve the set of measures available for implementing the Equal Treatment Act, in particular:

- Increasing the minimum entitlement to compensation due to discrimination in establishing an employment relationship from the equivalent of one monthly salary to two monthly salaries;
- Increasing compensation for harassment from € 400 to € 720;
- Clarifying that protection against discrimination in ending an employment relationship is applicable also to non-extension of a fixed-term employment relationship or termination during the probationary period;
- Granting each employee affected by discrimination an option to choose between challenging the termination of employment on the one hand and accepting the termination and claiming compensation on the other hand;
- Clarifying that in calculating the appropriate compensation for the personal impairment suffered, multiple discrimination has to be taken into account, if applicable;
- Widening the scope of the prohibition of discrimination in the event of discrimination on grounds of ethnicity to include persons appearing as witnesses or informants as well as clarifying sanctions for violating the prohibition of discrimination in all sections of the Equal Treatment Act;
- General extension of the limitation period for filing a harassment claim from six months to one year;
- Eliminating the possibility of reducing the three-year limitation period applied to discrimination offences on the basis of a collective agreement;
- Extending the right to adopt positive action measures to all spheres of work;
- Clarifying that the global exception “nationality” is limited to regulations relating to non-citizens;
- Introducing a suspension of time-limits for filing a claim in court if a procedure before the Equal Treatment Commission has been initiated, also in cases of discrimination on grounds of ethnicity in other areas.

251. With a view to implementing the Equal Treatment Act in a more efficient manner, the procedures before the Equal Treatment Commission (hereinafter: ETC) were improved, e.g. defining a term for issuing an authenticated copy and delivery of the findings of the ETC as well as obligation to publish all findings of the ETC on the website of the Federal



Chancellery (compare <http://www.frauen.bka.gv.at/site/5542/default.aspx>). Senate III of the ETC is now also responsible for equal treatment between women and men with regards to access to and supply of goods and services. In the period from 1 January 2008 to 31 December 2011, a total of 437 applications were filed with the ETC, 194 Senate meetings were held within the ETC, and the ETC prepared a total of 243 reports on findings made as well as expert opinions. The Equal Treatment Report has to be submitted to the National Council biannually. It provides information on the activities of the ETC, including statistical data and anonymized summaries of the cases dealt with by the Senates.

252. With the amendment in Federal Law Gazette I No. 7/2011, which came into force on 1 March 2011 and implements the National Action Plan on the Equal Treatment between Women and Men in the Labour Market, the following measures in particular were taken to reduce the income gap between women and men and to improve income transparency:

- Widening the scope of protection against discrimination to persons discriminated against because of their association with someone having a protected characteristic (discrimination by association);
- Increasing the minimum compensation for (sexual) harassment from € 720 to € 1,000;
- Lifting the confidentiality of the procedures before the Equal Treatment Commission;
- Harmonizing disability law with the amendment of the Equal Treatment Act.

253. Talks were held between the social partners on increasing the level of protection against discrimination in the access to and supply of goods and services in the Federal Ministry of Labour, Social Affairs and Consumer Protection between autumn 2011 and spring 2012. The draft was subject to a review procedure in autumn 2012 and is currently being discussed at a political level.

254. An evaluation of the disability equality law of the Federal Republic of Austria made in 2010/2011 shows a high level of acceptance for the new regulations. The arbitration procedure of the Federal Social Office, which precedes court proceedings, has proven particularly effective as an informal settlement instrument as it also helps to raise awareness of the parties to the arbitration procedure. A total of 1,161 arbitration procedures were concluded between 1 January 2006 and 31 October 2012. Settlement was reached in 549 arbitration procedures, i.e. 47.3 per cent of the cases dealt with.

255. Regarding the recommendation contained in paragraph 8 of the concluding observations, the information can be provided that the findings of the aforementioned evaluation procedure of the disability equality law at federal level were taken into account in the National Action Plan on Disability 2012-2020 (strategy of the Austrian federal government to implement the UN Convention on the Rights of Persons with Disabilities, [http://www.bmask.gv.at/cms/site/attachments/7/7/8/CH2477/CMS1332494355998/nap\\_web.pdf](http://www.bmask.gv.at/cms/site/attachments/7/7/8/CH2477/CMS1332494355998/nap_web.pdf)), measures No. 43 to 48. Implementation has been envisaged for the period 2013 to 2014. Since the fourth report of the State party the federal disability equality law has been amended several times, particularly to ensure harmonization with the remaining equality law. The law-maker has so far refrained from taking measures to implement the recommendation of abolishing the arbitration procedure before filing claims in court as it has proven to be efficient. Moreover, the parties to the arbitration procedure may withdraw from it and decide to file claims before the court by submitting a simple statement. Due regard should be paid to the fact that in many cases complaints about discrimination made by persons with disabilities only refer to indirect discrimination related to barriers. Due to the high amount in dispute of these cases, the persons affected would also incur costs by pursuing a claim before the court.

