



**International Convention on  
the Elimination  
of all Forms of  
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION  
OF RACIAL DISCRIMINATION

**REPORTS SUBMITTED BY STATES PARTIES UNDER  
ARTICLE 9 OF THE CONVENTION**

**Seventeenth periodic reports of States parties due in 2005**

**Addendum**

**AUSTRIA\* \*\* \*\*\***

[1 May 2007]

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\* This document contains the fifteenth, sixteenth and seventeenth periodic reports of Austria, due on 8 June 2003, 2005 and 2007, submitted in one document. For the fourteenth periodic report and the summary records of the meetings at which the Committee considered the report, see documents CERD/C/362/Add.7 and CERD/C/SR.1501, 1502 and 1512.

\*\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

\*\*\* The annexes can be consulted in the files of the secretariat.

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## **Introduction**

1. The Committee set up under Part II of the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter referred as “the Convention”) deliberated the fourteenth country report of the Republic of Austria on 21 March 2002, with a delegation of representatives of the Austrian Government participating in the discussions. In its concluding observations (see CERD/C/60/CO/1) the Committee recommends that the present report should be an updating report which should also deal with the items raised in the review. Below, the questions raised by the Committee will be dealt with in Part II, after communicating first a report on the major amendments and other measures of relevance to the present context (Part I, 1. and 2.). In the end, selected good-practice projects to combat and prevent any discrimination on account of race are presented (Part III).

### **I. UPDATE OF THE FOURTEENTH COUNTRY REPORT**

2. It should be mentioned, by way of introduction, that the concluding observations drawn up by the Committee on 21 March 2002 in connection with the fourteenth country report were published on the homepage of the Federal Chancery at [http://www.bka.gv.at/2004/4/7/anmerkungen\\_cerd14.pdf](http://www.bka.gv.at/2004/4/7/anmerkungen_cerd14.pdf).

3. In supplementing the fourteenth country report, the Republic of Austria would, first of all, like to refer to its international efforts regarding the elimination of racial discrimination. Austria actively supports the implementation of the decisions of the bodies of the Council of Europe and of the Organization for Security and Cooperation in Europe (OSCE) in the above-mentioned fields and, in particular, the activities of the European Commission against Racism and Intolerance (ECRI), of the European Union Monitoring Centre on Racism and Xenophobia (EUMC) and of the OSCE Office for Democratic Institution and Human Rights (ODIHR). Austria gives continuous financial support to ODIHR in the form of voluntary contributions.

#### **A. Legislative measures**

4. In order to attain the Convention’s objective, the following legislative measures were taken in recent years.

##### **1. Ad article 4**

5. In connection with the obligation to take measures in order to eradicate any incitement to racial discrimination as well as acts of racial discrimination, one should recall, first of all, the most relevant legal norms in this context. Here, one should mention the criminal offence of incitement (§ 283 of the Austrian Penal Code) and the National Socialist Prohibition Act, the aggravating circumstance of committing a racist or xenophobic act (§ 33, item 5, of the Austrian Penal Code), as well as the administrative offence of discrimination on racial grounds (article IX of the Introductory Laws to the Administrative Proceedings Acts), and the possibility to dissolve unlawful associations and gatherings according to the relevant provisions of the Association Act and the Assembly Act.

6. The tables below indicate the number of court cases in connection with National Socialist activities under the National Socialist Prohibition Act, as well as those concerning incitement, pursuant to § 283 Penal Code, during the last six years (1999-2004). The figures refer to persons. The court decisions were listed in the years in which they became final and enforceable.

**Table 1****Penal cases pursuant to § 283 of the Austrian Penal Code**

	Reports to the police	Demands for punishment	Convictions	Acquittals
1999	41	2	3	1
2000	40	7	1	0
2001	38	16	11	6
2002	97	13	9	1
2003	34	27	13	6
2004	29	17	14	4

**Table 2****Penal cases pursuant to the law prohibiting National Socialist activities**

	Reports to the police	Indictments	Convictions	Acquittals
1999	413	45	25	2
2000	604	14	32	4
2001	554	40	24	3
2002	618	25	20	2
2003	765	37	31	3
2004	724	25	27	7

7. The ban on organizations structured as associations that promote racial discrimination and incitement to such acts is laid down both in the Association Act and in criminal provisions. According to § 12 (1) of the 2002 Association Act, Federal Law Gazette No. 66/2002, the authority competent for associations “must state, by way of decree, that the establishment of an association will not be permitted if the association were to be unlawful in its intention, its name or its organization, whenever the requirements under Article 11 (2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Federal Law Gazette No. 210/1958, are satisfied”. An association may thus be prevented from being established, even before the association has taken any action with effect upon the outside world, if its scope of action includes activities, such as, for example, incitement (§ 283 of the Austrian Penal Code) or National Socialist activities (§ 3a and following of the National Socialist Prohibition Act), that carry a punishment. However, once an association has been established it may be dissolved pursuant to § 29 (1) of the Association Act “if it violates criminal provisions”.

8. Organized propaganda activities by a structure that does not yet constitute an association according to the relevant definition may be regarded as gatherings under certain circumstances. According to § 6 of the Assembly Act, adopted in 1953, gatherings may be prohibited before

they are held if they violate criminal provisions (for example § 183 of the Penal Code or § 3a of the National Socialist Prohibition Act). Such a prohibition or dissolution may also be pronounced in the course of a gathering. For example, the authorities are required to break up a meeting (already being held) pursuant to § 13 of the Assembly Act if unlawful acts take place during the meeting.

## 2. Ad article 5 (e)

9. When the amendments to the Chamber of Labour Act and the amendments to the Industrial Relations Act entered into force on 14 January 2006, the right to stand for elections of the Chamber of Labour (previously reserved to Austrian citizens) and the right to stand for election to works councils (previously reserved to citizens of the European economic area (EEA)) was extended to include all employees, irrespective of their nationality.

10. Moreover, Austria took several measures in recent years in connection with the Foreign Citizens Employment Act in order to further improve the integration of labour migrants and their family members into the labour market. Recent measures relate, for example, to the transposition of European Union (EU) Directives (Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents; Council Directive 2003/86/EC on the right to family reunification; and Directive 2004/38/EC of the European Parliament and Council on the right of citizens of the Union), in which connection the Foreign Citizens Employment Act, Federal Law Gazettes I No. 101/2005 and No. 103/2005, were amended to incorporate the following legal titles under EU legislation into the existing system of access to the labour market, as contained in the Foreign Citizens Employment Act:

- The right of access to the labour market for third-country family members who subsequently came to settle in Austria with their reference person under the establishment ordinance. After having lived legally on federal territory for one year, family members are issued a work permit in the scope of the work permit issued to the reference person (employment permit, work permit or exemption certificate);
- The facts constituting an exemption for third-country family members of citizens of the Union who claim their right to free movement has been extended to include parents and parents-in-law (§ 1 (2) letter I);
- Third-country family members of other EU member States' citizens with a long-term residence title in that member State obtain unrestricted access to the labour market of the federal territory after having been issued a temporary, 12-month access to the labour market;
- In addition to refugees recognized under the Convention, applicants for asylum now also have unrestricted access to the labour market whenever they have enjoyed the status of a person with a subsidiary title to protection for one year.

11. In addition, reference is made at this point to the good-practice projects in the health sector which are presented in the annex.

### 3. Ad Article 7

12. As part of the educational work against racism, a number of initiatives were taken in recent years. Especially as part of the educational principle governing political education, which applies to all types of schools, many different measures were taken in order to combat prejudices, racism, racial discrimination, xenophobia and anti-Semitism and to promote consideration for diversity, pluralism and mutual respect. Education in the field of human rights is rooted in school curricula in several places. For example, the educational objective of the curricula for general compulsory schools and upper-level general compulsory schools requires that classroom teaching contribute actively to a democracy oriented to human rights. The curricula of the classroom subject “political education” in upper-level general schools, middle-level vocational schools and upper-level vocational schools include human rights as a compulsory subject.

13. At the beginning of every school year, the Federal Ministry of Education, Science and Culture issues an order regarding the memorial days, anniversaries and international days against racism and makes available specific teaching materials on this subject. Separate announcements draw attention to the respective international days such as, for example, the International Day for the Elimination of Racial Discrimination (21 March) and Human Rights Day (10 December). The National Memorial Day for Victims of Violence and Racism in Commemoration of the Victims of National Socialism (5 May) was introduced as early as 1997 by a unanimous decision of the Austrian National Council. This correlates with a decision by the Conference of Ministers of Culture and Education of the Council of Europe of 18 October 2002.

14. At the beginning of the 1990s, “intercultural learning” was incorporated as a further teaching principle into the curricula of all general schools in connection with education for tolerance. Intercultural learning is intended “to contribute to a better mutual understanding and/or to better mutual appreciation, to the identification of common features and to the elimination of prejudices” (see Federal Law Gazette 439/1991). It should run through day-to-day life at school like a red thread. Being a cross-sectional issue, it is meant to be part of all classroom subjects and not only reflected in “intercultural projects” at the end of the school year. “Any possibly existing bi- or multilingualism is to be regarded positively, and pupils shall be encouraged to meaningfully contribute any mother-tongue knowledge to classroom teaching” (see Federal Law Gazette II No. 134/2000 and Federal Law Gazette II No.133/2000, amended by Federal Law Gazette II No. 277/2004). This educational principle is particularly valid if there are no pupils with a migrant background or pupils belonging to an autochthonous ethnic group in a class. However, when actually implementing the educational principle it is meaningful to take account of the language and cultural mix of a class.

