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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Third periodic reports of States parties due in 1993

Addendum

AUSTRIA*

[25 April 1997]

* For the second periodic report submitted by the Government of Austria, see CCPR/C/51/Add.2; for its consideration by the Committee, see CCPR/C/SR.1098 to SR.1100 and Official Records of the General Assembly, Forty-third Session, Supplement No. 40 (A/47/40), paras. 80-124.

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* The annexes may be consulted in the files of the secretariat.

Preliminary remarks

1. The third report submitted by the Republic of Austria pursuant to article 40 of the International Covenant on Civil and Political Rights is intended to serve as a supplement to previous reports. The detailed presentation in previous reports has been updated to give an account of the present legal situation. Only the changes that have occurred in comparison with former reports will be dealt with in greater detail.

Article 1

2. Here there is no need for an amendment or supplementary statement.

Article 2

3. The system of legal protection has been considerably extended through the introduction of autonomous administrative tribunals. The Federal Constitution was supplemented by the following provisions, which became effective on 1 January 1991 (annex A).

4. By creating autonomous administrative tribunals, the constitutional legislature wanted to establish tribunals within the meaning of article 14, paragraph 1. These tribunals, which serve as courts of appeal, were established in each of the nine Austrian States. The autonomous administrative tribunals in the individual Länder have jurisdiction:

(a) To determine administrative offences, except for federal fiscal offences which are to be dealt with by special independent authorities;

(b) To take a decision on the exercise of direct administrative power and compulsion, such as acts of detention, seizure, etc.;

(c) To take a decision in other matters which are assigned to them by individual federal or Land laws. This is to enable the Independent Administrative Tribunals to act as appellate courts, determining also matters relating to civil rights;

(d) Finally, the autonomous administrative tribunals are called upon to take a decision in matters within their sphere of competence if the administrative court has failed to do so.

5. A very important sphere of competence of the autonomous administrative tribunals is their right to challenge before the Constitutional Court regulations issued by a federal or Land authority, as well as federal or Land laws, for being unlawful or unconstitutional. The Tribunal can do so, however, only insofar as it has to apply the respective regulation or the respective law in the proceedings pending before it. This is to guarantee that in those cases where it is of the opinion that a regulation or law to be applied in such proceedings violates fundamental rights, it can submit this issue for review to the Constitutional Court.

6. It follows from article 129 (b) of the Federal Constitution that autonomous administrative tribunals essentially differ from administrative

courts only insofar as their members are appointed for a certain period - i.e. at least six years - whereas there is no such time limit for the appointment of judges. The important fact, however, is that the members of the autonomous administrative tribunals are independent and are thus of the same standing as judges.

7. Proceedings before the autonomous administrative tribunals are regulated on a uniform basis by federal law. The relevant provisions are to be found in the Code of General Administrative Procedure and the Code of Administrative Offences. The following principles can be deduced from these provisions:

(a) As a rule, autonomous administrative tribunals take their decisions in chambers of three members each;

(b) The autonomous administrative tribunals take a decision on the merits and are entitled only to set aside the challenged decision for being unlawful;

(c) As a rule, there must be an oral and public hearing; the parties can, however, waive their right to a public hearing;

(d) If there has been a public hearing, only the members of the autonomous administrative tribunal who have attended the hearing are entitled to adjudicate;

(e) Decisions of autonomous administrative tribunals must always be pronounced publicly. This requirement need not be met in the absence of an oral hearing provided that everyone is given an opportunity to inspect the decision.

8. Moreover, in administrative criminal proceedings before autonomous administrative tribunals there is the direct evidence rule, i.e. in such cases where a hearing is held, the tribunal must take into account in its decision only the evidence and submissions that were presented at the hearing.

9. The number of cases to be dealt with by the autonomous administrative tribunals differs in the various Länder. In Carinthia, for example, 2,018 cases were brought before the autonomous administrative tribunal in 1994, 3,108 cases were brought before the autonomous administrative tribunal in Salzburg, 2,322 in Tyrol and 1,201 in Vorarlberg. In 1994, 1,522 cases were determined in Carinthia, 3,250 in Lower Austria, 3,105 in Salzburg, 2,950 in Tyrol and 1,324 in Vorarlberg.

10. A complaint against a decision by an autonomous administrative tribunal can be filed with the Administrative Court or the Constitutional Court. In 1994, only nine complaints were filed against decisions by the autonomous administrative tribunal in Carinthia with the Administrative Court and four complaints with the Constitutional Court. As regards the autonomous administrative tribunal in Lower Austria, on the other hand, 141 complaints were raised with the Administrative Court and 39 complaints with the Constitutional Court. As regards the Land of Salzburg, in 104 cases

complaints were raised against decisions of the autonomous administrative tribunal with the Administrative Court and in 63 cases with the Constitutional Court while the respect numbers for Tyrol were 105 and 31.

11. It must be emphasized in particular that by filing complaints with the autonomous administrative tribunals, one can also allege a violation of fundamental rights and the right to liberty of the person. As mentioned earlier, the autonomous administrative tribunal is also entitled to submit for review to the Constitutional Court regulations and legal provisions that are to be applied in the proceedings pending before it but which it considers unlawful or unconstitutional (because they constitute, for example, an infringement of a fundamental right or a right to liberty of the person).

Article 3

12. Article 7 of the Federal Constitution, which contains the general principle of equality, was supplemented by paragraph 3 which enables women to use official designations and titles in the female form. (For the text of article 7 as it reads at present, see annex B.) The provisions of article 7, paragraph 3, are understood in the sense that they give women the personal right to use official designations and titles in the female form. Every woman is thus free to make use of this right. There is no obligation to use specific designations in the female form.

13. In 1993, a federal law on the equal treatment of men and women and the advancement of women in the federal service was enacted. The enactment of such a law had become necessary for the following reasons.

14. As early as in 1979, an Equal Treatment Act was enacted which, however, related exclusively to employment relationships that were based on contracts under private law. This Act was aimed exclusively at preventing any discrimination on grounds of sex in determining the salary of an employee. The Equal Treatment Act of 1979 was later further developed and extended to cover not only regulations that were intended to prevent sexual discrimination with regard to the fixing of salaries, but also fringe benefits and measures of basic and further training at the company level.

15. Civil servants were originally excluded from the Act because equal remuneration for men and women had long since been included in the payment regulations for the civil service. With the extension of the protection against discrimination, the civil service had to be included in the regulations so as to guarantee the principle of equality also in the above sense.

16. Hence, the Federal Act of 1993 was created. For reasons of competence, it relates exclusively to the federal civil service. The Länder have established similar provisions for their respective public service.

17. The Federal Equal Treatment Act essentially covers three fields, i.e. the prohibition against any form of discrimination on grounds of sex and the legal consequences resulting from an infringement, special equal treatment institutions and, finally, special measures for the advancement of women.

18. The basic provision stipulates that no one must be discriminated against, directly or indirectly, on grounds of sex in connection with his/her employment or training in the federal civil service; in particular he/she must not be discriminated against:

(a) When being accepted for employment or training;

(b) In the determination of his/her salary;

(c) When being granted fringe benefits which do not take the form of a remuneration;

(d) In connection with measures of basic and further training within a ministry;

(e) In connection with his/her professional career, in particular with regard to promotions and the assignment of positions (functions) that are better paid;

(f) As regards other working conditions; and

(g) In employment or training.

19. If the equal treatment rule is violated, the law provides either for the granting of a claim (such as, for example, fringe benefits that were withheld in a discriminatory manner) or the right to compensation.

20. Whether there has been discrimination in a particular case is to be determined either by a court of law or by the respective administrative authority upon an application by the person alleging discrimination.

21. It must be emphasized that sexual harassment is also considered a form of sexual discrimination. Accordingly, the Act also speaks of sexual discrimination if a male or female employee is sexually harassed by the male or female representative of the employer or by third persons in connection with his or her employment or training and if the representative of the employer negligently fails to provide adequate redress. According to the Equal Treatment Act, an offence of sexual harassment has been committed if there has been conduct related to the sexual sphere:

(a) That affects a person's dignity;

(b) Is undesirable, inappropriate or offensive for the person concerned; and

(c) Creates an intimidating, hostile or humiliating working environment for the person concerned, or if the fact that the person concerned rejects or endures/tolerates behaviour that is related to the sexual sphere by a male or female representative of the employer or a colleague expressly or tacitly serves as the basis for a decision which has negative effects on that person's access to basic and further training, employment, further employment, career or income, or if such a rejection or toleration leads to another unfavourable decision concerning his or her employment or training.

22. In the case of sexual harassment, a person is entitled to compensation for the damage incurred or, if there is no material damage, to adequate compensation of at least S 5,000.

23. As pointed out earlier, the Federal Equal Treatment Act also provides for the creation of a number of institutions that deal with equal treatment issues. Here must be mentioned in particular the Equal Treatment Commission that has been established at the Federal Chancellery. The Commission is not bound by instructions. Its task is to prepare expert opinions on all questions of equal treatment and the advancement of women in the federal civil service as well as on pertinent laws and regulations and, finally, on violations of the equal treatment rule and the requirement of the advancement of women. Other institutions have also been established, for example, equal treatment commissioners and working groups that deal with questions of equal treatment of men and women at the ministerial level or at the level of subordinate bodies.

24. The third field covered by the Act is special advancement measures for women. Every ministry has adopted a scheme for the advancement of women. The scheme must stipulate the period, the personnel, and the organizational as well as basic and further training measures it requires in order to redress the existing under-representation of women as well as the disadvantages with which they are faced in certain fields of employment. The preferential admission of women to the federal civil service, and the preferential treatment of women as regards their professional career and basic and further training are measures intended to counteract, within the framework of the principle of the advancement of women, the existing under-representation of or existing disadvantages for women.

25. Provisions similar to those relating to measures for the advancement of women contained in the Equal Treatment Act apply to the field of private employment.

26. As regards the labour market, the number of gainfully employed women is increasing. The employment rate of women was 63.5 per cent in 1993 and 63.6 per cent in 1994, while during the same period the employment rate of men was 78.8 per cent and 78.3 per cent (see also tables 7.01 to 7.03 in the statistical annex). In 1993, the unemployment rate of women was 6.9 per cent, slightly exceeding that of men (6.7 per cent). The same situation prevailed in 1994 with 6.7 per cent for women as compared with 6.4 per cent for men. Women are clearly unemployed for a longer period than men (see also tables 7.19 to 7.22 in the statistical annex).

27. In Austria, the average gross income (50 per cent earn more, 50 per cent less) of employed persons was S 18,600 a month in 1993. The average overall income of men exceeds that of women by 42 per cent. One reason is the higher number of female part-time workers. However, a comparison of the incomes of men and women in full-time employment still shows a difference of almost 30 per cent.

28. Since pension benefits depend both on the “assessment basis”, i.e. the months of insurance coverage, and the contribution periods, and since women often interrupt work and have a significantly lower income level over their

working life than do men, they are also at a disadvantage as far as pensions are concerned. In December 1993, the average old-age pension under the statutory pensions insurance scheme was S 12,936 for men but only S 7,269 for women. In order to compensate for this disadvantage, at least to some extent, the reform of the pensions insurance scheme brought with it a better system of calculation by including to a greater extent time spent caring for children.

29. Since 1989, there has been a Labour Market Policy Programme for Women in order to improve their chances in the labour market. Apart from offering specific information and intensive counselling, the programme is intended in particular to improve the qualification of women, to provide vocational guidance and counselling for young women and to support persons with child-care obligations. Child-care grants amounted to S 53.3 million in 1993 and to S 64.7 million in 1994.

30. Tables 4.02 to 4.09 in the statistical annex give an outline of the position of girls in the educational system. They show in particular that the proportion of female students at the universities has considerably increased.

Article 4

31. Austrian law does not provide for times of public emergency, hence this article is not applicable.

Article 6

32. In Austria, there are no arbitrary deprivations of life by the police, or any disappearances. In order to prevent the latter, in particular, a provision was adopted as early as in 1987 which regulates detentions by the police or gendarmerie:

> "(1) Any arrested person shall immediately be brought before the nearest authority that is competent to deal with the subject-matter, or, if the reason for his or her arrest has ceased to exist, shall be released. He or she shall at the earliest opportunity, if possible at the time of his/her arrest, be informed in a language which he or she understands, of the reasons of his or her arrest and of any charges against him or her. The authority must question the arrested person immediately. He/she must by no means be held in detention for more than 24 hours.
>
> "(2) A person who is arrested or detained shall be treated with respect for human dignity and with all feasible personal consideration. As far as a person's detention is concerned, section 53 (c), paragraphs 1 and 2 applies mutatis mutandis; the requirement of adequate day-light need not be fulfilled if there is sufficient artificial light.
>
> "(3) The arrested person must without undue delay be entitled to inform a relative of any other person of his or her confidence as well as a lawyer of his or her detention; the arrested person must be informed of this right. If the authority has concerns about permitting an arrested person to inform his or her relatives or counsel, it must do so itself.

> "(4) Any person who is detained for the purpose of conducting administrative criminal proceedings is allowed to receive visits from his/her relatives and counsel as well as from the diplomatic or consular representatives of his/her respective home country. For receiving letters and visits, section 53 (c), paragraphs 3 to 5 applies mutatis mutandis."