The amendment in Federal Law Gazette I No. 12/2013, which came into force in January 2013, improved protection against discrimination, enhanced the powers of the Ombud for Persons with Disabilities and introduced the possibility of bringing class action for injunctions in the private insurance sector.

## **Article 27**

### **Minorities in Austria**

256. Six officially recognized ethnic groups (“autochthonous minorities”) exist on the territory of Austria: the Burgenland Croatian, Slovene, Hungarian, Czech, Slovak and Roma autochthonous minorities.

257. The annual statistics of the Federal Ministry of the Interior on non-Austrian nationals include detailed data on the number and origin of non-citizens staying in Austria.

### **Support measures**

258. The Federal Republic of Austria, the federal provinces and municipalities promote the organizations of the autochthonous minorities with the aim of preserving their languages and cultures. The Federal Chancellery alone spends about € 3.868 million annually to support Austria’s autochthonous minorities. The crucial element for promoting the languages of the Croatian and Hungarian autochthonous minorities is the “educational system for minorities” in the settlement areas of Carinthia and Burgenland. In addition and also outside the geographical territory to which minority education laws are applicable, programmes for learning the languages of the autochthonous minorities are supported under private law. Mother-tongue teaching at public schools may basically be organized in any language throughout Austria.

259. Regarding the recommendation contained in paragraph 22 of the concluding observations the information may be provided that the Ethnic Groups Act (*Volksgruppen-gesetz*) was amended most recently by Federal Act of 26 July 2011, Federal Law Gazette I No. 46/2011. It provided a solution for ending the discussion on the erection of bilingual topographical signposts in Carinthia of several decades, which has been accepted by all relevant groups affected. Besides, this amendment was based on an agreement reached between the mayors of the municipalities affected, the “Heimatverbände” (associations promoting the local heritage and folklore), the political parties and key organizations of the Carinthian Slovenes (compare the “Memorandum” signed by the different parties). The bilingual topographical signposts have already been erected. Moreover, the admissibility of using the Croatian, Slovene and Hungarian languages as official languages in Austria has been guaranteed under the Constitution.

260. Regarding the recommendation contained in paragraph 21 of the concluding observations, the following information may be provided: Section 14, paragraph 1, of the Minorities School Act for Burgenland (*Minderheiten-Schulgesetz für das Burgenland*) provides that additional education in Romani has to be made possible according to actual need. In Vienna and in other parts of the Austrian federal territory it is possible to organize mother-tongue lessons – hence also in Romani – if the following three conditions are met: (1) adequate number of participants (12 in most federal provinces); (2) availability of a teacher for the respective language and 3. adequate budgetary resources for established posts. As far as we know, education in Romani has not been requested in any other federal province apart from Vienna.

261. The general principle of equal treatment and the prohibition of discrimination apply, of course, to all ethnic, religious and linguistic minorities living in Austria – including those not enjoying the special status of an “autochthonous minority”. An overview of integration

measures taken in the recent past, particularly to prevent or remedy discrimination, was given in the Integration Report published in July 2011. In general, mention should also be made of the MIDIS Report of 2010 prepared by the European Union Agency for Fundamental Rights, in which the treatment of Turkish and ex-Yugoslav migrants had been found to be very positive in Austria.

262. In 2011 a Secretariat of State for Integration was set up within the Federal Ministry of the Interior. Furthermore, the National Action Plan for Integration prepared by the Federal Republic, the federal provinces, municipalities as well as other interested parties of the civil society defined a structural framework for Austria-wide cooperation to ensure successful integration measures.

263. An Advisory Council on Integration was set up within the Federal Ministry of the Interior as a coordination and consultation platform for all stakeholders active in implementing the National Action Plan on Integration. Its members are representatives of the Federal Republic and the federal provinces, representatives of the social partners and of non-governmental organizations (Caritas, Diakonie, Hilfswerk, the Austrian Red Cross and Volkshilfe) (Section 18 of the Aliens' Police Act). The participating non-governmental organizations also represent the interests of potential discrimination victims such as migrants. The Advisory Council meets twice a year. In addition, there are numerous advisory councils on integration at a local level. They deal with different tasks, including the political representation of migrants' interests, advisory services to municipal councils and administrative bodies and special information services for migrants (overview: [www.staedtebund.gv.at](http://www.staedtebund.gv.at)).