15. Since the beginning of the 2005/06 school year, pupils have registered for school attendance during the months of October and November of the preceding year. On this occasion, it is also established whether a child is capable of communicating in German (establishing language status). If this is not the case, the persons authorized to educate the child are recommended to avail themselves of the special programmes promoting children in nursery schools, where 120 hours of early language coaching are offered, integrated into the day-to-day activities at nursery schools. There is no obligation to follow this recommendation.

16. For the 2006/07 and 2007/08 school years language-coaching classes can be set up at the preschool level and for the first four years in schools, especially when there is a minimum of

eight pupils. Language-coaching classes last a maximum of one school year. They may also be set up jointly for several school levels or several schools. It is the authority responsible under the law that decides on the setting up of language-coaching classes. The necessary teachers must be appointed for the language-coaching classes (§ 14a of the School Organization Act).

17. Moreover, intercultural priorities may be determined as part of a school's autonomy to establish its curriculum.

18. At middle-level and upper-level vocational schools, the teachers are free - under certain circumstances - to focus independently on promoting language competence in German, the language of instruction, as well as to offer the mother tongues of pupils under the provisions on foreign-language teaching. As of the 2006/07 school year, German can be offered as an optional exercise (two hours per week) in the fifth to seventh year of upper-level general schools, which is the ninth to the eleventh year of schooling, if the school has not made independent arrangements in this respect (see Federal Law Gazette II No. 321/2006).

19. Both the curriculum for commercial schools (Federal Law Gazette II No. 315 of 8 July 2003, in ascending order as of the 2003/04 school year) and the curriculum for commercial colleges (Federal Law Gazette II No. 291 of 19 July 2004, in ascending order as of the 2004/05 school year) contain a special syllabus applicable throughout Austria for the optional exercise "German Language Training Support" (USD). This voluntary offer is meant for pupils who use a language other than German as their first language and who continue to need some special support in the language of instruction. The teaching material covered by the optional exercise USD covers the whole of commercial school, as well as the first three years at commercial college. However, if required, this optional exercise may also be offered to pupils of the fourth and fifth year at commercial colleges, as part of a school's autonomy to fix its curriculum. In this case, the substance of the syllabus is adapted accordingly.

20. As a matter of principle, any language may be taught as a second living foreign language at commercial colleges, including the mother tongues of pupils, provided that a qualified teacher is available and pupils are sufficiently interested in this language. The provisions on school autonomy make it possible to offer also a third living foreign language in addition to English (first living foreign language) and the second living foreign language. At commercial schools, further languages - in addition to English, which is a compulsory subject - may be taught as optional subjects.

21. As there are no special admission barriers to attending business schools for gainfully employed persons, an increasing number of immigrants are attending these schools in urban centres. However, on account of their knowledge deficits regarding German, the language of instruction, it is very difficult for many pupils - especially during the first semesters - to understand what is being taught.

22. As part of the European Social Fund project "Team Teaching *und offenes Lernen an den kaufmännischen Schulen für Berufstätige*" (Team teaching and open learning at business schools for gainfully employed persons), tutorials are offered in order to prepare pupils for the specific technical vocabulary of an occupation in the language of instruction, but also in their first language. Depending on the staff resources at the school site, these courses are offered in the respective mother tongues and/or with German-speaking teachers in the form of team-teaching

models. The project is carried out at 13 school sites (business schools for gainfully employed persons) and will last for three years (1 February 2003 to 31 January 2006). The implementation is based on the experience gathered at the Federal Commercial College at Steyr and the schools of the BFI (Vocational Training Institute) in Vienna (“open learning” and “intercultural learning”).

23. The school community committee is responsible for agreeing on provisions for the curriculum that are based on the autonomy of schools. The committee must be guided by the respective requirements and problems of a school. The mother tongue of pupils may therefore also be taught, provided that a qualified teacher is available and pupils are sufficiently interested in the language. In recent years, the possibility is increasingly used (especially in Carinthia) to also learn a Central or Eastern European language, in addition to French and Italian.

24. The training institutes/courses in nursery-school pedagogy and/or social pedagogy also pay attention to promoting language competency in German, the language of instruction, as well as in various living foreign languages that are taught as compulsory or optional subjects. As part of a school’s autonomy, tutorials in German may be organized, which are increasingly attended by pupils using a language other than German as their first language. These tutorials may be organized for one or several school classes during a part of the school year. Depending on needs, a maximum of a total of 3 times 8 weeks of tutorial session may be held per school year and class (which means a maximum of 24 weeks). Per school year, every pupil may attend a total of four such tutorial sessions (offered in the subjects German, mathematics, living foreign language and music education). A pupil may also attend, for example, three tutorial sessions in German and one in mathematics or two sessions in German and one each in a living foreign language and music education.

25. Since the beginning of the 2004/05 school year, a new curriculum has been in force in ascending order at the five-year training institutes for nursery-school pedagogy (Federal Law Gazette II No. 327/2004). In the compulsory subject “living foreign language” (old curriculum, expiring with the 2007/08 school year) and/or “living foreign language/ethnic group language” (new curriculum) every school is free to offer every foreign language/ethnic group language (i.e. including the mother tongue of pupils). When deciding to offer the language of a national minority group, the provisions on the curriculum that satisfy the needs of the specific ethnic group must be observed.

26. Intercultural learning is firmly rooted as an educational principle in the five-year courses of the training institutes for nursery-school pedagogy and the five-year courses of the training institutes for social pedagogy, as well as the respective training courses. It is contained in the new curriculum for training institutes for nursery-school pedagogy as a general didactic principle for designing classroom teaching (“educating for intercultural thinking and acting”), and it is listed explicitly as a competence of occupational relevance among the general educational objectives (“the skill to plan, implement and evaluate ... measures regarding intercultural teaching”).

27. In cooperation with the Ludwig Boltzmann Institute for Human Rights in Vienna, the Federal Ministry of Education, Science and Culture set up the Service Centre for Human Rights Education in the year 1997. The occasion and international setting for this initiative was the United Nations Decade for Human Rights Education (1995-2004). The Service Centre provides



advice and information, primarily for educational work at schools. Its activities comprise communicating knowledge regarding human rights (knowledge) and promoting awareness for human rights (attitudes), as well as strengthening social skills for the enforcement of human rights (skills). The Service Centre makes available teaching materials and offers advice on projects. It also manages a website ([www.humanrights.at](http://www.humanrights.at)) and issues a quarterly newsletter, "Teaching Human Rights. *Informationen zur Menschenrechtsbildung*".

28. Between 20 November and 10 December 2005 the Service Centre for Human Rights Education at the Federal Ministry of Education, Science and Culture organized Human Rights Days 2005 (this year it was organized for the second time), in order to create interest in subjects regarding human rights, to make people aware of the different forms of discrimination - especially at schools - and to pinpoint cross-linkages to related concepts such as teaching peace, education in democracy and global learning.

### **B. Other measures**

29. The following measures in favour of victims of the National Socialist regime have been taken:

(a) Restitution payments from the "General Settlement Fund". After the last class action against Austrian enterprises pending before a court in the United States was dismissed on 7 December 2005, the Austrian Government announced that "legal closure", as defined in the Washington Agreement of 17 January 2001, had been obtained. This "legal peace" allows for preliminary payments from the General Settlement Fund to victims of National Socialism. In the interest of the surviving victims of the National Socialist regime, Austria has done its utmost to ensure that the payments will reach the beneficiaries within the shortest possible time. Preliminary payments therefore already commenced before the end of 2005. As of 10 April 2006, a total of US\$ 7.8 million had been paid out to 1,160 claimants. The General Settlement Fund, endowed with an amount of US\$ 210 million, was set up under the above-mentioned Washington Agreement;

(b) End of activities of the Reconciliation Fund of the Republic of Austria and establishment of the new Future Fund. The Austrian Reconciliation Fund had been established in 2000 in order to make one-time payments to persons who were forced to work as forced or slave labourers during the National Socialist era on the territory of the present-day Republic of Austria. By the end of its term, i.e. 31 December 2005, it had successfully processed more than 130,000 individual applications and awarded financial benefits amounting to more than € 350 million. Upon the expiry of its term, the Reconciliation Fund decided on the following use of its remaining resources: the six Eastern European partner organizations (in Belarus, the Czech Republic, Hungary, Poland, Russia and Ukraine) received € 30 million for humanitarian projects and the General Settlement Fund for Victims of National Socialism (GSF, see above) received € 20 million; € 25 million were allocated to a future scholarship foundation for nationals of States that suffered under the Nazi aggression and occupation. A further amount of € 20 million was transferred to the newly established Future Fund at the Austrian Federal Ministry for Foreign Affairs. This Fund is in charge of the remaining agenda of the Austrian Reconciliation Fund. Moreover, it has the task of supporting projects in commemoration of the victims of National Socialism, research into the history of the National Socialist and other totalitarian

regimes and the future-oriented promotion of tolerance and non-discrimination in Austria and abroad. For example, of the remaining funds, € 1.1 million will be used over a period of 10 years to finance the trust project “Roma and Sinti”.

## **II. AS REGARDS THE CONCERNS AND RECOMMENDATIONS OF THE COMMITTEE**

### **A. Ad paragraph 9**

30. The Republic of Austria is not in a position to share the concerns, expressed by the Committee in connection with the wording “on the ‘*sole*’ ground” (emphasis added), to the effect that the prohibition of discrimination, so stipulated, is not sufficiently far-reaching. In several judgements concerning the Federal Constitutional Act on the Transposition of the International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter referred to as “Federal Constitutional Act Prohibiting Racial Discrimination”), the Constitutional Court stated that a differentiating treatment is admissible only and to the extent that there is a factual justification for it and that the differentiating treatment is not disproportionate. The wording in question therefore did not introduce an additional, subjective possibility for justifying racial discrimination in connection with foreigners but only applied that principle, which in any case is a fixed element of the case law of the Constitutional Court, in order to distinguish between a permitted “differentiating treatment” and a prohibited “discrimination”.