33. Threats to life are, in particular, road accidents, accidents at work and diseases. Various measures are being taken to prevent road accidents, for example, the restructuring of roads, the introduction of speed limits and other measures, including the construction of guardrails. Federal roads are to be built in such a way as to make their use safe. The relevant provisions of section 7, paragraph 1, of the Federal Roads Act read as follows:

> "Federal roads are to be designed, constructed and maintained in such a manner that they can be used safely by all passengers in compliance with the road control and motor vehicles regulations, whereby due regard must be had to the specific circumstances resulting from weather conditions or elemental forces; in this respect, regard must also be had to the safety, efficiency and smoothness of traffic and its compatibility with environmental standards."

34. In 1994, 53,818 people were injured and 1,338 killed in 42,015 accidents resulting in casualties (i.e. an annual average of 115 accidents/day). In 43.5 per cent of the cases, the accident was due to inappropriate speed and in 12.1 per cent of the cases to non-observance of the rule to give way.

35. Special legal provisions have been adopted for the road transport of dangerous goods in order to prevent accidents.

36. For the exact number of road accidents, see tables 28.16 and 18.17 in the statistical annex.

37. The measures to be taken in order to avoid risks at the workplace, including in particular employment accidents, are enshrined in the Employers' Protection Act. They relate to the layout and equipment of the workplace, the set up and use of work devices, the use of working materials, the arrangement/organization of operations and procedures and, finally, the training and instruction of employees. A specific institution, the labour inspectorate, reviews compliance with the legal provisions that have been adopted for the protection of life and health. There is at least one labour inspectorate in each of the Austrian Länder.

38. As regards the number of industrial accidents, reference is made to tables 3.12 and 3.13 in the statistical annex. As regards the infant mortality rate, reference is made to table 2.40, which show a marked decline. The same is evident from table 2.41.

39. During the past 50 years, life expectancy of the Austrian population has increased, according to table 2.39, by slightly more than 10 years.

40. As regards medical treatment, there were 30,449 practising doctors in Austria in 1994, as well as 2,064 pharmacies, 1,000 of which were public

pharmacies and 1,001 pharmacies run by doctors. There is a total of 313 hospitals with 71,166 beds. Apart from this, there are 325 hospital wards at nursing homes, with 77,527 beds.

41. As far as nutrition is concerned, the average per capita food consumption in 1993/94 (in kg per year) was 59.6 in respect of flour, 5.5 (rice), 60.5 (potatoes), 34.7 (sugar), 17.6 (beef), 50.1 (pork), 13.4 (eggs), 102.9 (milk), 9.0 (cheese), 5.1 (butter), 79.8 (vegetables) and 30.9 (fats). The daily joule intake per capita was 12,808 kilojoules in 1994.

42. As far as the use of nuclear material is concerned, a law was enacted in Austria as early as in 1978 prohibiting nuclear power plants. This act reads as follows:

> "Installations which are intended to produce electrical energy by nuclear fission for energy supply must not be established in Austria. If such installations already exist, they shall not be operated."

This federal act was the result of a referendum in which a small majority opted against the operation of an already existing nuclear power plant. In Austria, nuclear material is used primarily for medical purposes and research.

43. It should also be noted that Austria has ratified the Treaty on the Non-Proliferation of Nuclear Weapons.

44. The use of weapons by the police is regulated by the Use of Weapons Act 1969. The term "weapons" within the meaning of this act includes not only firearms but also rubber truncheons, tear gas and water cannons. The police may use a weapon if this is necessary for self-defence, for overcoming resistance intended to prevent a lawful official act, for enforcing a lawful arrest, for preventing a lawfully arrested person from escaping and for averting an imminent threat that is emanating from an object.

45. The use of weapons is subject to the principle of proportionality. This means that it is admissible only if non-dangerous or less dangerous measures - such as the use of physical strength or handcuffs - are unsuitable in the specific case or have already proved ineffective. Where different weapons are available, only the least dangerous weapon that still seems suitable in the situation may be used.

46. The only purpose of using a weapon against a person must be to make him or her unable to attack, show resistance or escape. In cases where there is no justified self-defence, the damage to be expected as a result of using a weapon must not be clearly disproportionate to the intended effect. Any weapon must furthermore be used in such a way as to avoid as far as possible any unnecessary harm to persons and objects. Weapons may be used against persons only if the intended purpose cannot be achieved by using them against objects.

47. Special provisions apply where the use of a weapon threatens the lives of persons. Such use is admissible only:

(a) In case of justifiable defence for defending the life of another person;

(b) To suppress an insurrection or upheaval;

(c) To enforce a person's arrest or prevent his/her escape if that person has been found guilty or is strongly suspected of having committed a judicially punishable act that can only be committed intentionally and is punishable by more than one year of imprisonment, and if that act as such or in combination with the person's conduct during the arrest or escape depicts that person as constituting a general threat to national security, public safety or property;

(d) To enforce the arrest or prevent the escape of a mentally deranged person, who constitutes a general threat to public safety or property.

48. An express and clear warning must be given immediately prior to the life-endangering use of a weapon. In the case of a crowd, the warning must be repeated, and it can also take the form of a warning shot. Furthermore, the use of a weapon in the above sense is admissible only if uninvolved persons are not likely to be endangered, unless it is indispensable for preventing a crowd committing acts of violence which directly or indirectly threaten the safety of persons.

Article 7

49. Here must be added to the statements made on this article in the second report that corporal punishment, defamatory statements and collective punishment are prohibited with regard to pupils under section 47, paragraph 3, of the School Education Act.

Article 8

50. In Austria, no person is subjected to hard labour as a penal sanction.

51. As regards the execution of sentences, section 44 of the Execution of Sentences Act provides that every detainee who is able to work is under an obligation to do so. Detainees must perform the work assigned to them. They must, however, not be required to perform any type of work that constitutes a danger to their lives or a severe threat to their health.

52. Measures must be taken to ensure that every detainee can perform useful work. Any type of work that is to be performed in detention centres for the execution of sentences must be done by detainees. Apart from this, they must be occupied with other public administration work, work for the benefit of the public, or produce products for sale and must work for manufacturing enterprises or other private companies.

53. As far as the working hours of detainees are concerned, they must not exceed the maximum statutory period. Detainees who have completed their work in a satisfactory manner shall receive a remuneration.

54. The Austrian Federal Armed Forces are formed and supplemented by way of compulsory military service. Only male Austrian nationals aged 18 or over who have the necessary physical and mental ability to serve in the federal army can be drafted for military service. All male Austrian nationals who have completed age 17 but are below age 50 are liable for military service.

55. Article 9 (a), paragraph 3, of the Austrian Federal Constitution provides that "conscientious objectors who refuse the fulfilment of compulsory military service and are exonerated therefrom must perform an alternative service". Detailed provisions are to be found in the Alternative Military Service Act, which provides that any person who refuses to perform military service must issue a statement to that effect. By doing so, he will be exonerated from military service and becomes liable to perform an alternative service. He shall perform services in the field of civil defence or other services for the benefit of the general public which constitute a burden similar to that imposed on a person liable for military service. This includes work in hospitals and for the ambulance corps, welfare work, assistance for the handicapped, caring for the elderly and the sick, caring for drug addicts, displaced persons, asylum seekers and refugees, assistance in case of epidemics, disaster relief and civil defence, work at Austrian places of commemoration for the victims of national socialism, work for public safety and safety on the road, as well as performing activities within the framework of civil defence.

56. If immediate action is to be taken in order to prevent an imminent threat of bursting dykes or flooding, all persons present in the area and able to provide assistance are obligated to do so free of charge by order of the water authority or, in case of imminent danger, of the mayor of the endangered community. There are also similar obligations in case of a fire, whereby everyone required to do so must, according to his ability, render the necessary assistance and will receive adequate compensation for pecuniary damage.

57. Community regulations also stipulate that in case of a disaster, the mayor shall be entitled to require any member of the community being able to do so to provide assistance, and that such member shall be awarded adequate compensation for any pecuniary disadvantage resulting therefrom.

Article 9

58. The protection of personal liberty is guaranteed by the Federal Constitutional Law of 29 November 1988 on the Protection of Personal Liberty (for the text see annex C).

59. Any person arrested by the police or gendarmerie for having committed an offence shall immediately be brought before the nearest authority that is competent to deal with the subject-matter, or, if the reason for his/her arrest has ceased to exist, must be released. He or she shall at the earliest opportunity, if possible at the time of his/her arrest, be informed in a language which he or she understands of the reasons for his or her arrest and of any charges against him or her. The authority shall question the arrested person immediately. He/she must by no means be detained for more than 24 hours. A person who is arrested or detained shall be treated with

respect for human dignity and with all feasible personal consideration. Moreover, an arrested person must without undue delay be entitled to inform a relative or any other person of his or her confidence, as well as a lawyer, of his or her detention; the arrested person must be informed of this right. If the authority has concerns about permitting an arrested person to inform his or her relatives or counsel, it must do so itself.

60. Any person who is detained for the purpose of conducting administrative criminal proceedings is allowed to received visits from his/her relatives and counsel as well as from the diplomatic or consular representatives of his/her home country under section 36, paragraph 4, of the Code of Administrative Offences. According to section 187 of the Code of Criminal Procedure, any person who is detained for the purpose of conducting judicial criminal proceedings, that is to say, a person remanded in custody, can exchange letters with and receive visits from all persons who are not expected to affect the purpose of his or her detention on remand.

61. In 1992, special protection of personal liberty was guaranteed by the adoption of the Federal Act relating to complaints to the Supreme Court due to a violation of the Fundamental Right to Personal Liberty. Accordingly, a party suffering a violation of his or her fundamental right to personal liberty following a decision or order by a criminal court may file a complaint with the Supreme Court after having exhausted all available remedies. The fundamental right to personal liberty is deemed to have been violated in particular if the imposition or maintenance of a sentence of imprisonment is disproportionate to the purpose of the detention, if the duration of the detention is disproportionately long, if the prerequisites for the detention, such as suspicion of a criminal act, or the reasons for the detention have been examined incorrectly or if the law has otherwise been applied in an incorrect manner. No complaint lies against the imposition and execution of a sentence of imprisonment and preventive measures in the case of a judicially punishable offence.

62. The complaint has no suspensive effect. If the Supreme Court allows the complaint, the courts are under an obligation to create, without undue delay and with all the legal means available to them, the legal situation that corresponds to the Supreme Court's legal view.

63. A person's right to compensation for the material damage suffered as a result of being unlawfully arrested or detained by an Austrian court of law, or whose detention has been unlawfully extended, is regulated by the Criminal Compensation Act. The Act also applies to material damage suffered by persons who have been placed in preliminary detention or detention on remand and have subsequently been released or have not been prosecuted for other reasons. Such claims for compensation must be raised within three years before a court of law. Moreover, claims for compensation that are based on an unjustified deprivation of liberty may also be raised under an official liability action.

64. Mentally-ill persons may only be kept in closed wards of mental hospitals if they constituted a serious danger, on account of their illness, to their own life or health or the life or health of others and they cannot be treated and cared for in other ways, especially in the community. A person may only be committed to a mental hospital if a medical officer, having seen

the patient, certifies that the case meets the appropriate conditions. In the mental hospital, the patient has to be examined without delay by two other specialists. He may only be committed if the two independent medical reports state that the case requires hospitalization.

65. The medical director of the hospital has to inform the patient as soon as possible of the grounds on which he has been committed. He must also immediately notify the “patients' ombudsman” a well as - unless the patient objects - the patient's family and - if the patient so wishes - the patient's lawyer. “Patients' ombudsmen” act as representatives of the hospitalized. They are appointed by the president of the district court in whose area the hospital is situated.

66. Where a person has been committed to a mental hospital, the medical director must also immediately notify the district court. The court will then determine whether it is admissible to detain the patient in the light of the legal prerequisites to be met. For this purpose, the court shall arrange for a personal interview with the patient at the hospital within four days of the notification. The court shall hear not only the patient himself but the doctors and the “patients' ombudsman”; the court may also consult a psychiatrist who is not on the staff of the hospital. If the court finds that the case justifies the patient's detention, it shall sanction his/her forced hospitalization for the time being, while setting a date for a formal oral court hearing to be held not later than 14 days after the court has visited the patient. If there is no justification for the patient's being kept in the hospital, the court shall declare his/her detention unjustified and the patient shall be released immediately. In preparation of the oral court hearing, the court must appoint a second psychiatric expert; he must examine the patient without delay and submit a written report on whether hospitalization is required. Then the oral hearing is held, at the conclusion of which the court rules whether the patient's continuing detention is admissible. If the court declares it admissible, it shall at the same time state for how long the patient's detention is lawful, and this period may not exceed three months from the time he was committed. If the court finds his/her detention inadmissible, he must be released at once. At the oral hearing, the court's decision must be pronounced in the patient's presence, its reasons must be stated and its meaning must be explained to the patient.