264. The City of Vienna pursues a comprehensive diversity policy. Vienna's diversity policy is based on the fact that today more than one third of Vienna's population has a migration background. This diversity poses a great challenge to the population, policy-makers and the administration. The largest migrants' groups have a migration background from Serbia, Montenegro, Turkey, Germany and Poland.

265. The City of Vienna set up a special department in 2004 to communicate the strengths of demographical, ethnic, cultural and religious diversity in a more effective way. Since 1 July 2004 the Municipal Department 17 has fulfilled integration tasks. As a service provider and competence centre, it has also ensured that diversity management is taken into account in the further development of the municipal administration.

266. The two main goals of Vienna's diversity-oriented strategy are as follows: (1) to offer the same quality of services to all citizens of Vienna (intercultural competence in services); equal opportunities of access and career opportunities in the service of the City of Vienna; (2) increase in the proportion of employees with a migration background in Vienna's municipal administration.

267. In the light of this mission, the City of Vienna offers ongoing support, assistance and project development services to other municipal departments implementing integration-oriented diversity management. Progress is evaluated in the framework of a comprehensive monitoring and reporting system.

268. In addition, the City of Vienna promotes the settlement process of new immigrants (project "Start Vienna" (*Start Wien*), <http://www.startwien.at>). Newcomers and their children are for example offered equal opportunities in education and training as well as in the labour market. A priority which has been pursued for many years is to ensure that migrants have good or adequate skills in the German language.

269. The aim of the project to support parents in parents' associations ("Participation and School Project"/*Projekt Partizipation und Schule*) as well as joint projects of Municipal Department 17 and the police "Advice and Help" (*Rat und Hilfe*) and "Vienna needs you"

(*Wien braucht Dich*) is to promote the participation and equality of immigrants in social institutions. The City of Vienna has also supported the work of ZARA (*Zivilcourage und Antirassismusstelle*) for many years. This body committed to civic courage and the combat against racism advises and supports victims and witnesses of discrimination on the grounds of ethnicity, colour and religion. ZARA also provides comprehensive information and raises awareness in workshops held in schools and companies, through a study programme and various campaigns to prevent and reduce discrimination. ZARA issues an annual report on racism, which documents cases of racist and religious discrimination.

270. Another measure illustrating the work in the Austrian federal provinces is the establishment of a special Integration Board (*Integrationsstelle*) in Upper Austria (<http://www.integrationsstelle-ooe.at/>). This Integration Board focuses on cooperating with migrants' organizations and municipalities. In response to the question concerning the right of minorities to cultivate their culture, practise their religion and use their language, the funding of the Ketani association (for Sinti and Roma) should be mentioned.

### **Participating in decisions**

271. Advisory Boards for Ethnic Groups (*Volksgruppenbeiräte*) were established to facilitate the participation of Austria's autochthonous minorities in relevant decision-making processes. In accordance with Section 3 of Ethnic Groups Act (*Volksgruppengesetz*) (Federal Law Gazette No. 396/1976, as amended in Federal Law Gazette I No. 46/2011), Advisory Boards for Ethnic Groups have been set up within the Federal Chancellery and have to advise the federal government and the federal ministers as well as – on request – the provincial governments on all matters affecting the autochthonous minorities. They have to protect and represent the cultural, social and economic overall interests of the respective autochthonous minority. Furthermore, they have to be consulted in relevant matters affecting the interests of the autochthonous minorities, in particular before adopting legal provisions and with regard to general subsidy budget planning; an adequate period of time has to be granted to them for this purpose. Advisory Boards for Ethnic Groups may also submit proposals for improving the situation of the autochthonous minority and its members. The members of the Advisory Board are appointed after prior consultation with the respective provincial government for a period of four years. It is important to note that only the appointment of such persons who can be expected to promote the best interests of the autochthonous minority and the objectives of the Ethnic Groups Act is admissible.

### **Political representation**

272. In Austria there are no guaranteed seats in the Austrian Parliament or the provincial parliaments for autochthonous minorities. A special political party has emerged only within the Slovene minority, which defines itself as a regional party. Even within this autochthonous minority, many of its members prefer to be represented by other political parties based on their respective ideology. Members of the autochthonous minorities hold various political offices in the Austrian parties. The position of the Federal Minister of Agriculture and Forestry, Environment and Water Management is currently held by a member of the Croatian autochthonous minority. The Federal Minister of Defence and Sport, who recently stepped down, was also a member of this minority. The past and incumbent Presidents of the Provincial Parliament of Burgenland are Burgenland Croats. In Vienna, a member of the Roma autochthonous minority has held the position of a district councillor for many years. Moreover, numerous members of the autochthonous groups are active in the federal, provincial and municipal administration, many of them holding leading positions.