31. According to this case law, differentiations are justified by objective reasons only if they are based on objective criteria for distinction. The same legal consequences therefore apply to the same facts constituting an offence. Major differences regarding facts must result in correspondingly different solutions. A discrimination that is based solely on the grounds of nationality, race, colour of skin, origin or national or ethnic origin is thus inadmissible in any case. This interpretation of the Federal Constitutional Act Prohibiting Racial Discrimination does therefore not restrict the prohibition of discrimination in any manner. Rather, what is permitted is solely the differentiating treatment of nationals of different States on the basis of factual criteria such as on grounds of preferential treatment pursuant to bilateral or multilateral agreements or visa agreements.

32. It is underlined once again that article 1 (1) of the Federal Constitutional Act Prohibiting Racial Discrimination protects foreigners the same way as article 7 of the Federal Constitutional Act, in connection with article 2 of the Basic State Law, protects Austrian nationals, stating that all Austrian nationals are equal before the law. The case law of the Constitutional Court has clarified sufficiently that the Federal Constitutional Act Prohibiting Racial Discrimination not only protects foreigners against discrimination in relation to other foreigners but also against discrimination in relation to Austrian nationals (see decision VfSlg. 15.668/1999, as well as the decision of 25 November 2002, file number B 792/02, and most recently the decision of 21 June 2004, file number 531/02). Hence, the invitation by the Committee, namely to change the Federal Constitutional Act Prohibiting Racial Discrimination, would not result in any improvement of the status of foreigners, as compared to their current status. To demonstrate the effectiveness of this guarantee it should be mentioned that since January 2001, 8 out of 12 complaints raised before the Constitutional Court, complaining of a violation of the guarantees incorporated in the Federal Constitutional Act Prohibiting Racial Discrimination, have been successful.

## **B. Ad paragraph 10**

33. The Republic of Austria took comprehensive account of the recommendation forwarded by the Committee, namely to enact a law affording general protection against racial discrimination, by adopting the new legislative measures which are described below.

34. With effect from 1 July 2004 the Austrian Law on Equal Treatment, which so far had only covered the equal treatment of the sexes, was amended (see annex 11). The new legislation on equal treatment serves primarily to transpose the two anti-discrimination directives that were adopted by the EU in compliance with article 13 of the Treaty on European Union, namely Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (Anti-Racism Directive) and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (Equal Treatment Framework Directive), which prohibits discrimination on grounds of religion or ideology, disability, age or sexual orientation. Moreover, this act also transposed Directive 2002/73/EC of the European Parliament and Council amending Council Directive 76/2007/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (Equal Treatment Directive).

35. In addition to the areas of occupation and employment, the Anti-Racism Directive also covers the areas of social security, social benefits, education, as well as access to and provision of goods and services; the Equal Treatment Framework Directive and the amended Equal Treatment Directive only relate to employment and occupation. All directives apply both to the private and the public sector.

36. The three directives were primarily transposed by the Federal Law that enacted a Federal Law on equal treatment (Equal Treatment Act) and amended the Federal Law on the equal treatment of women and men in working life (Equal Treatment Act) (Federal Law Gazette I No. 66/2004). The federal provinces enacted provincial laws on anti-discrimination for their jurisdictions (for details see below). The earlier Law on Equal Treatment was renamed Federal Law on the Equal Treatment Commission and the Equal Treatment Ombudsman's Office. It was amended to the extent that it established institutions (Equal Treatment Commission and Equal Treatment Ombudsman's Office) and governs procedures. The new Equal Treatment Act took over the substantive provisions of the earlier Law on Equal Treatment and was extended by those provisions that derive from the need to transpose the directives.

37. The law now contains the points of priority described below.

38. As of now, no one may be directly or indirectly discriminated against on grounds of his/her gender, especially by referring to marital and family status, ethnic origin, religion or ideology, age or sexual orientation in connection with an employment relationship, especially:

- When commencing an employment relationship;
- When determining remuneration;
- When awarding voluntary social benefits that do not constitute a remuneration;

- Concerning measures of basic and continuing training, as well as retraining;
- Concerning occupational promotion, especially advancements;
- Concerning other working conditions;
- When ending an employment relationship;

as well as in connection with the overall working environment, namely:

- Concerning access to vocational counselling, vocational basic and continuing training, as well as retraining outside of an employment relationship;
- Membership and active participation in an employees' organization or an organization with members belonging to a specific occupational group, including recourse to services/benefits of such organizations;
- Conditions of access to self-employed gainful activities.

39. In addition to employed staff, the law also pertains to persons working at home on contract and to persons in employment-like positions.

40. Furthermore, ethnic origin must not be the reason for any direct or indirect discrimination in other areas, such as:

- Social protection, including social security and health services;
- Social benefits;
- Education;
- Access to and provision of goods and services that are available to the public, including housing.

41. Additionally, the provisions on compensation in case of violations of the equal-treatment requirement were amended.

42. The equal-treatment requirement stipulates the following sanctions for all facts constituting discrimination, including discrimination on grounds of ethnic origin:

- Compensation for the pecuniary damage, i.e. positive damage and loss of profit; or
- Establishing a status free of discrimination and - in both cases - additionally;
- Compensation for the intangible damage of having suffered a personal impairment.

43. In addition to the ban on sexual harassment, contained in the previous equal-treatment law, any gender-related molestation, as well as any harassment on one of the grounds constituting the offence of discrimination as listed above, is considered to be a form of discrimination. Moreover,

the requirement to announce job vacancies in a non-discriminatory manner, as well as sanctions, was introduced. The prohibition of causing disadvantage was also introduced as a measure to strengthen the protection against discrimination. It covers not only the complaining employee but also other employees who testify as witnesses or fellow staff members who support the complaint.

44. The scope of tasks of the Equal Treatment Commission, which previously was only responsible for the equal treatment of the two sexes, was extended to include all the aforementioned facts constituting the offence of discrimination. The Equal Treatment Commission now comprises three panels:

- Panel I deals with the equal treatment of women and men in the working environment;
- Panel II is responsible for equal treatment without distinction as to ethnic origin, religion or ideology, age or sexual orientation in the working environment; and
- Panel III is responsible for equal treatment without any distinction as to ethnic origin in other areas.

45. The costs of interpretation in proceedings before the Equal Treatment Commission are borne ex officio. The law also stipulates that the courts must deal with an expert opinion or the outcome of an investigation of the Equal Treatment Commission. Whenever the court decision deviates from them, the court is obliged to indicate the reasons for departing from those findings.

46. The scope of activities of the Equal Treatment Ombudsman's Office, which is responsible for giving advice and support to persons who feel discriminated against, was expanded in an analogous manner.

47. In the period between 1 January 2000 and 1 August 2006, 216 persons sought the advice and support of the Ombudswoman for equal treatment without any distinction regarding ethnic origin in other areas (first contacts). These led eventually to 781 follow-up contacts (personal advice, telephone calls, e-mails, letters, etc.).

48. The Ombudswoman for equal treatment without distinction regarding ethnic origin, religion or ideology, as well as age and sexual orientation in working life was able to record 399 first contacts during the same period, of which 121 related to ethnic origin as a ground of discrimination. As of 1 August 2006, 1,426 follow-up contacts had been made; of these, 571 again related to ethnic origin as a ground of discrimination.

49. The involvement of non-governmental organizations that regard themselves as representing the interests of certain groups affected by discrimination is governed by the following provisions regarding proceedings before the Equal Treatment Commission:

- On the one hand, a person affected by discrimination may be represented in the court proceedings by a representative of such a non-governmental organization; and
- On the other hand, the person concerned may apply for a representative of such a non-governmental organization to participate as a technical expert.

50. The involvement of non-governmental organizations in court proceedings is ensured in the form of a third-party intervention in the case. A person who intervenes as a third party in a case is someone who is not a party to the proceedings but who participates in the proceedings pending against other persons in order to support one of the parties. The provisions stipulate that - for the sake of enforcing the rights of victims of discrimination - the complaining association may intervene in the court proceedings as a third party in order to support victims of discrimination.

51. The new equal treatment law entered into force on 1 July 2004.

52. In keeping with § 24 of the Federal Law on the Equal Treatment Commission and the Equal Treatment Ombudsman's Office, the Federal Minister for Health and Women and the Federal Minister of Economics and Labour must present a report on the implementation of the equal treatment law to the National Council every two years. This report must especially contain information about the activities and observations of the Equal Treatment Ombudsman's Office, the proceedings before the Commission and the other activities of the Commission. Every four years, contributions of the organizations representing the interests of employees and employers must be attached to this report. In keeping with § 12 of the Federal Law on the Equal Treatment Commission and the Equal Treatment Ombudsman's Office, the responsible panel of the Equal Treatment Commission must communicate a written proposal for implementing equal treatment to the employer or the person responsible for an act of discrimination, whenever the panel is of the opinion that there has been a violation of the requirement for equal treatment as stipulated in the law on equal treatment, requesting them at the same time to end the discrimination. If there is no compliance with this order, every interest group represented on the respective panel may file an action with the responsible labour or civil court so that the court can establish that a violation of the equal treatment requirement occurred. In proceedings lodged upon the request of the Equal Treatment Ombudsman's Office, the latter also has the right to initiate court proceedings. However, the action may only be brought to court with the consent of the employee or the person concerned. The panel must publish final and enforceable court decisions, as defined above, with their full wording - without indicating names, however - on the home page of the Federal Ministry for Health and Women.