67. Where a court has found that a patient should continue to be hospitalized, it has to decide whether hospitalization shall continue as soon as the original period of detention ends. If the court determines that the patient shall remain in hospital, it shall fix a new maximum period of detention, which must not exceed six months. Beyond a year, further hospitalization may only be allowed if it is necessary on special medical grounds, confirmed in concurrent opinions by two medical specialists who should, if at all possible, not have been involved in the case so far. If so, hospitalization may be declared admissible, but only for consecutive one-year periods.

68. The patient or his/her representative may ask the court for a ruling on the admissibility of continuing hospitalization even before the periods

mentioned above expire. The court may also review the case ex officio if there are reasons to doubt whether the patient's continuing detention is justified.

69. As regards the treatment of the mentally ill, the law enjoins that the personal rights of such persons received very special protection. The human dignity of the mentally ill must be respected and protected in all circumstances. Their personal rights may only be curtailed to the extent that this is explicitly permitted by statutory provisions.

70. Constraints on the patient's mobility are only permitted to the extent that their nature and the period throughout which they are imposed are absolutely essential to prevent dangerous situations or ensure medical treatment and care. They must not be disproportionate to their purpose. Normally the patient's freedom of movement may only be restricted to certain rooms or certain parts of a room. The physician in charge of the case must order such constraints in each case individually, and such instructions shall be noted down in the patient's case history and the patient's representative shall be notified forthwith. At the request of the patient or his/her representative, the court shall rule without delay whether such restrictions on the patient's mobility are admissible.

71. The patient's correspondence and his/her contacts with his/her representatives may not be restricted. The patient's right to talk to other persons on the phone or to receive visits may only be restricted to the extent essential in the patient's own interest. Again the doctor must explicitly order any such restriction, which must be recorded in the case history giving the reason, and the patient and his/her representative must be informed immediately. Again, the court must rule about the admissibility of any such step if the patient or his/her representative so requests.

72. Another statutory rule for the medical treatment of mental patients provides that only treatments conforming to the principles and recognized methods of medical science are permitted. Again, treatment is only admissible if it is not out of proportion to the objective pursued. The reasons and meaning of the treatment must be explained to the patient, insofar as this is not contrary to his/her well-being. The same rule applies to the patient's legal representative. If the patient is capable of understanding the reasons and meaning of a course of treatment, he may not be treated against his/her wishes. Certain special treatments and surgical operations may only be applied if the patient has given his/her consent in writing.

73. If a patient is incapable of understanding the reasons and meaning of a course of treatment or of directing his/her will power in accordance with such understanding, and if he is a minor or an adult for whom a guardian has been appointed whose powers include approving the patient's treatment, he/she many not be treated against the wishes of his/her legal representative or of the person acting in loco parentis. In such a case, special treatments and surgery require the representative's or guardian's written consent. If the patient has no legal representative or person standing in loco parentis, the court shall decide, if the patient so wishes, whether a specific treatment or operation may be resorted to.

74. Such consent or judicial approval is not required where a treatment is so urgent that any delay would endanger the patient's life or would risk seriously endangering his/her health.

Article 10

75. Article 1, paragraph 4, of the Federal Constitutional Law on the Protection of Personal Liberty provides that whoever is arrested or detained shall be treated with respect for human dignity and with all feasible personal consideration, and may be subjected only to such restrictions as are commensurate with the purpose of the detention or necessary for the maintenance of his/her detention. This principle is reaffirmed in quite a number of laws governing arrest and custody. Thus, for example, section 36, paragraph 2, of the Administrative Penal Act stipulates that in arresting and detaining a person, the authorities must proceed with due respect for human dignity and all feasible consideration. This provision essentially refers to police custody. A similar rule applying to patients kept in closed wards of mental hospitals has been mentioned above.

76. Observance of these principles is monitored in the case of police by the appropriate supervisory authorities, in the case of mental patients by the court-appointed “patients' ombudsmen”, and in penitentiaries where convicted offenders serve their sentences by special commissions. See also the observations in the second periodic report.

Article 11

77. The Federal Constitutional Law on the Protection of Personal Liberty (annex C) provides that no one may be arrested or detained on grounds other than those it explicitly mentions. Inability to fulfil a contractual obligation is not among the grounds mentioned. Hence, no one can be arrested or detained on this ground.

Article 12

78. For persons coming to Austria, the general principle is that they need a valid passport and, usually, a visa (for entry, exit and residence). Citizens of member countries of the European Economic Area do not require a visa.

79. The choice or change of domicile is not subject to any restrictions for Austrians or foreigners. Where a person takes up permanent or temporary residence in a place, he or she is required to register at the mayor's office. Normally, this is done by filling in a registration form. If the person moves away from the locality, he or she is expected to inform the authorities.

80. Travel by Austrians or foreigners is not monitored. Anyone can travel wherever they wish within Austrian territory. Only restricted military areas are not accessible to everyone.

81. Passports are issued to Austrian nationals on request and are usually valid for 10 years. A passport may only be refused if the applicant is unable to prove his/her identity or if his/or her freedom of movement is restricted by law or if there are good grounds to suspect that he/she would use the

passport to commit a crime or that travel by him/her abroad would endanger national security. A person may be required to hand in his/her passport, where the latter has not been expired for more than five years, if the authorities, after issuing it, hear about facts or if events transpire which would justify a refusal to issue a passport. A passport must also be returned if it is no longer a true description of the holder's identity, if an entry made by the passport authority is incorrect or illegible, if the holder's photograph is missing, or if the passport contains forgeries, is no longer complete or is unusable for other reasons.

82. Powers to issue or withdraw passports are vested in the district administrative authorities and federal police directorates in Austria and in the diplomatic missions abroad. The general rules governing administrative procedures are applicable to all official acts concerning passports. Hence, where a passport is refused or withdrawn, the first remedy is an appeal to the next higher administrative level. Further appeals lie to the Constitutional Court and the Administrative Court. Incidentally, there is a rule requiring authorities to determine applications for a passport within three months.

83. There are no general prohibitions on leaving Austria, either for Austrians or foreigners. To prohibit an Austrian national to return to Austria is unconstitutional.

84. As of 31 December 1995, there were 741,591 foreign residents in Austria. Between 1990 and 1994, 63,185 foreigners were naturalized in Austria. In the years from 1986 to 1995, 15,701 foreigners were granted asylum in Austria.

Article 13

85. There is a rule that foreigners shall be refused entry into Austria's territory if the border police find that there are doubts about their identify, if they have no passport or visa, or if there is a regulation to the effect that they must use a different border crossing point. Foreigners are also refused entry by the border police where:

(a) A residence ban has been imposed on the person concerned;

(b) While the person is in principle entitled to enter without a visa, there are certain facts justifying the assumption that:

(i) His/her stay in Austria would endanger public peace, order or security or the relations between the Republic of Austria and another State;

(ii) He/she intends to embark on a gainful activity in Austria without being in possession of the required permits;

(iii) He/she intends to engage or participate in organizing illegal immigration in Austria;

(c) The person has no fixed domicile in Austria and does not have the funds to finance the costs of his/her stay and return abroad;

(d) There are specific facts indicating that the person intends to use his/her stay in Austria to commit serious fiscal offences or to intentionally breach foreign exchange regulations.

86. Foreigners may be compelled by the authorities to leave Austria for another country if:

(a) They entered the country by evading border controls, provided they are caught within seven days; or

(b) Within seven days of their entry into Austria they had to be taken back by the Republic of Austria under an expulsion agreement or by international custom.

87. Foreigners against whom a residence ban or expulsion order is enforceable may be compelled by the authorities to leave Austria if:

(a) It is considered necessary on grounds of maintaining public peace, order or security to monitor their departure; or

(b) They have not complied in good time with their obligation to leave; or

(c) It is to be feared on account of certain facts that they will not comply with their obligation to leave; or

(d) They have returned to Austria in violation of a residence ban.

88. A foreigner may not be deported to another country if there are valid reasons to suspect that he would be exposed to a risk of inhuman treatment or punishment or to the death penalty in that country. Nor may he or she be deported if there are valid reasons to suspect that his/her life or liberty would be threatened there on account of his/her race, religion, nationality, membership of a specific social group or his/her political views. Where a foreigner claims that he or she cannot be deported or returned for any of the reasons stated above, he or she must be given an opportunity to state his or her case.

89. Deporting a foreigner to a country where his/her life or liberty are at risk on account of his/her race, religion, nationality, membership of a specific social group or political views is only admissible where there are weighty reasons why the foreigner constitutes a danger to the liberty of the Republic of Austria or where, having been finally convicted of a crime carrying a punishment of more than five years' imprisonment, he or she constitutes a danger to society in Austria.

90. Finally, deporting a foreigner to another country is inadmissible as long as there is a temporary injunction (“recommendation of a temporary measure”) by the European Commission on Human Rights or the European Court of Human Rights to the contrary.

91. As mentioned above, a foreigner's expulsion or deportation is predicated on a residence ban imposed on him or her. It is the duty of the authorities

to impose a residence ban on a foreigner where there are definite facts to justify the assumption that his/her residence in Austria is contrary to public peace, order or security or other public interests mentioned in article 8, paragraph 2, of the European Convention on Human Rights. If a residence ban is likely to interfere with the foreigner's private or family life, withdrawing his/her right to reside in Austria is only permissible if such a step is urgently required to achieve any of the objectives mentioned in article 8, paragraph 2, of the European Convention on Human Rights. Nor may a residence ban be imposed where its effects on the foreigner's life and that of his or her family would be graver than the negative consequences to be expected should the authorities not exercise their right to remove him or her from Austria. In taking a decision in such cases, the authorities have to bear in mind how long the foreigner has resided in Austria, how well integrated he or she and/or his or her family are in Austrian society and how close the foreigner's family and other personal relations are. Where a foreigner's case as such meets all the preconditions for imposing a residence ban but the foreign person has had his/her domicile in Austria for 10 years and has no criminal record, so that he/she could have naturalized, a residence ban is also normally ruled out.

92. Refusal of entry or deportation is an act of “direct command and coercion” by officers of a public security service. An appeal to an Independent Administrative Tribunal lies against such acts. The Tribunal's rulings can be challenged before the Constitutional Court or the Administrative Court. In any such appeals, the complainant can put forward his/her arguments against rejection, return to another country or deportation. Before the Administrative Tribunal, the foreigner may rely on the services of a lawyer; before the Constitutional Court or the Administrative Court, he/she has to be represented by counsel.

93. Foreigners can be expelled by simple administrative decision where their presence in Austria is unlawful. This is the case if they have ignored entry regulations, evaded border controls, or if they have no residence permit under the Asylum Act. In the interests of public order, foreigners may be expelled by administrative decision if:

(a) They have been convicted by a criminal court of a criminal offence committed with intent within a month after their entry into Austria (and they may be thus expelled even if their conviction is not final); or

(b) Within a month after entry into Austria, they have been caught in the act of committing a crime with intent or have been credibly accused of a crime immediately after it has been committed, provided the offence carries a heavy criminal sanction; or

(c) Within a month after entry into Austria, they have committed a breach of the Austrian regulations on prostitution; or

(d) Within a month after entry into Austria, they are unable to substantiate that they possess the necessary funds to ensure their livelihood in Austria; or

(e) Within a month after entry into Austria, they are found by the employment service to be pursuing an occupation which they are not entitled to exercise pursuant to the Foreign Labour Employment Act; or

(f) They have entered Austria disregarding entry provisions or evading border controls, provided they are caught within one month.

94. Expulsion by administrative decision requires formal proceedings in the course of which the authorities have to establish that the regulations actually apply to the case. These proceedings end with the issuance of a formal administrative decision. If the decision orders the foreigner's expulsion, he or she can appeal. Unless the expulsion has been ordered in the interests of public order, an appeal will have a suspensive effect, although the latter may be cancelled in case of periculum in mora. The decision on the appeal may in its turn be appealed to the Constitutional Court or the Administrative Court.

Article 14

95. The constitutional foundations of the Austrian court system are contained in articles 82 to 94 of the Austrian Federal Constitution (for the texts, see annex D).

96. District courts are the basis of the court system. Regional courts are the next level. The four regional courts of appeal form the third level, and the pyramid is topped by the Supreme Court.

97. A distinction is made between civil courts and criminal courts. Civil courts hear cases involving private rights and obligations of the inhabitants of Austria with regard to each other. Civil jurisprudence also includes labour law, i.e. disputes mainly between employers and workers arising out of contracts of employment; social legislation, i.e. mainly disputes about the justification, extent or suspension of claims to insurance benefits; and commercial law.

98. The other branch of the court system is criminal jurisprudence. Its function is to hear cases involving criminal offences. Austrian law distinguishes between offences punishable by a court of justice, most of which are listed in the Penal Code or other penal legislation, and offences punishable by administrative authorities rather than courts (administrative penal matters).

99. The Austrian Penal Code divides criminal offences into felonies and misdemeanours. Felonies are crimes carrying life imprisonment or a prison term of more than three years. All other criminal offences are misdemeanours. District courts have jurisdiction over all offences carrying a prison sentence not exceeding six months. All other felonies and misdemeanours are tried at first instance by regional courts.

100. District court cases are heard by a judge sitting alone. Regional court cases may come before a single judge or a bench consisting of two career

judges and two “lay” judges (chosen from the population at large). The latter type of court hears cases where the maximum prison sentence may exceed five years as well as certain other categories of crime.

101. There are also assize courts in Austrian criminal jurisprudence. They are competent to hear cases involving crimes which carry life sentences or a term of imprisonment of not less than 5 or a maximum of 10 or more years. Assize courts also try all political crimes, which are specifically listed in the Code of Criminal Procedure.

102. A person wanting to become a judge has to be a university graduate in law. The young lawyer then has to work at a court for nine months as a graduate trainee. He or she can then apply to be accepted into the Judicial Preparatory Service. The first decision on such applications, centred on the applicant's suitability, lies with the president of the appropriate regional court of appeal, who may then recommend to the Federal Minister of Justice to appoint the applicant a candidate judge. The training period is four years, at the end of which the candidate sits for the Judge's Examination. Normally, aspirants get their training at district courts or regional courts. By taking the final examination, candidates have to show that they have the necessary theoretical and practical knowledge and also the personal ability to handle civil and criminal matters expeditiously and correctly. The examination comprises a written and an oral part. The examining boards operate in the framework of regional courts. Usually, they consist of judges and public prosecutors, within occasionally some barristers.

103. Once the candidate judge has passed the Judge's Examination, he is free to apply for an established judicial post. All vacancies have to be publicized to enable candidates to come forward. Job applications are examined by personnel boards, which all regional and higher courts have. Normally, these boards consist of five members, two ex officio and three elected. Only judges have the right to vote in elections of board members - in the case of a regional court, the judges of that particular court as well as those of the district courts within its jurisdiction. Only one judge of each court can be elected. The personnel board examines applications for vacancies. Its members prepare a short list for each vacancy. The judge is then normally appointed by the Federal Minister of Justice.

104. A judge can only be employed by the court to which he or she has been appointed. Judges cannot be transferred administratively to other posts. Their terms of office are open-ended. They retire at the age of 65.

105. As regards a judge's career, it may be noted that judges get automatic regular increments to their salaries. Whether a judge changes over to a higher court or becomes president of such a court depends primarily upon him- or herself, because a judge has to apply for any such vacancy, and applications are again handled by the personnel boards, who draw up short lists.

106. Judicial procedure in civil matters is regulated by the Code of Civil Procedure, whose section 171 ensures that the proceedings are public: “The

hearing before the trial court, including the pronouncement of the judicial decision, shall be public." As regards the audience, only adult unarmed persons are entitled to be present.

107. The public shall be excluded where the court considers that holding the hearings in public would pose a risk to public order or where there is reason to fear that public hearings would be misused to disturb the proceedings or the court's efforts to establish the facts of the case. Moreover, the court may exclude the public, even if only one of the parties so requests, where, in order to settle the dispute, facts concerning family life have to be discussed and proved. The public may be excluded for the whole trial or only for parts of it, but the exclusion of the public can never extend to the pronouncement of the court's judgement. Even if the public at large is excluded, any of the parties may demand that, in addition to their lawyers, three persons enjoying their special trust be allowed to attend the hearings.

108. Proceedings under the Code of Civil Procedure are characterized by the rule that they must be oral. Accordingly, section 176 of the Code of Civil Procedure stipulates: "Before the trial court, the proceedings shall be oral." After the case is called, the court must hear the parties' motions, including the actual arguments brought forward to substantiate the motions and to challenge the motions of the opponent, as well as the evidence and the legal arguments concerning the case. Motions for taking evidence may be filed until the end of the oral hearing. Each party has the right to question its opponent. If the court considers a case ripe for decision, the hearing is declared closed. Thereupon, the court pronounces its judgement; in doing so, however, it is not authorized to adjudicate to one of the parties something that has not been requested. The judgement must be pronounced on the basis of the outcome of the hearing and, if possible, immediately after the end of the hearing. The judgement must contain the reasons for the court's decision. The pronouncement of the judgement is not dependent on the presence of both parties. If the judgement cannot be pronounced immediately after the end of the oral hearing, it must be pronounced within four weeks thereafter. It must also be issued in writing.

109. Criminal proceedings are governed by the prosecutorial principle. This means that the judicial prosecution of an offence can only be initiated at the request of a prosecutor.

110. Sentencing presupposes that criminal proceedings have been conducted and that the competent judge passed a pertinent judgement.

111. In criminal proceedings, too, the trial is public, otherwise it would be null and void. Also, such proceedings may be attended only by unarmed adult persons. Coverage of the trial by television and radio as well as the shooting of films and taking of photos are prohibited.

112. The general public may be excluded from a trial only for reasons of morality and public order. The court pronounces such an exclusion ex officio or by decision if so requested by the prosecutor or the accused following a non-public session and non-public deliberations. Such decision, including the reasons for it, must be pronounced in a public session and must be taken on

record. If there are overriding protected interests, the court must exclude the general public in cases where facts from the personal life or secrets of the accused, a witness or a third person are discussed.

113. The following persons must never be excluded from the trial: persons whose rights have been violated by an offence, judges, officials from the public prosecutor's office and the Federal Ministry of Justice, and persons registered on the list of defence counsels. The accused, the person claiming damages in criminal proceedings as well as the private prosecutor may request that three persons in their confidence are permitted access to the trial.

114. In criminal proceedings, the trial commences when the case is called. The accused must appear without shackles; if he is detained on remand, however, he must appear with a guard. First, the presiding judge questions the accused about his personal data. Then the evidence is taken. Witnesses and experts are questioned. Apart from the presiding judge, the other members of the court, i.e. the public prosecutor, the accused and the private party and their representatives, have the right to question any summoned person after having been given permission by the judge to do so.

115. After termination of evidence proceedings, the judge gives the floor to the public prosecutor to present the charge. All counts of the charge must be stated and substantiated insofar as this is necessary to understand the charge. After the charge has been explained, the judge must satisfy himself that the accused has a sufficient understanding of the substance and extent of the charge. Now, the defence counsel has the right to reply to the charge. The accused is the last one to reply. After that, the judge declares the hearing closed. The court retires for judgement. When judgement has been reached, the accused must again be produced and the judge pronounces the judgement in public session, including the essential reasons for it and the reading of the applicable provisions. At the same time, the judge must inform the accused of the remedies available to him. Every judgement must also be issued in writing within four weeks from the day it was pronounced.

116. Remedies against a criminal judgement are a plea of nullity and an appeal.

117. A plea of nullity is filed with the Supreme Court. It may be lodged for the reasons specified in the Code of Criminal Procedure. Such reasons are, for instance, that the composition of the court was not appropriate, that the accused was not represented by counsel during the entire trial although this is explicitly prescribed by law, that provisions were disregarded the violation of which is an explicit ground of nullity, such as in the case of a violation of the publicity requirement, or if the court exceeded its sentencing authority.

118. An appeal, which goes to the next higher court, can only be lodged against sentence and against a decision on private-law claims.

119. Austrian lawyers must be members of the Austrian Bar Associations. These associations are public-law corporations. The bar association conducts its business partly directly in plenary meetings, partly indirectly through a

committee. Both the association and the committee are obligated to protect the honour, the reputation and the rights, and to supervise the obligations of the legal profession.

120. The president, his deputy and the members of the committee are elected by secret ballot from among the members of the association in plenary session; they must get an absolute majority of the votes of those present and they serve for a term of three years.

121. The tasks of the plenary session and the tasks of the committees are regulated in detail by law.

122. Lawyers are independent of the courts. They are subject to their own disciplinary regulations, the disciplinary boards of the bar associations being made up exclusively of lawyers.

123. An essential sphere of responsibility of the bar association is the granting of legal aid. If a court has decided that an accused is to be given a lawyer, the party concerned has the right to be assigned a lawyer by the bar association. The association gets a lump sum compensation for providing legal aid from the State.

124. A court must grant a party legal aid insofar as it is unable to bear the costs of the proceedings without impairing its subsistence and if the intended prosecution or defence does not appear to be obviously mischievous or futile. A legal person may also be granted legal aid if the means required to conduct the proceedings can neither be provided by it nor by those participating in the proceedings for financial reasons and if the intended prosecution or defence does not appear to be obviously mischievous or futile.

Articles 15 and 16

125. There is no need to add anything to the reports submitted so far.

Article 17

126. The term “family” comprises all legal relations between children and parents, which are characterized, in particular, by the elements of protection, care and education on the part of the parents. The concept of the family is tied to the concept of marriage, which means that a man and a woman live together permanently on a legal basis in a spirit of partnership, although there is no absolute need to have all of these elements linked together. For a family also means the legal relationships to illegitimate children and those of single parents to their children. In a wider sense, the family concept also includes the legal relationships of relatives by blood and marriage.

127. It is disputed whether the community for life of homosexual couples is also to be considered a family. Although this view is being held, it has not yet become accepted by society.

128. The protection of the home is guaranteed by a law adopted as early as in 1862 (for the text, see annex E). According to the case-law of the

Constitutional Court, the wording used in section 1 of the Law on the Protection of the Rights of the Home, i.e. “home or the appurtenant premises”, must be interpreted in the widest possible sense resulting from the general objective that - as the Constitutional Court notes - “any interference with privacy, with things which one is generally authorized and used to keep from the eyes of strangers, which would violate a person's dignity and independence is to be prevented”. Therefore, premises serving this general purpose are afforded particular protection. In this context, the term “premises” is not to be understood technically to mean a building but any type of space that is closed or can at least be closed to the public and is to be used by the persons of the same household or serves other personal or economic purposes. That is why protection is afforded not only to living quarters but also cellars, stables, shacks, gardens, business premises of any kind, like a doctor's practice, and club rooms. According to the case-law of the Constitutional Court, such premises are exempted from protection only in exceptional cases. Essentially, this happens when premises or properties are open on account of their dedication or actual use or accessible for the public so that there is no need whatsoever to protect the privacy of whomsoever. In particular, this applies to buildings whose dedication for public purposes serves the accomplishment of public tasks, like in the case of waiting rooms in railway stations or airports, public libraries or public swimming pools. In individual cases, it may be difficult to make a clear distinction, for there may also be rooms in buildings dedicated for public purposes (such as universities, hospitals, theatres, opera houses), that are protected under the law (workrooms, cloakrooms, cloakrooms of actors, operation theatres of hospitals).

129. According to traditional usage, a “home” means a number of rooms to live in, including not only living quarters as such (living rooms, sleeping rooms, children's rooms, kitchen) but also additional rooms physically connected with a home or a house (cellar, shack, adjacent gardens). In such cases, what matters is, again, their dedicated or actual use so that, for instance, a living van may also be considered a “home”. This, however, does not include rooms where professional activities are carried out.

130. A search of the home may be made, as a rule, only on the basis of a judicial order giving the reasons for the search. Such a judicially ordered search may be challenged in court. Searches made without a judicial order are admissible under section 2 of the above-mentioned law in exceptional cases. The police may search a home either on the basis of a mandate given to it under public security legislation or on its own responsibility; this, however, only upon the condition of imminent danger.

131. The basic rule that a search warrant must be obtained from a judge must always be respected except in specific cases, i.e. where specific circumstances preclude the obtaining of the search warrant. Taking account of the purpose of home searches, such specific circumstances exist if obtaining a search warrant would be detrimental to criminal procedure or if the efforts of the police in criminal proceedings would be thwarted. This would be the case, for instance, if important evidence could be removed were there no search, if the traces of an offence could be covered or if there was the possibility for someone to evade prosecution. However, the element of imminent danger does

not exist if there is sufficient time to obtain a search warrant, which means that such a warrant can be secured from a judge without jeopardizing the successful conduct of the search.

132. If a search is made without a judicially granted search warrant, a complaint may be filed with an independent administrative tribunal whose decision may be challenged before the Constitutional Court.

133. Eventually, the protection of the home and of privacy is ensured by the penal provision on the violation of domestic privacy, which reads:

> "(1) Anyone who gains admission to the living quarters of another person by force or threat of force shall be punished by imprisonment of up to one year.
>
> "(2) The offender shall be prosecuted only by authority of the person whose rights have been violated.
>
> "(3) A person who trespasses, in the manner described in paragraph 1 above, on a house, a home, a closed room serving public purposes or the exercise of a profession or trade, or on fenced premises belonging directly to a house, and in doing so:
>
> > "1. Intends to use force against a person or thing being there,
> >
> > "2. Carries himself or knows that another accomplice carries a weapon or other means to break or prevent a person's resistance, or
> >
> > "3. If the intrusion of several persons is accomplished by force,
>
> shall be punished by imprisonment of up to three years."

134. Both the secrecy of correspondence and the secrecy of telecommunications are ensured under Austrian law. In both cases, interferences are admissible only on the basis of a judicial order and in compliance with applicable law. The relevant legal provisions are contained in the Code of Criminal procedure which essentially stipulates the following: if an accused is already being detained for having deliberately committed an offence which is punishable by imprisonment of more than one year or if a warrant of arraignment or arrest has been issued on account of such an offence, the investigating judge may seize telegrams, letters or other mail sent by the accused or addressed to him and request the postal service or other forwarding agencies to make them available to the court. Moreover, the postal service is obligated to retain such mail at the request of the public prosecutor until it receives a court order. If such a court order is not issued by the investigating judge within three days, the postal service must no longer postpone the delivery of the mail concerned.