53. The Equal Treatment Commission for the private economy has been set up with the Federal Ministry for Women and Health. Since its creation on 1 July 2004, panels II and III had received a total of 39 cases as of the end of August 2006. Twenty-two cases were filed with Panel II, which is responsible for equal treatment without distinction as to ethnic origin, religion or ideology, age or sexual orientation in the working environment. Panel III received 17 cases. It is responsible for the equal treatment without distinction as to ethnic origin in other spheres.

54. The EU directives in question were transposed (again with effect as of 1 July 2004) by the existing Federal Equal Treatment Act, which governs equal treatment in the federal sector. The first main chapter of the law deals with the equal status and equal treatment of women and men; the second main chapter focuses on equal treatment without distinction as to ethnic origin, religion or ideology, age or sexual orientation (anti-discrimination).

55. Since 1 July 2004 the Federal Equal Treatment Commission has been divided into two panels. Panel I is responsible for the equal treatment of women and men. Panel II is responsible for the equal treatment without distinction as to ethnic origin, religion or ideology, age or sexual orientation. Panel II had received 14 cases concerning discrimination as at the end of August 2006.

56. On account of the distribution of competences between the federal bodies and the agencies of the federal provinces, as required under constitutional law, the directives under EU law were also transposed by the federal provinces by way of regional laws on anti-discrimination. The objective was once again the implementation of the principle of equal treatment. The purpose is to prevent any inequalities in treatment on grounds of ethnic origin, sex, religion or ideology, handicap, age or sexual orientation, which comes under the purview of the federal provinces according to the distribution of competences under constitutional law. In the federal provinces, too, bodies were set up to combat discrimination, which will conduct mediation proceedings in cases of conflicts between citizens and authorities and promote the implementation of the principle of equal treatment.

57. In connection with the subject of “equal treatment”, reference is made to the fact that the provisions of § 27g (3), item 4, of the Consumer Protection Act entered into force on 1 July 2004. Accordingly, contracts with homes accommodating, caring for and nursing elderly persons and with comparable institutions must ensure “the right to equal treatment, irrespective of sex, origin, race, language, political opinion or religion”. This means that residents of homes for elderly persons enjoy special protection against discrimination which can be enforced on an individual basis but also by an act of an association such as a consumer protection organization. These provisions under contract law are currently of relevance to more than 100,000 residents of homes.

### **C. Ad paragraph 11**

58. In reacting to the invitation of the Committee to provide further clarification on the terminological distinction, commonly applied under Austrian law with regard to the protection of minorities, it should be emphasized, first of all, that Austria does not restrict its understanding of the ethnic, religious and language minorities only to the autochthonous ethnic groups. However, the legal basis and the administrative competences are different, depending on the minority concerned. This can be explained by the historic developments, by the obligations under international law, especially of benefit to the Slovene and Croat ethnic groups, as well as by the special needs of the different minority groups. The report therefore covers the individual minority groups separately.

59. According to § 1 (2) of the National Minorities Act, the concept of national minorities also includes “citizens with a non-German mother tongue and their own culture and traditions who live and reside in parts of the federal territory”. Today, national minorities, as defined by the National Minorities Act, are the Slovene minority in Carinthia and Styria, the Croat minority in Burgenland, the Hungarian minority in Burgenland and Vienna, the Czech minority in Vienna, the Slovak minority in Vienna, as well as the minority of the Roma in Burgenland.

60. There is no need to further explain that the members of ethnic minorities in Austria - being Austrian nationals - enjoy the same rights as all other citizens. In addition, the Austrian legal system comprises a number of legal standards that relate, in particular, to the national minorities and their members.

61. One standard, which is on the level of the Constitution, is article 8 of the Federal Constitution Act, which was amended by a basic policy clause of the Constitution for the benefit of the ethnic groups. The first two paragraphs of article 8 of the Federal Constitution Act read as follows:

“The German language shall be the official language of the Republic, irrespective of the rights granted to the language minorities by Federal Law.

“The Republic (federal, regional and local authorities) is committed to its linguistic and cultural diversity, as it has developed in the course of history, which finds expression in its autochthonous national minorities. The language and culture, existence and maintenance of these national minorities shall be respected, secured and promoted.”

62. One should also mention articles 66 to 68 of the State Treaty of Saint-Germain-en-Laye. In addition to a ban on discrimination, article 66 of the aforementioned law contains a provision relating to the free use of one's language: “No restrictions shall be imposed upon any Austrian citizen in connection with the free use of any language in private and business contacts, in matters of religion, the press or in any other kind of publication or public gathering.”

63. Article 67 of the aforementioned law ensures the right of the minority groups “to set up, run and supervise charitable, religious and social facilities, schools and other educational institutes, with the right to use their own languages in them at their discretion and to freely practice their religion”.

64. Article 68 of the aforementioned law stipulates, inter alia, that the national minorities shall also share in the financial resources of the State, “for example for educational, religious or charitable purposes”.

65. For the Slovene and the Croat minorities, article 7 (and here items 2, 3 and 4, which have constitutional standing) of the State Treaty concerning the restoration of an independent and democratic Austria (State Treaty of Vienna, 1955) is of central importance. It reads as follows:

“Article 7. The rights of the Slovene and Croat minorities

“1. Austrian nationals of the Slovene and Croat minorities in Carinthia, Burgenland and Styria enjoy the same rights on the basis of the same conditions as all other Austrian citizens, including the right to have their own organizations, gatherings and press in their own language.

“2. They have a right to obtain elementary schooling in the Slovene or Croat languages and to a proportionate number of their secondary schools. In this connection, the school curricula shall be reviewed, and a department shall be set up with the school inspectorate for the Slovene and Croat schools.



“3. In the administrative and court districts of Carinthia, Burgenland and Styria with a Slovene, Croat or mixed population, the Slovene or Croat language shall be admitted as official languages, in addition to German. In these districts, the names and indications of a topographical nature shall be put up both in the Slovene or Croat language, as well as in German.

“4. Austrian nationals belonging to the Slovene and Croat minorities in Carinthia, Burgenland and Styria share in the cultural, administrative and court institutions of their regions on the basis of identical conditions as all other Austrian citizens.

“5. The activities of organizations shall be prohibited which aim at depriving the Croat or Slovene population of their characteristics and their rights as minorities.”

66. The Federal Law of 7 July 1976 on the legal status of national minorities in Austria, referred to as the National Minorities Act, serves, first and foremost, as an implementing law in connection with article 7 of the State Treaty of Vienna (with the exception of the provisions on schools, which were implemented by way of the minority school laws for Burgenland and Carinthia); secondly, it created the legal basis for setting up the national minority advisory councils and for promoting the ethnic groups; thirdly, it does not limit the scope of application only to the Croat and Slovene minorities but - on account of the definition of “national minority” - it then permits application of this law to the Hungarian minority, the Czech minority and the Slovak minority, as well as the ethnic group of the Roma.

67. One should mention the following ordinances implementing the National Minorities Act:

- Ordinance of the Federal Government on national minority advisory councils, Federal Law Gazette No. 38/1977, in the version of Federal Law Gazette No. 895/1993;
- Ordinance of the Federal Government determining the regional territories in which topographical signs and indications shall be affixed both in the German and in the Slovene languages, Federal Law Gazette II No. 245/2006;
- Ordinance of the Federal Government determining the courts, administrative authorities and other service units at which the Slovene language is admitted as an official language in addition to the German language, Federal Law Gazette No. 307/1977 in the version of Federal Law Gazette II No. 428/2000;
- Ordinance of the Federal Government determining the courts, administrative authorities and other service units at which the Croat language is admitted as an official language in addition to the German language, Federal Law Gazette No. 231/1990, in the version of Federal Law Gazette No. 6/1991;
- Ordinance of the Federal Government determining the regional territories in which topographical signs and indications shall be affixed not only in the German but also in the Croat or Hungarian language, Federal Law Gazette II No. 170/2000;

- Ordinance of the Federal Government determining the courts, administrative authorities and other service units at which the Hungarian language is admitted as an official language in addition to the German language, Federal Law Gazette II No. 229/2000, in the version of Federal Law Gazette II No. 335/2000.

68. An advisory council has been set up with the Federal Chancellery for each of the six autochthonous national minorities. It is the task of these advisory councils to advise the Federal Government and the federal ministers on matters pertaining to the national minorities. They are responsible for preserving and representing the overall cultural, social and economic interest of the ethnic groups, and they shall be heard, especially before legal norms are adopted, as well in connection with planning promotional measures. They may submit proposals for improving the situation of the national minorities and their members. In particular, the national minorities' advisory councils also make recommendations on the distribution of the funds available for promoting the national minorities (see chapter II of the National Minorities Act).

69. In keeping with the National Minorities Act, the implementing ordinances stipulate that in the regions listed there all indications and signs of a topographical nature must be in two languages, whenever these are put up by public authorities. Moreover, the ordinances stipulate the authorities and regions where citizens have the right to use the language of the national minority as an official language.

70. On 1 July 1998 Austria acceded to the European Framework Convention for the Protection of National Minorities, as well as the European Charter on Regional and Minority Languages (effective date: 1 October 2001).