135. Seized mail may be opened only by the investigating judge, and if the accused has given his consent, there are no other requirements to be observed.

If the accused does not consent, the investigating judge must obtain, for the time being, the approval of a judicial panel provided there is no imminent danger. When opening such mail, a record must be taken.

136. The accused or, in his absence, one of his family must be informed of the seizure of mail immediately or at least within 24 hours.

137. If mail has been opened, the accused or the person to whom it is addressed must be informed of the contents, in part or in whole, of letters and telegrams by handing out the original or a copy, unless imparting the contents might have an adverse effect on the investigation. If the accused is absent, one of his family must be notified. If no members of the family of the accused are available, the letter must be returned to the sender if the judge considers this to be in the interest of the sender, or the sender must be informed of the seizure if the letter or telegram must stay in the case file.

138. The secrecy of correspondence is supplemented by postal secrecy according to which postal officials are under the obligation to refrain from imparting any information about mail to persons other than the sender or receiver, unless otherwise provided by law. Although the secrecy of correspondence provides protection against an intentional or unlawful opening of sealed letters, it offers no protection from spreading unintentionally or legally obtained knowledge of the contents of mail or of the obvious fact of postal communication between the sender and receiver. Also, secrecy of correspondence does not relate to the protection against the spreading of the contents of written communications contained in unsealed mail, e.g. postcards. Such communications are protected under the postal secrecy requirement.

139. As regards criminal legislation, a violation of the secrecy of correspondence is subject to punishment in accordance with section 118 of the Penal Code. This provision reads as follows:

> "(1) Anyone who opens a sealed letter that is not intended for him to be read or any other such written communication shall be punished by imprisonment of up to 3 months or a fine of up to 180 daily rates.
>
> "(2) Similarly, anyone shall be punished who:
>
> > "1. Opens a sealed containment in which such written communication has been placed, or
> >
> > "2. Applies technical means to accomplish his purpose without breaking the seal of the written communication or containment,
>
> in order to obtain knowledge of the contents of a written communication that is not intended to be read by him either for himself or for another unauthorized person.
>
> "(3) Similarly, anyone shall be punished who intercepts or otherwise suppresses a letter or another written communication before the receiver has obtained knowledge thereof.

> "(4) The offender shall be prosecuted only at the request of the person whose rights have been violated. If, however, the offence is committed by a public official in the exercise of his official duty or by availing himself of an opportunity offered to him in the pursuit of his official activities, the public prosecutor, having been authorized by the person whose rights have been violated, shall prosecute the offender."

140. Unless a violation of postal secrecy comes within the purview of the above provision quoted from the Penal Code, it amounts to an administrative offence and is punishable by administrative authorities.

141. As already mentioned, secrecy is also afforded to the exchange of information between persons by means of telephones or other technical means. Again, an interference with this secrecy requirement ("secrecy of telecommunications") is admissible only on the basis of a judicial order or in compliance with existing legislation.

142. Under the Code of Criminal procedure, it is permitted to monitor telecommunication traffic, including the recording of messages by technical means and the transcription of their contents:

(a) If it can be expected that this will help to expedite the clarification of an offence that was committed intentionally and is punishable by imprisonment of more than six months and if the proprietor of the telecommunication facility has given his express consent; or

(b) If this appears to be necessary for clearing up an offence that was committed intentionally and is punishable by imprisonment of more than one year, and

(i) The proprietor of the telecommunication facility himself is suspected of having committed the offence; or

(ii) There are reasons to assume that a person strongly suspected of having committed the offence will use the telecommunication facility or will establish contact with it unless the proprietor of the facility is a lawyer, notary public or chartered public accountant and tax consultant, a psychiatrist or psychotherapist who is exempted by law from the duty to testify before a court as he is bound by professional secrecy.

143. The monitoring of telecommunications transmitted by the facilities of a media enterprise is admissible in case (b) (ii) mentioned above only if it can be expected that this will help to expedite the clarification of an offence carrying life imprisonment or a term of imprisonment of a not less than 5 years and not more than 10 years.

144. The monitoring of telecommunications must be ordered by decision of a judicial panel. In the case of imminent danger, it is also possible for the investigating judge to take this decision; however, he must obtain the

approval of the judicial panel without delay. If such approval is refused, the investigating judge must revoke his order immediately and have the recordings and transcripts destroyed.

145. The decision ordering the monitoring of telecommunications must specify the name of the accused, the offence which he is strongly suspected to have committed and its legal designation, the name of the proprietor of the telecommunication facility and its designation, the time when monitoring is to start and to end, as well as the facts from which the need for monitoring results. As soon as the conditions for continuing the monitoring of telecommunications cease to exist, the investigating judge must order its immediate termination.

146. After terminating monitoring activities, the court decision ordering such monitoring must immediately be served on the proprietor of the facility and the accused. However, the serving of the decision may be postponed as long as this would jeopardize the objective of the investigation.

147. The public prosecutor, the proprietor of the facility and the accused may appeal against a decision ordering the monitoring of telecommunications by filing a complaint with the superior court within 14 days. If the complaint is allowed, an order must be issued at the same time that any recordings or transcripts made in the course of such monitoring must be destroyed. The monitoring of telecommunications, including the recording of their contents, must be carried out by the investigating judge or the public security authority commissioned by him in consultation with the telecommunications authorities. The investigating judge or the public security authority must review the recordings and transcribe the parts that are of importance to the investigation and may be used as evidence. Such transcripts must be included in the case file. The recordings must be kept safe by the court and must be erased after the proceedings have been terminated with final effect.

148. If indications turn up during the examination of the recording that an offence has been committed by a person other than the one having prompted the monitoring, that part of the recording must be transcribed separately as far as it may be used as evidence.

149. The results of monitoring, in particular the recordings and their transcriptions, may be used as evidence only - otherwise they would be null and void - if monitoring was admissible:

(a) In criminal proceedings against the accused who prompted the monitoring; or

(b) In criminal proceedings against a person other than the accused for proving an offence that was committed deliberately and is punishable by imprisonment of more than one year.

150. The public prosecutor and the accused must be given an opportunity to hear the entire recording. If required to protect the legitimate interests of third parties, the court, however, must ensure that the sections of the

recording which are irrelevant for the proceedings are not brought to the attention of the accused. This does not apply if the recording is played before the court at the main trial.

151. The persons taking part in telecommunications traffic have the right to read the pertinent transcripts as far as they relate to their conversations. Such persons, provided their identity is known or can be established without particular procedural efforts, must be informed by the investigating judge of this right and the right to request the destruction of the transcripts.

152. If parts of the transcript are irrelevant for a criminal proceeding or may not be used as evidence, such parts must be destroyed at the request of the public prosecutor or the accused or ex officio.

153. The secrecy of telecommunications is laid down in detail in section 4 of the Telecommunications Act. According to this provision, persons who operate, maintain or supervise telecommunication facilities within the framework of rendering telecommunication services to the public are bound to keep any messages secret that have been forwarded by such telecommunication facilities or have been dispatched for being communicated through such facilities, as well as the fact that such telecommunication traffic exists between specific persons. Telecommunication facilities are all technical facilities for sending, transmitting or receiving messages, be it by cable or radio, by optical means, or by means of other electromagnetic systems.

154. If messages are received by means of a radio installation for which such messages were not intended, the contents of the messages, as well as the fact of their having been received, must neither be recorded nor brought to the attention of unauthorized persons nor be used for any other purpose. Any such recorded messages must be erased or destroyed.

155. Anyone who, in contravention of these rules, records messages with the intention to obtain knowledge of their contents either for himself or for another unauthorized persons or informs an unauthorized person of such contents shall be punished by a court, unless the offence carries a severer sentence under another provision, with imprisonment of up to three months or a fine of up to 180 daily rates. The offender may be prosecuted only at the request of the person whose rights have been violated.

156. In addition to these provisions that relate to the violation of the secrecy requirement, section 190 of the Penal Code contains a special provision on the breach of the secrecy of telecommunications. This provision reads as follows:

> “(1) Anyone who installs a device in a telecommunication facility or prepares it for reception in any other way with the intention to obtain knowledge of a message either for himself or for another unauthorized person that is transmitted by a telecommunication facility and not intended to be used by such person shall be punished by imprisonment of up to six months or a fine of up to 360 daily rates.

"(2) Similarly, anyone shall be liable to punishment who uses a device installed in a telecommunication facility or prepared for reception in any other way with the intention specified in para.1.

"(3) The offender shall be prosecuted only at the request of the person whose rights have been violated. If, however, the offense is committed by a public official in the exercise of his official duty or by availing himself of an opportunity offered to him in the pursuit of his official activities, the public prosecutor, having been authorized by the person whose rights have been violated, shall prosecute the offender."

157. In addition, there are other secrecy requirements protecting a person's privacy, official secrecy, for instance. Under the requirement, all employees of the federal, Land and local authorities are obligated to keep any facts secret that have become known to them exclusively in the course of their official activities and the secret character of which is required in the prevalent interest of private persons. Likewise, bank employees must not disclose or use secrets that have been entrusted or make accessible to them exclusively by doing business with clients. The secrecy requirement is not subject to a time limit. Another example is the obligation to keep data secret. Private persons may gather and process data about other private persons only if the content and objective of data processing is covered by its legitimate purpose and if this does not violate the protected interests of the person concerned, particularly with respect to the privacy and family of that person. Data may be processed for exclusively private purposes only if the person concerned has made available such data to the ordering party or if the ordering party has regularly received such data as a private person. These data may be passed on only if the person concerned has given his/her express consent in writing, and may at any time withdraw his/her consent in writing, or if the disclosure of data serves the legitimate purpose of the person disclosing such data or, finally, if the disclosure is required for protecting the overriding legitimate interests of a third party. Processed data which have been entrusted or made accessible to someone exclusively in the course of his/her professional activities may be disclosed - irrespective of any other secrecy requirements - only subject to an explicit instruction by the ordering party or the employer or his/her representative.

158. Anyone who discloses or uses data that have been entrusted or made accessible to him/her exclusively in the course of having professionally to do with data processing and the disclosure or use of which is likely to violate a legitimate interest of the person concerned shall be punished by a court with imprisonment of up to one year, unless the offence is liable to a severer punishment under a different provision. The offender shall be prosecuted only at the request of the person whose interest in keeping the respective data secret has been violated or at the request of the Data Protection Commission.

159. Certain professions, such as physicians, lawyers or notaries public, are subject to a specific secrecy requirement in relation to their patients and clients. Violations of such secrecy requirements are disciplinary offences, some of which may also lead to judicial prosecution.

160. The honour of a person is protected from unlawful attacks by the offences of "defamation" and "slander and assault".

161. The offence of defamation is committed by anyone who, in such a way that it may be perceived by a third person, accuses another of possessing a contemptible character or attitude or of behaviour contrary to honour or morality and of such a nature as to make him contemptible or otherwise lower him in public esteem. Such activities are liable to imprisonment of up to six months or a fine of up to 360 daily rates. Severer punishment is provided for offenders who commit defamation in a printed document, by broadcasting or otherwise in such a way as to make the defamation accessible to a broad section of the public.

162. An offender shall not be punished if the statement is proved to be true. If the defamation has not been made public in a printed document, by broadcasting or otherwise in such a way as to make it accessible to a broad section of the public, the person making the statement shall not be liable to punishment even if circumstances are established which gave the person making the statement sufficient reason to assume that the statement was true. Similarly, a person shall not be liable to punishment if he is forced by special circumstances to make a statement in the particular form and manner, unless the statement made is untrue and the person making the statement, acting with necessary care, ought to have been aware thereof.

163. Slander and assault is committed by someone who, in public or in the presence of several others, insults, mocks, mistreats or threatens with ill-treatment a third person. Unless he is liable to a severer punishment under a different provision, such person is liable to imprisonment of up to three months or a fine of up to 180 daily rates.

164. Finally, someone is liable to punishment if he accuses another, in such a way that it may be perceived by a third person, of an offence for which the sentence has already been served or has at least conditionally been remitted or in respect of which the pronouncement of the sentence has temporarily been postponed.

165. Offences against honour are liable to prosecution only at the request of the person whose honour has been attacked. If an offence against honour is committed in respect of the honour of a civil servant or a clergyman of a domestic church or religious community in the exercise of his official duties, the public prosecutor shall prosecute the offender by authority of the person concerned and his superior within the time limit available to the person concerned for requesting prosecution. The same applies if such an offence is committed in respect of the mentioned persons with regard to one of their professional activities in a printed document, by broadcasting or otherwise in such a manner that the offence is made accessible to a broad section of the public.

166. Particular rules for the protection of personality apply for the mass media. The term “media” denotes any means for the dissemination of information or entertainment with an intellectual content in word, print, sound or pictures to a wide readership or audience by way of mass production or mass dissemination. This includes, above all, newspapers and periodicals.

167. If an objective factual situation constituting defamation, ridicule or malicious falsehood is created in any medium, the person concerned has a right

to damages against the media proprietor (publisher) for the injury suffered. In determining the amount of damages, consideration must be given on the one hand to the extent and effect of the publication, including the type and popularity of the medium, and to the preservation of the economic existence of the media enterprise, on the other. Damages must not exceed S 200,000 or, in the case of malicious falsehood or defamation having particularly serious consequences, S 500,000.

168. There is no right to damages if the report in question is a true report of a debate in a public session of the National Assembly, the Federal Council, the Federal Assembly, a Land parliament or a committee of one of these general representative bodies.

169. In the case of defamation, there is no right to damages if the publication is true or if there was an overriding public interest in the publication and there were sufficient reasons for the author, taking the necessary professional care of a journalist, to regard the allegation as true. Moreover, there is no right to damages if a defamatory statement was broadcast live on radio and no staff member or agent of the broadcasting company had neglected their necessary journalistic care. Finally, there is no right to damages if the publication was a true reproduction of a statement made by a third party of there was an overriding interest of the public in being informed of the statement in question.

170. If the strictly personal sphere of the life of an individual is discussed or represented in a medium in a manner likely to compromise him in public, the person concerned has a right to damages against the media proprietor (publisher) for the injury suffered. The amount of damages must not exceed S 200,000.

171. If a name, picture or other information is published in a medium which is likely to disclose to a not directly informed larger readership or audience the identity of a person who has become the victim of a judicially punishable offence or is suspected to have committed a judicially punishable offence or has been convicted of such an offence, thereby violating the protected interests of such person, and there was no overriding public interest in the publication of such information because of such person's public position, another connection with public life or for other reasons, the person concerned has a right to damages against the media proprietor (publisher) for the injury suffered. In such case, too, the amount of damages must not exceed S 200,000. At any rate, the protected interests of the person concerned are violated if the publication is likely to result in an interference with the strictly personal sphere of life or the public exposure of the crime victim. In the case of a criminal offender, protected interests are violated if the publication relates to a youth or to a misdemeanour or is likely to unreasonably affect the living conditions of the person concerned.

172. There is no right to damages if the report in question is a true report of a session of a general representative body, if the publication of personal data was ordered by a public authority, particularly for the purpose of criminal prosecution or the maintenance of public peace and safety, if the person concerned agreed to the publication or if the publication is the result of any information of the person concerned to the medium or, eventually, if

the report in question was broadcast live on radio and no staff member or agent of the broadcasting company had neglected the necessary journalistic care.

173. Particular protection is also afforded to the principle of the presumption of innocence. If a person who is suspected of having committed a judicially punishable offence but has not yet been finally convicted is described in a medium as having been convicted or guilty or as the perpetrator of such offence and not merely as a suspect, the person concerned has a right to damages against the media proprietor (publisher) for the injury suffered. The amount of damages must not exceed S 200,000. In such case, too, the amount of damages must be determined according to the extent of the report and its effect on the public, and particularly in view of the type and popularity of the medium.

174. In such case, there is again no right to damages if the report in question is a true report of a session of a general representative body, a true report about a sentence pronounced by a court of first instance and it is pointed out at the same time that the judgement has not yet become final, if the person concerned has made a confession of having committed the offence in public or to a medium and has not withdrawn his confession, if the report was broadcast live on radio and no staff member or agent of the broadcasting company had neglected the necessary journalistic care, or if the report was a true reproduction of a statement by a third person and there was an overriding interest of the public in being informed of the said statement.

175. In all of the above cases, the media proprietor (publisher) must show that there is a reason which precludes a claim for damages.

Article 18

176. According to the case law of the Constitutional Court, the right to freedom of conscience and religion is a strictly personal right, a right in personam, from which a legal person can never derive any rights. It is guaranteed to everybody and is thus a right due to all inhabitants of a national territory irrespective of their citizenship.

177. Under the Constitutional Court's jurisprudence, the belief in a religious doctrine presupposes the intellectual capacity to comprehend this doctrine; this process of comprehension can only be a gradual one, going hand in hand with the development of the intellect and the powers of reason of the individual; and as the conscience as a guide of human conduct becomes operative only when a human being starts thinking rationally, a child may claim the right to religion and conscience only upon reaching an age when, given the normal development of its mental capacity, it has acquired the judgement. Up to that time, it is not possible for a child to exercise the right to religion and conscience on its own. On the other hand, however, legally binding arrangements concerning the religious situation of children until they acquire judgement are admissible only insofar as pertinent provisions have been laid down by law and specific persons - like the parents and those responsible for their upbringing - are granted a distinct right in this respect. Such a right, however, is not without restrictions; this is shown by the fact that the exercise of one's full freedom in the field of

religious conviction can - given the strictly personal character of these rights - by no means be considered as the exercise of the freedom of religion and conscience by the child and does not include the right to decide on the child's religion but exists only to the extent provided for by law.

178. Religious personal rights are protected, in particular, by the law governing the interdenominational relations of citizens in various combinations. This law was passed as early as 25 May 1868. Basically, it contains the following provisions: After completing age 14, everyone may choose freely - irrespective of one's gender - their religion according to their own conviction; in doing so, one must be afforded the protection, if necessary, of the public authorities. When changing one's religion, all rights the former church or religious community left had vis-à-vis the leaver and all claims the leaver had vis-à-vis the church are lost. For the withdrawal from a church to become legally effective, it is necessary, however, that the person leaving the church informs the administrative district authority accordingly which, in turn, informs the competent bodies of the former church or religious community of the withdrawal. Joining a new church or religious community requires the personal appearance of the person concerned before the competent bodies of the newly chosen church. A church or religious community is forbidden to induce members of another church or religious community to change their religion by coercion or trickery.

179. As early as in 1868, this law nullified the provisions of the General Civil Code under which the abandonment of the Christian faith was considered a ground for disinheritance, as well as those provisions of the Penal Code according to which anybody who tried to induce a Christian to apostatize or to spread a doctrine contrary to the Christian religion committed a crime.

180. As regards burials, there is a provision according to which no religious community may refuse the proper burial in its cemetery of a person not belonging to it if such person is to be buried in a family grave or if in the parish there is no cemetery of the church or religious community to which the deceased belonged.

181. Also, nobody can be forced to abstain from work on high days or holidays of a church or religious society to which such person does not belong. On Sundays, however, any public activity that is not urgent must be refrained from. Moreover, during the main service on high days of any church or religious society, no activity may be carried out in the vicinity of the community hall that would disturb or obstruct the service. Furthermore, disturbing religious exercise is punishable. Section 189 of the Penal Code provides that anyone who disturbs or obstructs, by force or threat of force, the legally admissible holy service or individual activities performed during holy service of a church or religious society existing in Austria shall be punished with imprisonment of up to two years. The disturbance of the peace of the dead and of a funeral ceremony is punishable as well.

182. As regards the religious education of children, the following provisions have been made: The religious upbringing of a child is a matter to be freely determined by agreement of the parents provided they are responsible for the care and education of the child. Such agreement may be revoked at any time and expires upon the demise of one of the spouses. In case there is no such

agreement or if such agreement no longer exists, religious education is subject to the provisions of the General Civil Code concerning the care and education of a child. According to these provisions, religious education is again the responsibility of the parents acting in agreement. If there is no such agreement, the care of the child is primarily entrusted to and the obligation of the parent who runs the household where the child is taken care of. However, as long as marriage subsists no parent may decide without the consent of the other parent that the child will be brought up in accordance with a belief other than the common confession of the spouses when being married or other than the one in which the child has been raised so far, or that the child is to be taken out of religious instruction in school. If no consent is given in such case by one of the parents, a request may be filed with the Guardianship Court for mediation or decision.

183. If the sole responsibility for the care and upbringing of a child lies with a legal guardian, the guardian must decide on the religious education of the child. For doing so, he needs the approval of the Guardianship Court. In such case, the Guardianship Court needs to hear the child as well if it has completed the age of 10.

184. Any contracts on the religious education of a child are without legal effect.

185. After completion of the age of 14, the child has the right to decide which religious belief it wants to take. If the child has completed the age of 12, it cannot be brought up against its will in a belief other than the one it has had so far.

186. The provisions on the religious education of children apply to the non-religious education of children mutatis mutandis.

187. As far as religious instruction in school is concerned, more detailed provisions are contained in the Religious School Instruction Act of 1949. For all pupils belonging to a legally recognized church or religious society, instruction in their belief is a compulsory subject in almost all public schools or schools with public status. Pupils under 14 may, however, be excused from participation in religious instruction at the beginning of the school year at the written request of their parents; pupils above 14 may submit a written excuse themselves.

188. Religion is taught, conducted and directly supervised by members of the respective legally recognized church or religious community. Public bodies have the right to supervise religious instruction only insofar as matters of organization and school discipline are concerned.

189. Under Austrian law, the relationship between the State and the schools is characterized by the fact that neither the State nor a church or other institution has a monopoly on education. As regards the entire educational system, the State has only the right of supreme control and supervision. Moreover, it is laid down by law that, with the exception of religious instruction, education must be independent of any influence by a church or religious society.

190. As Austrian law guarantees every citizen who can prove his qualification as prescribed by law the right to found institutions of learning and education and to provide instruction in such institutions, this right is also granted to juridical persons, including churches and religious societies.

191. In Austria, a differentiation is made between churches and religious communities that are legally recognized and those that are not legally recognized. The legally recognized churches also include the so-called "historically" recognized churches, i.e. the Catholic Church, the Protestant Church (Augsburg) and the Protestant Church (Helvetic), the Greek Orthodox and the Jewish religious communities. In 1874, the Act on the Recognition of Churches was adopted which specifies the requirements under which hitherto non-recognized creeds may gain legal recognition as a church or religious society by administrative decree. Legally recognized churches in this sense are the Old Catholic Church, the Methodist Church and the Mormons. In 1912, Islam was legally recognized in Austria as a religious community and, later on, the two Protestant Churches.

192. Members of a hitherto legally non-recognized religious faith are granted recognition as a religious community under the condition that their religious doctrine, their holy services, their constitutions and their chosen names contain nothing illegal or immoral and that the establishment and sustenance of at least one religious community are ensured. As regards the requirement for setting up a religious community, the following must be pointed out. While the lawmaker basically considers the drafting of the community's constitution an internal matter, it requires at least one religious chapter to be set up. The religious community must appear as an organization in the public sphere. The internal organization of the religious community, however, is a matter of the community concerned and is not subject to the influence of the State. In practice, recognition as such is granted by a decree of the competent federal minister.

193. A religious community becomes a legally recognized church or religious community by recognition. In the public sphere, it becomes a juridical person under public law and is granted all the rights enjoyed by legally recognized churches or religious communities under the law.

194. Recognition is granted without any time limit. There is also no legal provision that recognition once granted may be withdrawn. If, in the case of a legally recognized religious community, the prerequisites for recognition cease to exist, the opinion prevails that the religious community concerned loses its legal status as a legally recognized church without the need for any other legal steps to be taken.

195. Free religious exercise gives the individual the right to perform religious activities and to take part in religious affairs; the individual has the right to be protected from unlawful coercion to make him refrain from such activities or such participation. Furthermore, an individual must not be forced in an unlawful manner to perform a religious or non-religious ideological activity or to participate in such a ceremony. A restriction on the freedom of religious exercise is the age of a person, which has already been dealt with above. Another barrier to the individual's freedom of religious exercise is the rights granted to others in this respect. In

particular, there must be no abuse of this right, i.e. the enjoyment of the right of others to freedom of religious exercise or non-exercise must not be disturbed or obstructed. The penal provisions existing in this respect for the protection of the freedom of religious practice have already been mentioned.

196. An essential restriction to the freedom of religious practice is the provision of article 63, paragraph 2, of the Treaty of Saint-Germain-en-Laye of 10 September 1919, which ranks as constitutional law and reads:

> "(2) All inhabitants of Austria shall be entitled to the free exercise, whether public or private, of any creed, religion or belief, whose practices are not inconsistent with public order or public morals."

The question of how to interpret "public order" has caused problems. The case law of the Constitutional Court indicates that the entire Austrian legal order is considered to constitute a barrier within the meaning of "public order" to the freedom of creed and religion. However, equating the concept of "public order" with "legal order" cannot result in the fact that the legislature would be empowered to limit the freedom of religion deliberately by law. For the free practice of religion is itself a constitutional guarantee so that laws to restrict the right to free practice of religion and belief in an unjustified way contravene the Federal Constitution as they violate the principle of equality and the right to the free exercise of religion. Such laws, therefore, would have to be repealed by the Constitutional Court.

197. In summing up, one may say: every inhabitant of Austria is granted the right to adopt his religion freely and independent of any interference by the State and to practise such religion accordingly. The nature of the freedom of religion and conscience consists in the exclusion of coercion by the State in religious affairs. Everyone shall be entirely free and not subject to any kind of restrictions in the choice of his religion and in all cases where his actions are guided by the voice of his conscience. This freedom is guaranteed to everybody and is essentially identical with the freedom to profess a creed, a religion or a belief in public or in private; it is not dependent on the fact that the community in which the creed, religion or belief is practised has the status of a legally recognized church or religious society.

Article 19

198. Under Austrian law, the principle applies that national authorities may interfere only if and to the extent provided for by law. There are no regulations that would permit national authorities to interfere with the freedom of opinion.