71. The following Supreme Court decisions provide an insight into the current developments in connection with the law governing national minorities:

(a) Decision of the Constitutional Court of 9 March 2000, file number G 2-4/00-7. In this decision, the Constitutional Court stated that "elementary instruction", as mentioned in article 7, item 2, of the State Treaty of Vienna, which has constitutional standing, is meant to refer to the first four grades of school. Classes must therefore be taught in two languages in the schools of relevance in this connection. The Constitutional Court explained in its decision that elementary instruction in the Slovene language is no longer ensured if Slovene is taught only as a compulsory subject - like a foreign language - whereas the remaining classes in the other subjects are taught in German. (In addition, the laws on minority schools in Burgenland and Carinthia also provide that bilingual instruction can also be given in other types of school.);

(b) Decision of the Constitutional Court of 4 October 2000, file number V 91/99-11. In giving the reasons for this decision concerning a case relating to the use of an official language, the Constitutional Court stated that an administrative district with a "mixed population", as defined by article 7, item 3, of the State Treaty of Vienna, which has constitutional standing, also refers to a municipality;

(c) Decision of the Constitutional Court of 13 December 2001, file numbers G 213/01-18, V 62, 63/01-08. According to this decision relating to topographical indications and signs, villages are also considered as "administrative districts with a mixed population", as defined in article 7, item 3, of the State Treaty of Vienna. Again, in giving the

reasons for its decision, the Constitutional Court stated that in the case in question a longer period of time must be monitored in order to establish that a certain percentage of the population using a language of a national minority in everyday discourse is decisive;

(d) Decision of the Constitutional Court of 27 June 2002, file number B 1230/01. This decision made it clear that there is compliance with article 7, item 2, of the State Treaty of Vienna if a/bilingual primary school exists in a bilingual municipality for the pupils belonging to that school district. The organizational structure according to school law does not matter in this connection;

(e) Decision of the Constitutional Court of 12 December 2005, file number V 64/05, and decision of the Constitutional Court of 26 June 2006, file number V 20/06. In these decisions the Constitutional Court confirmed its previous case law, as it had been expressed in the decision of 13 December 2001. In giving its reasons in the last-mentioned decision, the Court specified that the character of a village as “an administrative district with a mixed-language population” may also be lost if - as in the case in question - the share of the relevant population using the language of a national minority did not reach a certain level at the last two censuses, with the trend going in the downward direction.

72. Most autochthonous national minorities and/or their members are very well integrated into the majority population. However, the ethnic groups that traditionally reside in Austria are confronted with the problems of a diminishing number of members and ageing. As in any modern society, assimilation can be brought about by the following circumstances: the small size of the national minorities, measured in absolute terms; the fact that - at least in Carinthia - many of their settlements are widely scattered, as well as that mixed-language marriages predominate; the fact that agrarian lifestyles are on the decrease and - parallel to that - mobility is on the increase, as well as a mostly German-speaking working environment. Austria therefore supports the languages and the cultures of the national minorities through its promotional measures, and it also works to improve the bilingual educational system for the national minorities, in an effort to preserve their cultures and languages. The services rendered by the churches (primarily the Catholic Church, and for the Hungarian minority also the Augustana Confession (AB) and the Helvetic Confession (HB) of the Protestant Church) are of great historical and also current significance in connection with preserving the languages of the national minorities.

73. The structures of the national minorities are primarily based on organizations for the national minorities that are set up under the law governing associations. The organizations of the national minorities are associations which serve the purpose of preserving and securing a national minority, its specific folklore, as well as its characteristics and rights. Private-law foundations and funds, set up with the intention to serve this mandate, are also organizations of the national minorities; they play, however, hardly any role. The organizations of the national minorities can obtain financial resources from the funds available for promoting the national minorities. Whenever it is intended to promote specific projects of a national minority, churches and religious denominations are treated in the same manner as the organizations of the national minorities (see § 9 of the National Minorities Act).

74. With the fall of the Iron Curtain, as well as the accession to the EU of Hungary, Slovenia, the Czech Republic and Slovakia, the functionality of the languages of the national minorities has improved, as well as their prestige. It is beneficial, especially for the members of the national

minorities, that there is a growing number of cross-border events and exchange programmes, but there are also occupational and economic advantages that result from having an active knowledge of the languages of the national minorities, which are - at the same time - the languages of one's neighbour and official languages of the European Union.

75. Bilingual instruction in Carinthia and Burgenland is governed by the laws on minority schools. It is noteworthy that the number of pupils attending bilingual classes is on the increase. A closer look, however, reveals that there is trend among children attending school towards a decreasing level of language competence. The reason for this is not only the fact that the use of the language of a national minority in the family tends to decrease, but also that single-language persons responsible for a child's education opt in favour of a bilingual education for their children and that these children then begin without any knowledge of the language of the national minority.

76. For the Czech minority living in Vienna there is the Komensky School, which is a publicly recognized private school. It offers a full series of bilingual courses educating pupils from nursery school to the school-leaving examination. The Schulverein Komensky, an association, runs the school and receives substantial public funding. Some instruction in the Slovak language is offered at the Komensky School and at a lower-level secondary school in the form of "mother-tongue instruction". In Vienna, Hungarian is offered as a language of instruction by the organizations of the national minority in the form of extramural language coaching and/or language courses, as well as in certain public schools as "mother-tongue instruction". Adult-education institutions, as well as commercial providers offer a large number of language courses, which also include the languages of the national minorities.

77. In connection with the pre-school education available in the languages of the national minorities, two improvements need to be mentioned that occurred since the last report: The Carinthian law on nursery-school funding of 12 July 2001 has made it possible to obtain financial support for bilingual or multilingual private nursery schools in the settlement area of the Slovene minority in Carinthia. In addition, the law also contains quality-assurance measures for the education offered at bilingual nursery schools. In addition to bilingual private nursery schools, there are also bilingual groups in public nursery schools in Carinthia. By tradition, the preschool education in Burgenland for the Burgenland-Croat/German-speaking and the Hungarian/German-speaking population is offered at the municipal nursery schools of the communities concerned. With the amendment of the Burgenland law of 8 July 2005 on nursery schools, the minimum time frame for using Burgenland-Croat and/or Hungarian in the /bilingual nursery schools was extended from 9 to 12 hours per week. In Vienna, an association of the national minority runs a bilingual nursery-school group in Burgenland-Croat, and the Komensky School Association runs a bilingual Czech nursery school at which Slovak is also taught.

78. The national minority of the Roma holds a special situation in many respects. First of all, it is of importance to note that the number of autochthonous Roma was reduced to a large extent by persecution during the National Socialist period. This persecution also resulted in a major break in the linguistic and cultural tradition. The discrimination, which is reported occasionally, is mostly the result of an interaction between a lack of training and poor integration into the labour market. Major efforts are therefore being made in Austria in order to promote success at school and integration into the labour market.

79. In this connection, one should mention the coaching provided by associations of the ethnic group in Burgenland and Vienna. The “RomBus” was started as a new project and offers mobile coaching to pupils, especially to Roma children in Burgenland, as well as classroom teaching in the language of the Burgenland Roma, the language of the national minority, together with public relations activities.

80. Moreover, Austria funds a staff member of the Labour Market Service who belongs to the Roma minority. Her primary task is to advise Roma on educational and occupational issues.

81. “Mri buti” is a labour-market project that was started as an EU project under the “equal” programme and is now being continued with Austrian financing. This project offers jobs on an hourly or daily basis and takes account of the different levels of potential and the readiness to perform.

82. The service unit for ethnic groups of the Eisenstadt diocese has an outstanding record for coaching young Roma during leisure-time hours, as part of their youth-care activities.

83. A short time ago, the decision was taken to use some of the remaining financial resources of the Reconciliation Fund (see above) in the amount of € 1.1 million - spread over 10 years - for the trust-fund project “Roma and Sinti”. The largest part of the money will go to schools, and the remaining amount will be made available to compile the names of the Roman and Sinti victims who were killed during the National Socialist regime.

84. The Romany project of the University of Graz is being continued. In the course of the project, the Romany varieties spoken most frequently in Austria are being processed scientifically and laid down in writing for the first time. As a result of this work, it is possible to publish the newspapers of the Roma associations in two languages and to produce bilingual collections of Roma stories and teaching games. As one of the consequences of codifying and establishing the didactics for the Burgenland Roma language it is also possible to teach Romany at public schools, i.e. the primary school at Oberwart (together with the pupils of the special pedagogic centre; 5 pupils) and at the European middle-level school at Oberwart (formerly lower-level secondary school; 9 pupils) during the 2006/07 school year. Curricula and teaching materials are also produced in this connection. Scientific support is given to the publication of the bilingual association newspapers and the preparation of instruction in Romany.

85. In order to provide an approximate impression of the numerical strength of the national minorities residing in Austria, the figures are given below from the last census conducted in the year 2001.<sup>1</sup> However, it should definitely be borne in mind that the statistics only provide approximate values, because affiliation with a national minority is not investigated in Austria. Rather, the question asked in the course of the census relates to actual everyday language used. Here, it is possible to indicate several languages. The number of persons speaking a language should therefore not be equated with the number of persons belonging to a national minority. In fact, the national minorities themselves vehemently reject statistical surveys that are based on affiliation with a national minority. This may be due to the historical trauma, when official

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<sup>1</sup> *Source:* Statistik Austria.

recording of affiliation with a national minority fostered systematic acts of persecution by the National Socialist regime. The fact that any quantification of the national minorities is rejected appears to be also due to personal fears that the reference to lower membership numbers might lead to a restriction of the funding made available to the national minorities. Thirdly, there is concern that in the preparation of a minority census and/or statistics on mother tongue, the climate between the national minorities and the majority population might become strained, on account of politically controversial discussions. The fact that any official recording of the national minorities and/or statistics on mother tongue is still being rejected became clear when, for example, a member of the Slovene Advisory Council spoke out to this effect at a joint session of the national minority advisory councils on 2 May 2005 and was not contradicted.