199. While previously the freedom of expression was considered to be restricted to the mere expression of value judgements, it is undisputed today that this freedom also includes the communication of facts. Nowadays, the freedom of expression is often understood to mean the freedom of individual communication. In particular, the freedom of expression is independent of the content of a statement and of the quality of what has been said, as well as a special legitimation of the person expressing something. The freedom of expression also includes commercial advertising. The freedom to express a

negative opinion is guaranteed as well because an order to express a specific opinion would constitute an interference with the freedom of expression in the same manner as the prohibition of a specific expression.

200. Included in the freedom of expression is also the form of expression (writing, film, radio).

201. The right to disseminate one's ideas has its counterpart in the right to information, i.e. to be allowed to receive communications and ideas freely. As a result, the Constitutional Court has held, for instance, that the destruction by the police of exposed film taken by a journalist at a demonstration amounted to a violation of this right. The Constitutional Court added that the right to obtain information played a particular role in the case of the media in view of the greater need of the press to obtain information.

202. According to current opinion, however, this right relates only to publicly accessible information. As far as particular cases are concerned, the question of how far the freedom to seek information extends is still not settled. In this context, the decision of the Constitutional Court (ref. No. 12104/1989) is of interest. In that case, a customs officer took a periodical from a person entering Austria. The Constitutional Court took the view that while there is no obligation on the part of the State to ensure access to information or to provide information itself, an obstruction through the active intervention by State organs of the procurement of and search for publicly available information was only admissible if provided for by law, because only such an interpretation would ensure the actual exercise of the right to freedom of expression on the basis of sufficient information. In the instant case, the protected rights of the applicant were violated by taking away his periodical as by depriving him of the information medium, he was prevented from obtaining publicly available information. There was no legal basis for such measure, which is why there was an infringement upon the applicant's right to freedom of information.

203. Freedom of information also implies the free use of information sources which also include, apart from the mass media, information facilities like public libraries and archives as well as any directly perceivable events and publicly accessible functions.

204. There is, however, a limited obligation on the part of the State to procure information. This obligation does not derive from the freedom of information, however, but from article 20, paragraph 4, of the Federal Constitution which reads:

> “All functionaries entrusted with federal, Land and local administrative duties as well as the functionaries of other public law corporate bodies shall impart information about matters pertaining to their sphere of competence insofar as this does not conflict with a legal obligation to maintain secrecy; an onus on professional associations to supply information extends only to members of their respective organizations and this inasmuch as fulfilment of their statutory functions is not impeded. The detailed regulations, as regards the federal authorities and the self-administration to be determined by federal law in respect

> of legislation and execution, are the business of the Federation; as regards the Länder and local authorities and the self-administration to be determined by the Land law in respect of framework legislation, they are the business of the Federation while the implementing legislation and execution are Land business."

205. On the basis of this provision, largely corresponding statutory implementing regulations have been passed by the federal as well as the Land parliaments. Accordingly, the federal authorities and the authorities of self-administration to be regulated by federal law have to supply information about matters pertaining to their sphere of competence insofar as this does not conflict with the legal obligation to maintain secrecy. Information must be provided only inasmuch as the fulfilment of other administrative functions is not essentially impeded. Information must not be supplied if requests for such information are obviously mischievous. Anyone may request information orally, by telephone, telegraph, in writing or by telex. Information must be provided without undue delay but not later than eight weeks after a request for information has been received. If this time-limit cannot be observed for specific reasons, the person requesting the information must at any rate be notified accordingly. If information is denied, a formal decision must be issued at the request of the person seeking the information in order to give that person an opportunity to have the legal admissibility of the denial of information reviewed by the Administrative or the Constitutional Courts.

206. Similar laws apply to the authorities of the Länder and the communities.

207. The freedom to express and to receive opinions and information and ideas without restrictions is not guaranteed. However, such restrictions must be provided for by law, must not be in conflict with an absolute prohibition of interference, must serve only very specific purposes and must comply with the principle of proportionality.

208. The freedom of communication may be restricted only by a formal and sufficiently defined law. An absolute restriction on interfering with the freedom of communication is the prohibition of censorship, in particular pre-censorship, i.e. preventive censorship. Such preventive measures are inadmissible also if they serve an objective other than that of opinion control. That is why the Constitutional Court, for instance, considered it inadmissible to require films to be previewed in the interest of protecting young people and to permit administrative officials to attend theatre rehearsals. In addition, legal provisions restricting the freedom of communication may only serve specific purposes, for instance the protection of national security or the respect of the rights of others. A further restriction on admissible interference is the principle of proportionality; a measure serving a legitimate aim must also observe the criteria of appropriateness and necessity. This presupposes a weighing of the values of the free expression of an opinion and of opposing interests, i.e. a weighing of constitutionally guaranteed interests the aim of which is the practical concordance of competing values. Parliament bears the ultimate responsibility for balancing opposing interests in the spirit of the Constitution. Its resolutions are subject to a subsequent review by the Constitutional Court, which also deals with the question of whether Parliament has passed a regulation that corresponds to the principle of proportionality.

209. In accordance with these conditions, there are a number of restrictions on the freedom of communication that are considered legitimate. The basic right to freedom of communication, for instance, does not hinder the State from preventing attacks on communal interests or socially destructive behaviour, even if it appears in the form of statements. In this sense, penal provisions, for instance on treason, on the intimidation of State organs and on the punishable incitement to commit a crime, protect the foundations of a national community. The prohibition of incitement and the disturbance of religious exercise tries to ensure social and religious peace (cf. case of Otto-Preminger-Institut v. Austria of 20 September 1994, annex F). The electoral protection law seeks to guarantee that democratic electoral decisions can be made free from any pressure or manipulation. The prohibition to advocate the purposes and goals of the National Socialist Party serves the maintenance of the basic democratic structure of the State.

210. Restrictions on the freedom of communications also result from the need to respect the rights and reputation of others. The already mentioned offences of “slander and assault” and “defamation”, as well as the guarantee of the protection of personality in the mass media law, serve this purpose. Another restriction on the freedom of opinion for the protection of the rights of others is the copyright that protects the material and intellectual interests of authors; a balance between the interest of the general public in receiving information and other, for instance cultural interests is ensured by the right to the free use of works.

211. A particular problem arises from the relationship of the freedom of communication and the protection of personality because of the fact that a conflict between them presents two opposing legal interests which are of equal value, neither of which may claim absolute priority over the other. Striking a balance between the legitimate claim of an individual for protection of his honour and privacy and the legitimate interest in receiving information gives rise to complex problems.

212. The right to the protection of one's reputation is derived from the principle that as part of the basic right to freedom of communication only false accusations damaging the reputation of another can entail a legal liability while the dissemination of facts is a freedom guaranteed by basic law and which may be restricted only in particular circumstances. The view has gained acceptance that there must be a strict distinction between statements of fact and value judgements and that value judgements as expressions of subjective opinion are always protected from review by a public authority. Of great importance for this development was the decision of the European Court of Human Rights in the Lingens case.

213. The protection of the privacy of an individual was the reason for according particular significance to the protection of the strictly personal sphere of life in the Mass Media Act, as already observed under article 14. From the viewpoint of restricting the freedom of expression, the protection of the private sphere of life is a particularly sensitive issue because an effective protection of privacy also leads to a restriction of objective and truthful reporting. If one takes the opinion that the legitimate public interest in information may not be disproportionately curtailed for the sake of protecting a person's privacy, the authorities applying the law are

confronted with the huge problem of having to weigh the different interests. Such weighing is particularly difficult in cases of crime reports where the right to be presumed innocent is at stake, on the one hand, and the right of the public to be objectively informed about crimes and their solutions, on the other.

214. Difficulties also arise when assessing the degree to which the secrecy requirement applying to public officials interferes with the freedom of expression. In its judgement of 14 December 1994, the Constitutional Court held that the possibility to express objective criticism in an appropriate manner is an indispensable right resulting from the freedom of expression to be exercised by everyone and must therefore also be available to a public official vis-à-vis the authority to which he belongs. Such criticism entails disciplinary responsibility in all cases where it exceeds the limit imposed by the obligation to maintain secrecy as it is liable to reduce the confidence of the public in the objective exercise of the official's duties. This shows that the Constitutional Court seems to consider official secrecy to amount to a general restriction on the freedom of expression of public officials.

215. A similar situation can be found in respect of the liberal professions where the requirement to maintain secrecy - e.g. the patient-doctor privilege or the client-lawyer privilege - also restricts the freedom of expression

216. Another aspect playing a role in the liberal professions is the jurisdiction of professional tribunals which serves to maintain the honour and reputation of the respective professions. This gave rise to codes of ethics that may also affect the freedom of opinion and information of their members. First and foremost, these codes contain restrictions on commercial advertising and the obligation to exercise particular restraint in the expression of opinions in connection with critical or insulting statements about persons of the same profession, about professional representatives or - in the case of the legal profession - about judges and public authorities. In this context, a particular feature is the fact that members of the liberal professions are subjected to obligations that exceed those imposed on citizens under general legislation. The development of the case law of the Constitutional Court points in the direction of increasing emphasis on the freedom of expression. The far-reaching ban on advertising applying to several professions, for example veterinarians, has been ruled unconstitutional; the Constitutional Court held that the ban prevented the client from getting useful and objective information. The Court found no facts that, by their purpose, would permit an interference with the freedom of expression and would constitute a reason for maintaining a general prohibition on advertising by veterinarians.

217. An even stricter opinion is held by the Constitutional Court when it comes to offending statements. Although it is clear in principle that - as the Constitutional Court has repeatedly found - “in view of the particular significance and function of the freedom of expression in a democratic society ... the necessity of a - punishable - restriction of the freedom of expression must be beyond doubt in the individual case ...”, which means that nobody - neither the professional organizations nor their members - is above criticism. However, the Court demands from the members of the liberal professions more objectivity in their statements than from other persons.

This requirement has been criticized on the grounds that everything necessary for protecting the honour of others in a democratic society is already regulated under the generally applicable provisions of civil and penal law.

218. As far as the freedom of radio broadcasting is concerned, the following needs to be pointed out. In 1974, a special federal law was passed creating a monopoly for the Austrian radio broadcasting system. However, a decisive event in this context was the judgement of the European Court of Human Rights of 24 November 1993, in the Informationsverein Lentia v. Austria case. The judgement is summarized in annex G. As a result of this judgement, the Regional Radio Broadcasting Act was passed in 1993 enabling private programmes to be broadcast. A "privatization" of television is currently under way.

Article 20

219. In this respect, there is no need to add anything to the reports submitted so far.

Article 21

220. The right to peaceful assembly is guaranteed under the Federal Constitution. The details of this right are governed by the Assembly Act.

221. According to the consistent case law of the Constitutional Court, an assembly means the gathering of several persons that has been organized with the intention to bring about a joint activity by those present (debate, discussion, manifestation). An assembly is thus the coming together of people (including in the streets) for the common purpose of discussing opinions or of communicating opinions to others. An assembly is not a merely incidental gathering of people. The Constitutional Court judges whether or not a gathering is an assembly by "the purpose and the elements of its outward appearance (including the arrangements, length and the number of people taking part in the event)". To clarify this question, it is necessary to perceive what is going to happen and not whether the organizer has formally reported the intended gathering as an assembly to the authority.

222. The freedom to arrange an assembly is an integral part of the freedom of assembly, just as the choice of its place, time and purpose.

223. In the comments on the basic right to peaceful assembly, the Assembly Act lays down the terms and conditions on which this right may be exercised. The following types of assemblies are excluded from the provisions of the Assembly Act but not from the right to peaceful assembly and its constitutional safeguards:

(a) Assemblies that are limited to invited guests, irrespective of the fact whether they take place in the open air or in rooms, are exempted from the reporting requirement;

(b) Public entertainments, wedding processions, folklore festivities or processions, funerals, processions, pilgrimages or other types of gatherings or processions for the exercise of a legally permitted religion, if taking place in a traditional way, are not subject to the Assembly Act;

(c) Assemblies of voters for meeting with elected members of Parliament, if held during election times and not in the open air, are not subject to the Assembly Act.

224. The organizer of an assembly may be any physical or legal person that is capable to act. Also, several persons may act jointly as organizers. Non-nationals are not allowed to organize assemblies if they serve as a forum for discussing public affairs. Anyone who wants to organize a publicly accessible assembly must notify the district administrative authority or the federal police authority in writing not later than 24 hours in advance by stating the purpose, place and time of the event. If the assembly is to be held in a place open to public traffic (like a street), another notification must be sent to the road police authority three days in advance.