**Table 3****National minorities residing in Austria**

Everyday language	Total number of nationals		Born in			
	Absolute number	in % <sup>a</sup>	Austria	in % <sup>a</sup>	abroad	in % <sup>a</sup>
Burgenland-Croat	19 374	5.9	18 943	11.3	431	0.3
Romany	4 348	1.3	1 732	1.0	2 616	1.6
Slovak	3 343	1.0	1 172	0.7	2 171	1.3
Slovene	17 953	5.4	13 225	7.9	4 728	2.9
Czech	11 035	3.3	4 137	2.5	6 698	4.2
Hungarian	25 884	7.8	9 565	5.7	16 319	10.0
Windisch <sup>b</sup>	567	0.2	547	0.9	20	0.0

<sup>a</sup> % figures relate to the total number of indications referring to a non-German everyday language.

<sup>b</sup> A variant of Slovene spoken in Carinthia.

86. Furthermore, the Federal Chancellery commissioned a study on the “Language of everyday life and social structure. The characteristics of the Austrian national minorities as reflected in the data of the 2001 census” and the social structure, which is based on the most recent census. The results of this study are currently being evaluated.

**D. Ad paragraph 12**

87. First of all, please refer to the statistics attached as annexes to the present report, in connection with the requested demographic material. They provide information, inter alia, on the level of integration of foreign nationals into working life (see the study of the Austrian Institute of Economic Research, commissioned by the Federal Ministry of the Interior, on foreigners becoming established in Austria - annex 1; Registered unemployed foreigners according to nationalities as an average for the year 2004 - annex 2; Persons promoted by the Labour Market Service according to nationalities - annex 3) and on educational matters (Pupils according to nationality in Austria - annex 4; Statistical evaluation of mother-tongue instruction in Austria for the 2004/2005 school year - annex 5).

88. Information on the ethnic composition of the Austrian population can be drawn from annex 6 (Valid residence permits of third-country nationals as on 1 December 2005), as well as from the evaluations of the results of the most recent census in 2001. In this context, a decisive step was taken in the direction of recording naturalized persons with a migration background in statistics when, for the first time, questions were asked about the country of birth, as well as on religion, in addition to inquiring about the language used in everyday communication.

89. According to the 2001 census, 95 per cent of Austria's citizens use German as their only language of day-to-day communication. 330,000 Austrians (4.5 per cent) mentioned a second everyday language; the majority, though, indicated that it was used in combination with German (see table 1 and/or 6 of annex 8 - 2001 census, everyday language). As a result of their migration to Austria, the languages of the autochthonous national minorities have long ceased to be the majority languages among the non-German everyday languages of Austrians, replaced by the languages of the naturalized migrants and refugees. Chart 3 of annex 10 reflects the significance of the new language groups: Turkish ranks first (60,000 or 18.2 per cent of the Austrian nationals with a non-German everyday language), Serbian ranks second (42,000 Austrian or 12.7 per cent) and English comes third (33,400 or 10.1 per cent).

90. According to the 2001 census, there are 60,000 Turkish-speaking Austrians, in addition to 123,400 foreign nationals living in Austria and using Turkish as their everyday language. However, Serbian is the most common everyday language of foreign nationals living in Austria, used by 135,400 persons (19.1 per cent) (table 7 of annex 8). German is second, used by 124,000 persons (17.5 per cent)); it ranks ahead of Turkish (17.4 per cent) and Croat (105,500 persons (14.8 per cent)). Further languages are Bosnian, English, Albanian, Polish, Hungarian and Romanian with percentages of between 2 and 4 per cent. These are also shown in chart 4 of annex 8.

91. More than one fourth of the foreign nationals (27.4 per cent, or 195,000 persons) do not speak German in their private sphere. However, most foreign nationals indicated that they use both the other language and German (55.1 per cent) in everyday communication.

92. Please refer to annexes 7 and 9 for statistical data on the subject of residential population according to country of birth and/or nationality.

93. It has been calculated that a total of 1,119,000 persons (13.9 per cent of the total population) have a migrant background; that is, they are directly or indirectly affected by international immigration. More than half are first-generation migrants (53.1 per cent) and have both a foreign passport and were born abroad. The second- and third-generation migrants (foreigners born in Austria) account for 10.4 per cent (see table 4, annex 10).

94. Austrian nationals born abroad constitute a third group. It can be assumed that only a few of these persons were born Austrian nationals and that the majority of them were naturalized. This group of persons numbers 408,500, which corresponds to 36.5 per cent. One can therefore estimate the various regions of origin in connection with naturalizations over the last decades (table 4 of Annex 10).

95. A total of 66.8 per cent (247,102 persons) of the foreigners and immigrants from the former Yugoslavia are first-generation migrants. The number of persons with former Yugoslav

nationality who were born in Austria amounts to 14.8 per cent (54,570 persons). This figure is lower than the number of naturalized citizens from the former Yugoslavia (18.4 per cent, or 68,213 persons). The second-largest group of immigrants comes from Turkey (total number of persons: 159,000). Of these, 58.8 per cent, or 93,630 persons, are first-generation migrants. One fifth of the Turkish persons living in Austria (20.0 per cent, or 31,898 persons) were born in Austria. A slightly larger number obtained Austrian citizenship (21.1 per cent, or 33,592 persons). However, the situation is completely different concerning persons from the Czech Republic or Slovakia, as well as Hungary. On the one hand, the figures for second- and third-generation migrants are very low for this group; on the other hand, the figures for persons with Austrian nationality who were born in the Czech Republic/Slovakia or Hungary are very high.

96. When looking at the various “generations” of migrants according to age, sex and region of origin, one may obtain further interesting indications about “lifetime migrants”, i.e. foreign immigrants, but also naturalized persons of the first generation of migrants to Austria. For the different regions of origin, the effects of international immigration on the population can be shown in a cross-sectional presentation and over time (see charts 2 and 3 of annex 10).

97. In June 2005 the City of Vienna commissioned the European Institute for Integration of the Austrian Academy of Sciences (EIF) to make a special evaluation of the study “*Leben in Wien II*” (“Living in Vienna II”) in connection with the specific data on migrants that were collected in the course of this study. In addition to the quality of life of migrants, the study will examine the recourse to facilities and services of the City of Vienna by migrants, the level of education obtained by the migrants and their children, as well as their occupations and their employment situation. In the course of the study, the EIF will analyse the situation and the specific needs of the Viennese population with a migrant background up to end of the year 2005, in order to be able to draw up and/or improve the corresponding programmes on that basis and in proportion to the population without a migrant background. In particular, the results of the study are meant to provide an indication of the adequacy of the services offered by the local authorities.

### **E. Ad paragraph 13**

98. With regard to the concerns about reports of incidents involving persons of foreign origin or members of ethnic minorities, the Republic of Austria would like to inform the Committee that the Federal Minister of the Interior gave orders, by way of decrees dated 5 March 2003 and 10 November 2000, that the public prosecutor’s office and the office for internal matters, set up as a separate department of the Federal Ministry of the Interior, must be informed immediately about all complaints relating to alleged ill-treatments by bodies of the public security services. In connection with arrests and complaints about ill-treatment relating to bodies of the public security services, reference is also made to a decree dated 4 November 1996 concerning the “Documentation of injuries caused by measures depriving persons of their liberty”. This decree, inter alia, also ensures that another service unit or civil servants not involved in the official act immediately collect all necessary evidence relating to complaints about alleged ill-treatment. A service instruction ensures that a detailed medical report is drawn up, as well as an expert opinion by the official police physician. In her decree dated 29 June 2006, the Federal Minister of the Interior also gave orders that police inspections of cases should particularly look into xenophobic, racist or anti-Semitic motives for the offence. The responsible



Regional Office for the Protection of the Constitution and the Fight against Terrorism (Landesamt für Verfassungsschutz und Terrorismusbekämpfung - LVT) must be informed immediately about cases in which there is such a motive behind an offence, or where such a motive can be assumed to be likely. This office is then responsible for communicating its report to the Federal Office for the Protection of the Constitution and the Fight against Terrorism (Bundesamt für Verfassungsschutz und Terrorismusbekämpfung - BVT). The decree is based on the definitions set up in Doc. 11768/94 JAI 78 of the Council for Justice and Home Affairs of 3 December 1994 as a basis, which state that xenophobic/racist/anti-Semitic offences are offences against persons or groups of persons who - on account of an attitude of intolerance - are denied the right to stay or live in a residential area or the entire country by the co-offenders on grounds of their actual or alleged nationality, ethnic origin, race, colour of skin, religion or origin, or offences that are committed against other persons/institutions/objects, where the offenders act on account of xenophobic/racist/anti-Semitic motives.

99. In this connection, we would like to remind the Committee that the Advisory Board for Human Rights was established in July 1999. This independent body is responsible for reviewing - from the perspective of compliance with human rights - the activities of the security authorities, of authorities that are otherwise subordinate to the Federal Minister of the Interior, as well as of the agencies authorized to apply immediate powers of command as well as coercive powers as administrative authorities. In addition, the Advisory Board for Human Rights engages in drafting activities on the substance of the issue. On the basis of this work, it submits proposals for improvement to the Federal Minister of the Interior.

100. The main focus of the work of the Advisory Board for Human Rights is on pinpointing possible structural deficiencies - which may certainly also be on the occasion and by way of the example of significant individual cases - as well as on obtaining a certain preventive effect by making the appropriate suggestions for improvement for the benefit of human rights, in connection with the tasks performed by the security and law-enforcement staff. The primary task of the Advisory Board for Human Rights is therefore to analyse the structural conditions for the work of the police from the viewpoint of human rights. This means, in particular, that abuse and violations are not regarded as isolated individual incidents but as cases that are caused by the system.

101. The Advisory Board for Human Rights meets approximately every six weeks. Whenever necessary, a minimum of three members may call for an extraordinary meeting. The reports communicated by the commissions are discussed and analysed at the meetings. Depending on the factual situation, recommendations with proposals for possible improvements are addressed to the Federal Minister of the Interior, or the Advisory Board for Human Rights identifies the matter as a priority for its work. Working groups, which the Advisory Board appoints and which also comprise external experts, in addition to the members of the Advisory Board and of its commission, deal with the issues in hand and bring the matter to the attention of the Federal Minister of the Interior, in the form of reports.

102. The Advisory Board pursues its monitoring and reviewing activities without prejudice to the activities of the criminal enforcement agencies, or of the administrative supervisory bodies or the Independent Administrative Senates.

103. The Advisory Board for Human Rights has set up commissions of experts, which are organized on a regional basis, in order to ensure nationwide coverage when evaluating the activities of the security and law-enforcement bodies. The commissions review the detention of persons at service units of the security and law-enforcement bodies, as well as large-scale police activities with regard to the observance of human rights in their performance. According to § 15 c (1) of the Security Police Act the Advisory Board for Human Rights has to set up commissions, based on regional considerations, in such numbers that compliance with all tasks is ensured. As a result, three commissions were set up for the district covered by the Higher Regional Court for Vienna, and one commission each for the other districts covered by Higher Regional Courts. Article I of the Guidelines for the Structure, Working Methods and Visits of the Commissions defines the local competences of the three commissions set up for the district covered by the Higher Regional Court for Vienna. The six commissions began operating in July 2000.

104. The six commissions consist of a minimum of five and a maximum of eight members. The Advisory Board for Human Rights appoints a person recognized for his/her achievements in the field of human rights as the head of each commission. The other members of the commissions are appointed by the Advisory Board upon proposal by the head of the commissions. Care must be taken with regard to the composition of the commissions so that the expertise required to perform the tasks is adequately represented, and that there is a balanced representation of the two sexes. Experts who belong to security and law-enforcement bodies cannot become members of the commissions.

105. The visits undertaken by the commissions follow a routine pattern and cover the entire respective territory, on the one hand, and are scheduled on the basis of circumstances brought to their attention, on the other. The visits need not be announced in advance. The commission as a whole or a delegation of the commission may undertake the visits. A delegation consists of a minimum of two members of a commission. Every delegation must represent the legal and administrative expertise, as well as the medical and psychological expertise.

106. The security and law-enforcement bodies are obliged to support the Advisory Board for Human Rights and its commissions in its activities. The head of a visited service unit must allow access to the documents and provide information. In this connection, officials of the security and law-enforcement bodies are not required to observe official secrecy. The commission must be allowed access to all premises. Moreover, if the commission wishes to contact specific detained persons it must be allowed to do so without any third parties being present.

107. The commissions must report to the Advisory Board for Human Rights after every visit. These reports must, in particular, comprise the established facts and the measures and recommendations that the commission deems to be required.

108. The Federal Minister of the Interior must make available sufficient funding to the Advisory Board for Human Rights so that it can fulfil its obligations. A business unit was set up at the Federal Ministry of the Interior which supports the Advisory Board for Human Rights in its activities. The business unit acts as a general contact point and coordinates and implements the tasks entrusted to the members of the Advisory Board for Human Rights, who work on an honorary basis. It also acts as a link to the commissions. In addition to the administrative work involved in preparing and processing the meetings of the Advisory Board for Human Rights,

other main tasks undertaken by the business unit include organizing, assisting and cooperating in the substantive matters covered during the meetings of the working groups. Furthermore, the individual reports of the commissions are compiled in a database, analysed and prepared for deliberation by the Advisory Board for Human Rights.

109. So far, the Advisory Board for Human Rights has prepared the following 20 reports:

- Report on so-called “problematic cases of deportations” (1999)
- Report on the problems regarding “minor persons in pre-deportation detention” (2000)
- Report on human rights issues in connection with the detention of women by staff of the security and law-enforcement bodies (2001)
- Report on the information provided to detained persons (2002)
- Report on the medical services provided to detained persons (2002)
- Position of the Advisory Board for Human Rights regarding the Guidelines of the Federal Minister of the Interior regarding federal services provided to asylum-seekers (2003)
- Report of the Advisory Report for Human Rights regarding the study “Language Used by the Security and Law-Enforcement Bodies” (2004)
- Report on the language used by Austrian security and law-enforcement bodies (2004)
- Report of the Advisory Board for Human Rights regarding “The Use of Police Coercive Force - Minimizing the Risks in Problematic Situations” (2004)
- Report of the Advisory Board for Human Rights regarding “Reactions to Alleged Human Rights Violations” (2004)
- Report of the Advisory Board for Human Rights regarding “Human-Rights Defence Counsels” (2005)
- Report of the Advisory Board for Human Rights regarding “Human Rights in the Basic and Further Training of Security and Law-Enforcement Staff” (2005)
- Report on the Board’s activities in the years 1999 and 2000
- Report on the Board’s activities in the year 2001
- Report on the Board’s activities in the year 2002
- Report on the Board’s activities in the year 2003
- Report on the Board’s activities in the year 2004

- Report on the Board’s activities in the year 2005
- Report on the Board’s activities in the year 2006
- Detention conditions in the detention premises of security bodies (2006)

110. The Security Police Act ensures that the recommendations made by the Advisory Board for Human Rights to the Federal Minister of the Interior in any given year are included in the Annual Report on Security by the Federal Government to the National Council.

111. In addition, the Advisory Board for Human Rights submitted recommendations to the Federal Minister of the Interior on the following subjects, inter alia: discriminating use of language by the security and law-enforcement bodies, large-scale police operations, hunger strike by persons detained prior to deportation, border surveillance posts, predeportation detainees in prisons, and the joint detention of married couples.

112. The German version of the reports and the recommendations of the Advisory Board for Human Rights can be downloaded from its home page ([www.menschenrechtsbeirat.at](http://www.menschenrechtsbeirat.at)).

113. In response to the recommendations issued by the Advisory Board for Human Rights to law-enforcement officers on avoiding racist expressions, the Federal Minister of the Interior issued a decree on 7 August 2002 concerning the language used by law-enforcement officers. It points out that the officers’ reputation and acceptance by the population, as well as ultimately the efficiency in complying with the tasks of the security services depend largely on how the law-enforcement staff deals with other persons and, in particular, with persons of foreign origin and members of groups exposed to discrimination. It is therefore indispensable from this perspective that for professional conduct during work every member of the security services should use language and expressions that do not even give rise to any impression of a discriminatory, degrading, humiliating or prejudiced procedure and/or allow one to conclude that such motives are part of the basic attitude.

114. Furthermore, the Federal Ministry of the Interior also introduced rules in the year 2001 which improve the planning, performance and documentation of “large-scale police raids and large-scale events”, in order to further develop official and/or police interventions that are free from prejudice, as much as possible, on the one hand, and in order to prevent subsequent complaints against intervening officials or entire operations, on the other hand. Moreover, it was provided that the Advisory Board for Human Rights and its commissions are to be involved in such operations. The Chairman of the Advisory Board for Human Rights is informed in due time of such planned official operations, so that the members of the Advisory Board for Human Rights and the members of its commissions are in a position to participate and to monitor large-scale police raids and operations at large-scale events.

115. Concerning the suggestion of the Committee that any xenophobic and racist tendencies should specifically continued to be monitored, one should mention, first of all, the activities of the independent European Monitoring Centre on Racism and Xenophobia, located in Vienna (see [www.eumc.eu.int](http://www.eumc.eu.int)). The Monitoring Centre was funded by the European Union and draws up comprehensive reports on situations regarding racism, xenophobia, anti-Semitism and other related types of intolerance (e.g. hostility towards Islam) in the EU member States. An English

version of the annual report for 2005 can be accessed at [http://eumc.eu.int/eumc/material/pub/ar05/AR05\\_p2\\_EN.pdf](http://eumc.eu.int/eumc/material/pub/ar05/AR05_p2_EN.pdf). The main areas of activity of the Monitoring Centre are racial violence, legislation, education, housing and employment. Austria cooperates closely with the Monitoring Centre via a national liaison officer; it makes available comprehensive information material and - last but not least - contributes to the funding of the Monitoring Centre. It is to be mentioned, that on 1 March 2007 the European Monitoring Centre on Racism and Xenophobia (EUMC) became the EU Agency for Fundamental Rights (FRA). The new agency will provide the Community and its member States, when implementing Community law, with assistance and expertise relating to fundamental rights. After an organizational set-up phase, FRA is expected to extend its operational activities in 2008. The work on racism, xenophobia and related intolerance will remain one of the Agency's main tasks.