225. Even before an assembly is held, the authority may prohibit it on three grounds. First, assemblies that are in contravention of the purpose of penal laws must be prohibited by the authority. According to the case law of the Constitutional Court, however, this does not apply without restriction. Rather, the Constitutional Court held in this respect: “The authority is authorized to do so only in cases where this is necessary for one of the reasons mentioned in article 11, paragraph 2, of the European Convention on Human Rights. If the authority considers prohibiting an assembly, it must weigh the interests of the organizer in holding the assembly in the planned way with the public interests specified in article 11, paragraph 2, of the European Convention on Human Rights in prohibiting the assembly; thus, it has to consider whether or not the impediments resulting from the assembly (e.g. closing the street to traffic) are acceptable for the public in the interest of the freedom of assembly. The authority has to take its decision on the basis of concrete and objective facts.” In this case, the Constitutional Court did not find the prohibition of a planned blockade of the Brenner motorway for several hours to amount to a violation of the right to freedom of assembly. “The interests in the prevention of disorder and the protection of the rights and freedoms of others guaranteed under article 11, paragraph 2, of the European Convention on Human Rights made it necessary in the mentioned circumstances to prohibit the planned assembly; the unavoidable, far-reaching, long and extreme disturbance of road traffic to be feared gave rise to expectations of such severe impediments and safety risks for a large number of uninvolved persons that even by taking the aim - which was in the public interest - of the planned assembly into account, the required weighing of interests had to result in the prohibition of the assembly.” Certain modes of conduct that satisfy the criteria of an offence as such need to be tolerated in view of the basic right to freedom of assembly, unless the interests of the general public prevail over the interest of the freedom of assembly.

226. Second, an assembly presenting a danger to public safety or the public weal must be prohibited. At first glance, these reasons for prohibiting an assembly seem to give the authorities a great deal of leeway. The case law of the Constitutional Court, however, has reduced this leeway considerably by requiring that an assembly may be prohibited only if objectively identifiable conditions exist which are sufficient to justify the assumption of danger. An assumption or fear alone that conditions might arise which would pose a danger for public safety and the public weal without any identifiable facts are not sufficient to prohibit an assembly; above all, assemblies held in streets and

the resulting obstruction of traffic are an issue on which the admissibility of prohibiting an assembly can be judged only on a case-by-case basis. It is obvious that the blocking of a street where, owing to local conditions, a detour is difficult must be assessed differently from the blocking of a road that can easily be detoured. For instance, the Constitutional Court came to the conclusion that the prohibition of a demonstration which was to be organized in the already congested inner city on a day when a weekly market was held and which would thus lead to even more traffic was inadmissible because the competent authority would nevertheless have been able to reduce the relatively short period of traffic obstruction caused by the assembly to an acceptable minimum by taking appropriate measures. On the other hand, the Constitutional Court held admissible the prohibition of assemblies which were aimed at spreading National Socialist ideas because of the illegality of such activities and their threat to the security of the State, and considered them a danger to the public weal.

227. A particular problem arises where counter-demonstrations are announced. In one case where a publicly accessible assembly organized by a society was prohibited because of threats to hold a protest counter-demonstration, the Constitutional Court found a violation of the right to freedom of assembly and substantiated its decision as follows: “It is not up to third persons or other organizations to interfere with the basic right to freedom of assembly of a society they do not like but which is legal by carrying out protest activities of any kind, not even if the protests could have led to disturbances. For if protests alone are enough to make a prohibition seem necessary although no concrete reasons exist for such prohibition, this would mean the end of the constitutionally ensured right to assembly and possibly also of other fundamental rights and freedoms. Concrete facts and evidence cannot be replaced by protests. Much less reason to prohibit an assembly are the threats voiced in such protest.”

228. If an assembly is organized in violation of the provisions of the Assembly Act, it must be prohibited. This applies to all cases where the authority has not been notified or has been notified too late or where the participants have been encouraged, for instance, to carry arms. An assembly must be dissolved if the provisions of the Assembly Act are violated or if unlawful activities are carried out in the course of the assembly or if it becomes a threat to public order. If an assembly has been dissolved, the participants are obligated to leave the assembly site and to disperse.

229. In this connection, reference has to be made to the case-law of the Constitutional Court where it is emphasized that one of the key elements of the right to assembly is the right that an assembly not be dissolved against the will of its organizers; sufficient reasons must therefore exist for the authority to dissolve an assembly. The Constitutional Court takes the opinion that, for instance, the mere fact of disregarding the notification requirement alone must not result in the dissolution of an assembly, and refers to article 11, paragraph 2, of the European Convention on Human Rights in this context. The conditions that have to exist - in addition to a violation of the notification requirement - in order to justify the dissolution of an assembly must be such that one of the protected interests mentioned in article 11, paragraph 2, of the European Convention on Human Rights would be endangered without such measure.

230. It is accepted that the right to freedom of assembly also includes the positive obligation of the State to protect assemblies. This not only applies to publicly accessible assemblies but also to assemblies participation in which is limited to invited guests. Although the duty of the State to protect assemblies has been undisputed so far, the judgement of the European Court of Human Rights in the case of Plattform "Ärzte für das Leben" v. Austria (annex H) is of great importance. Since that judgement was passed, it is absolutely undisputed that demonstrations are entitled to be protected by the State from counter-demonstrations so as to ensure the effective exercise of the right to demonstrate. It is incumbent upon the State to take reasonable and appropriate measures to guarantee the peaceful conduct of authorized demonstrations.

231. As far as the means for the protection of assemblies are concerned, the State does have a wide scope of discretion; however, the means employed have to be appropriate. According to the case-law of the Constitutional Court, this means that public organs are not only authorized but are also obligated to take the appropriate measures for the protection of authorized assemblies and to guarantee such assemblies in this way. Austrian law contains various provisions for protection of assemblies by the law enforcement bodies. Under sections 284 and 285 of the Penal Code, for instance, the prevention, disturbance or break-up of an assembly are punishable. The Assembly Act itself and the Public Safety Act contain provisions enabling the protection of demonstrations. The Constitutional Court has found that there are legal provisions enabling police interventions and ensuring the protection of assemblies. As regards police interventions, however, the Constitutional Court decided in its judgement of 12 October 1990 (ref. No. 12 501) as follows: "This is permissible, however, only within certain limits which are first determined by the fact that the measures to accomplish the objective of guaranteeing that an assembly may be held undisturbed have to be appropriate and adequate and must not go beyond this objective. Moreover, the police measures to be taken under this protection requirement by the authorities must be in practical compliance with the basic rights (e.g. freedom of expression or the right to property) the measures interfere with; the measures must be such as to constitute a minimum interference with other basic rights. Thus, an assembly must be protected by measures which, objectively speaking, strike an appropriate balance between the often divergent interests which are to be protected. Such interests are in the first place those of the organizer, and the participants close to him, the interests of groups which want to accomplish in or through the assembly objectives other than those desired by the organizer, and the interests of the public, i.e. to be least affected by the assembly. Furthermore, account must be taken of the possible range of measures available to the authority in each case and which it can be expected to take. It results from the principle of proportionality to be observed that what matters in each case is, on the one hand, the particular type of the assembly or event to be protected and the type of the disturbance to be expected or already taking place, on the other; these two aspects must be weighed against each other. In the course of political discussions, for instance, expressions of opinion that are contrary to the views of the organizer will have to be judged as far as their contents and the way in which they are made are concerned completely differently from statements made in the

course of a ceremony or procession of a purely religious character which are always afforded the protection of articles 14 and 15 of the Basic Law and article 9 of the European Convention on Human Rights."

Articles 22 to 24

232. In this respect, there is no need to add anything to the reports submitted so far.

Article 25

233. Austria is a representative parliamentary democracy. There are no detailed regulations or restrictions that would preclude persons from participating in public life. Article 7, paragraph 2, of the Federal Constitution rather provides as follows:

> "Public employees, including members of the Federal Armed Forces, are guaranteed the unrestricted exercise of their political rights."

The relevant text of the Federal Constitution pertaining to suffrage is provided in annex I.

234. Federal legislation is a matter of the National Assembly and the Federal Council. The Land laws are passed by the Land parliaments. Their members are elected in accordance with the principle of proportional representation on the basis of equal, direct, secret and personal suffrage for all men and women of a Land who have the right to vote under the electoral regulations of the Land. The detailed provisions are contained in the electoral regulations of the Länder. The legislative period of the National Assembly is four years. In the case of the Land parliaments, this period is, as a rule, five years.

235. The election of the members of the National Assembly is governed by the regulations on general elections. According to these regulations, the National Assembly is made up of 183 members. When general elections are held, the federal territory is divided into 9 electoral districts which are identical with the 9 Länder and - within the Länder - into 43 regional electoral districts.

236. The right to vote is granted to all men and women who are Austrian citizens and have completed their eighteenth year of life before 1 January of the election year and are not excluded from the right to vote.

237. Someone is excluded from the right to vote if he has been sentenced with final effect by a domestic court to imprisonment of one or more years for having committed one or several offences deliberately. Such exclusion expires after six months. The time limit starts as soon as the sentence is served and any preventive measures connected with the imprisonment have been carried out or dropped; if the sentence has been served only because pretrial detention was counted toward the sentence, the time limit starts as soon as the judgement enters into effect. If there are no legal consequences under other provisions or if legal consequences have ceased to exist or if the convict has been exempted from all legal consequences or from the exclusion requirement, he has the right to vote. Also, there is no exclusion from the right to vote

where the court has granted a conditional pardon. If such a conditional pardon is revoked, exclusion from the right to vote becomes effective on the day such decision enters into force.

238. The names of the voters are entered in electoral registers which are open to inspection by everyone prior to the election. At such time, objections may be raised, which means that one can request to be entered in or struck from the register.

239. The right to vote must be exercised personally; the blind, heavily vision-impaired and decrepit may have a person of their choice to guide them and help them in the poll. Apart from such cases, only one person may enter the polling booth. To facilitate the exercise of the right to vote by patients in public or private sanitariums or nursing homes, the local electoral board may set up one or several special electoral areas in such institutions. The same applies to prisons.

240. Three distribution procedures must be carried out, one each for the regional and Land electoral districts and another for the entire federal territory. In the first distribution procedure, each party gets a number of seats equivalent to the electoral quotient contained in the sum total of the votes cast for the party in the regional electoral district (Hare's procedure). In the second distribution procedure, each party - provided that it has won at least one seat in at least one regional electoral district or at least 4 per cent of the valid votes in the federal territory - gets as many seats as the electoral quotient contained in the sum of the votes cast for that party in the Land electoral district but minus the seats allocated to it in the first distribution procedure. In the third distribution procedure, comprising the entire federal territory, all 183 seats are allocated in accordance with the Hondt system: if the overall number of seats due to a party as determined under the system exceeds the number of seats allocated to that party in the first and second distribution procedures, the party gets the difference in seats in addition; if the overall number of seats determined for a party is less than the number of seats allocated to it in the first and second distribution procedures, it gets no further seats.

241. Public positions and the public service are accessible to all Austrian citizens on an equal basis. The detailed provisions on the public service are contained in the Public Service (Employment) Regulations of 1979.

242. At first, employment is provisional. As a rule, this provisional employment lasts six years. During this time, basic training must be completed and a service examination must be taken. After that, the employee may be given tenure.

243. Article 2 of the Basic Law provides: “All nationals are equal before the law”. In addition, article 7, paragraph 1, of the Federal Constitution provides that privileges based upon birth, sex, status, class or religion are excluded. Articles 66 and 67 of the Treaty of Saint-Germain stipulate that all Austrian nationals are equal before the law and enjoy the same civil and political rights and guarantees without distinction as to race, language or religion.

244. In 1973, a special federal constitutional law was passed concerning the prohibition of racial discrimination. It was adopted to implement the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination. This constitutional law bans racial discrimination and makes it incumbent on the legislative and executive branches to refrain from any distinctions on the sole ground of race, skin colour, descent or national or ethnic origin. However, Austrian nationals may be granted special rights and may be put under special obligations. All non-Austrians, however, must be treated equally. Moreover, Austria has ratified the Convention on the Elimination of All Forms of Discrimination against Women.

245. It needs to be emphasized that the principle of equality is binding upon the executive and legislative powers and that, in principle, it grants a right in personam only to Austrian citizens and Austrian legal persons.

246. As far as the degree is concerned to which the lawmaker is bound by the principle of equality, the Constitutional Court has developed the tendency in its case-law that a differentiation is justified objectively only if it is done according to objective criteria on the basis of objective facts. The same facts must have the same legal consequences. Different provisions that are not based on different actual facts are in contradiction with the equality principle. A change in the actual situation may turn an existing provision into an equality conflict. The Constitutional Court requires general laws to be reviewable as to their objectivity; otherwise, they would violate the equality principle.

247. In addition to the legislative branch, the executive branch is bound by the equality principle as well. This means first of all that all applicable laws must be applied to all citizens in the same way. An administrative decision violates the equality requirement if it is based on a law contravening equality, if the authority has wrongly assumed that a law contravenes equality or if the authority acts arbitrarily.

List of annexes

Statistical annex

Annex A — Federal Constitution, chapter VI, Constitutional and administrative guarantees, section A, Autonomous administrative tribunals in the Länder

Annex B — Federal Constitution, article 7

Annex C — Federal Constitutional Law of 29 November 1988 on the Protection of Personal Property

Annex D — Federal Constitution, chapter III, Federal execution, section B, Jurisdiction

Annex E — Law of 27 October 1862 on Protection of the Rights of the Home

Annex F — Case of Otto-Preminger-Institut v. Austria

Annex G — Informationsverein Lentia v. Austria, summary of the judgement

Annex H — Case of Plattform “Ärzte für das Leben” v. Austria

Annex I — Federal Constitution, chapter II, Federal legislation, section A, The Nationalrat, article 26