116. The association ZARA (Zivilcourage und Anti-Rassismusarbeit - Civil Courage and Anti-Racism Work) operates, among others, in the field of racial discrimination. ZARA publishes an annual report on racism, which comprises a selection of cases and thus gives an overview of the situations regarding racism in Austria. An English version of the annual report for 2005 can be accessed at <http://www.zara.or.at/materialien/rassismus-report/racism-report-2005.pdf>. In the field of counselling of and assistance to victims of discrimination, the City of Vienna has been supporting the important work done by ZARA for years. Since 1999 ZARA has been devoting its activities to the important social tasks of working against racism. By means of a broad spectrum of assistance activities, including in the form of legal advice, affected persons are supported in drawing attention to the injustice that they suffer, to sensitize the public to it and to create public awareness for change. One of the most important areas of activities is the counselling centre for victims of and witnesses to racism, which provides information about legal and other steps to be taken against racist action, as well as support and assistance to clients in carrying out the jointly agreed further action, and the systematic documentation of all reported incidents, together with free information services.

117. In the year 2005, a report on the subject of racism and discrimination in the working environment was drawn up as part of Vienna's EQUAL development partnership, "Equal opportunities in companies - Companies without racism" (Manolakos/Sohler, "*Gleiche Chancen im Betrieb? Diskriminierung von MigantInnen am Wiener Arbeitsmarkt*") ("Equal opportunities in companies? Discrimination against migrants in the Vienna labour market"), Europäisches Zentrum für Wohlfahrtspolitik und Sozialforschung (European Centre for Social Welfare Policy and Social Research), Vienna, 2005), which can be accessed at [http://www.gleichechances.at/down/M1\\_Endbericht\\_WienerAM.pdf](http://www.gleichechances.at/down/M1_Endbericht_WienerAM.pdf).

118. In connection with education, the four-year long-term study "Establishing language levels in multicultural primary-school classes - Learning languages as a migrant" should be mentioned as a current project. It documents the language development of more than 100 primary-school pupils in German and (in the case of Bosnian, Serbian, Croat and Turkish) also in the first language.

119. In response to the results of "PISA 2000", the Federal Ministry for Education, Science and Culture also commissioned the feasibility study called "PISA Austria Migration", which dealt with the subject of compiling and evaluating data available on the situation of Austrian pupils with a migrant background. As part of the national supplementary survey under "PISA 2006", the questionnaire for pupils was enlarged by several questions dealing with the socialization

process of pupils with a migrant background, in order to obtain more detailed information about the socialization process of such pupils. The results are expected to be published in early 2008.

120. On the level of the Organization for Economic Cooperation for Development (OECD), the Max Planck Institute for Human Development in Berlin carried out the study “PISA 2003 - Supplementary survey in national policies and practices related to assisting immigrant students attain proficiency in the language of instruction”, in which Austria participated. The results were published in a thematic report of the OECD with the title “Where Immigrant Students Succeed” (OECD, 2006).

121. In connection with the suggestion by the Committee to recruit more members of minority groups into the public administration, it is stated that, in keeping with the prevailing legal situation, only Austrian nationals who successfully pass a selection procedure can be recruited into the public administration. Against the background of the special loyalty obligations of persons in the public administration, the violation of which is subject to both penal law and disciplinary sanctions, this restriction of the right to equal access to public administration to Austrian citizens appears to be justified. However, it should be pointed out that Austrian nationals with a migrant background have increasingly been recruited for the public administration in recent years.

122. In connection with the recommendation of the Committee to specifically train civil servants who deal with issues involving foreigners on contacts with foreigners as part of their initial and continuing training, we would like to inform the Committee that the Security Academy of the Federal Ministry of the Interior attaches great priority to the subjects of racism, xenophobia and anti-Semitism. The Security Academy, which is the central control institution for initial and continuing training, is responsible for formulating the temporary target priorities, for coordinating them with the higher strategic objectives and for integrating them into the line organization.

123. The initial training of law-enforcement staff includes, inter alia, the following themes:

(a) Curriculum subject Constitutional Law

Constitutional guarantees for the fundamental rights and freedoms	<ul style="list-style-type: none"> <li>→ European Convention on Human Rights</li> <li>→ United Nations Convention against Torture</li> <li>→ Basic State law</li> <li>→ Protection of personal freedom</li> <li>→ Protection of the right to undisturbed use of one's premises</li> </ul>
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(b) Curriculum subject Applied Psychology

Authority - power - obedience	→ “The Milgram Experiment”
Dehumanization	→ Mechanisms, possible dangers → Discussion of the experiment “Final Solution”
Conflicts	→ Categories → Origins → Escalation → Handling

(c) Curriculum subject Sociology

Migration	→ Migratory movements → Strangers
Security and freedom	→ Fundamental freedoms and police State

(d) Curriculum subject Security Police Operations (excerpt)

Basic principles of police intervention	→ Principle of legality → Principle of State intervention → Principle of <i>ultima ratio</i> → Principle of proportionality → Rights of affected persons → Guidelines for interventions → Basic rights and fundamental freedoms
Interference with personal liberty	→ Law on the protection of personal liberty → Prerequisites for admissibility → Rights of detained persons
Rights of affected persons	→ Protection of human rights → Protection of the legal remedies

(e) Curriculum subject Training for Operations

Course participants learn to solve the tasks at hand by considering their own security and safety, the security and safety of fellow officers and by heeding the required principle of proportionality. In this connection, there is also a close linkage between theory and practice, as well as of methodology and tactics. Psychological factors and legal issues are also covered.

## (f) Curriculum subject Professional Ethics

Job profile	→ Expectations of citizens → Own expectations
Values and attitudes and the role of law enforcement in society	→ Sources of our legitimacy
Conflict of roles	→ Reasons and handling of situations → Tensions between various demands

124. In the further initial training courses for higher duty officers (E2a) and senior duty officers (E1), the outlined topics are taught in further detail in the respective curriculum subjects. In analogy to the specific law-enforcement subjects, the initial training for civil servants in the general administrative services covers priority topics such as people and contacts with people and professional conduct in contacts with people.

125. As part of the continuing training which accompanies civil servants in their actual work, various seminars on the subjects of human rights and racism are offered, which are intended to allow participants an in-depth coverage of the aforementioned subject areas, in order to create the necessary awareness for them:

Applied psychology	<ul style="list-style-type: none"> <li>* Expanding approaches to assignments with a view to the imminent professional activities, and analysing possible tensions in human cohabitation</li> <li>* Reinforcing civil servants in their competence for social action in order to successfully cope with job-specific challenges</li> </ul> <p>Content:</p> <ul style="list-style-type: none"> <li>* job profile, model examples</li> <li>* perception</li> <li>* authority, power, obedience</li> <li>* dehumanization and possible dangers</li> <li>* aggression</li> <li>* communication</li> <li>* stress</li> <li>* group psychology</li> <li>* official acts with different persons and marginalized groups</li> </ul>
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To be a stranger in this country	<p>Civil servants shall</p> <ul style="list-style-type: none"> <li>* have a better knowledge, understanding and appreciation of the living circumstances and situations of the foreigners that they deal with</li> <li>* act with less prejudice</li> <li>* handle conflict situations that result from cultural differences in a form that is more in conformity with the situation and the people involved</li> <li>* have a better understanding and appreciation of the social services, their methods, objectives and motivations</li> </ul> <p>Content:</p> <ul style="list-style-type: none"> <li>* communicating facts to replace imagined perceptions about the lifestyles and circumstances under which fellow foreign citizens live</li> <li>* building up competence for intercultural discourse and action</li> <li>* becoming familiar with counselling, care and social services working specifically for and with foreigners</li> </ul> <p><u>Pilot seminars in 2001</u></p> <p>On the basis of an evaluation, the seminar design was not kept but developed further. Participants are given the opportunity, by visiting various facilities (e.g. Vienna Integration Fund, Counselling Service for Foreigners, Association for Democracy in Africa, Initiative of Muslims in Austria) that are in direct contact with foreigners, to get to know the problems on site and to discuss issues directly with the “affected persons”.</p>
People - Rights	<p>In the course of this activity, human rights problems are discussed, which is meant to reinforce awareness and to sensitize participants to the subject of human rights.</p> <p>Content:</p> <ul style="list-style-type: none"> <li>* origin and history of human rights, as well as forms of existing (and possible) human rights violations</li> <li>* presentation of human rights organizations, outline of the legal situation, as well as work on individual studies and case studies</li> </ul>

	<p>* research into the causes with a view to (false) self-presentations and (external as well as internal) job profiles, motivation, decisive Effective Processes and Mechanisms, social, psychological and group-dynamic aspects, especially in connection with aggression, frustration, prejudices, companionship, authority and handling power</p> <p>* developing approaches to prevent human rights violations</p> <p>Target groups: staff levels A1, A2, E1 SWD/KrD, E2a SWD/KrD and BBF, as well as 1 day of E2c training</p>
<p>Police and Africans</p> <p>Project of the Federal Police Administration in Vienna</p>	<p>Project goal:</p> <p>To improve the day-to-day contacts between police officers and Africans by:</p> <p>organizing a workshop,</p> <p>developing a plan to improve contacts between police officers and Africans,</p> <p>defining and organizing a pilot project within the domain of the Federal Police Administration in Vienna,</p> <p>holding a conference at the end of the project.</p>
<p>Current subprojects</p>	<p>Alsergrund Project:</p> <p>Creating the institutional framework for encounter, communication and problem-solving on the local level.</p> <p>At present, there are various events and/or meetings between NGOs, members of the Institute for African Studies and members of the police force.</p>
<p>Human Rights Week</p>	<p>Objective:</p> <p>The primary goal of the project is to continue and to reinforce the process of creating awareness for human rights subjects that was begun in 1998 with the project "Human Rights Week".</p>

	<p>In the course of this activity, the focus will be on human rights problems; this will create awareness and sensitize participants to the issue of human rights. Departing from the assumption that training measures alone are not sufficient in order to effectively counteract all possible human rights violations and, in addition, to sensitize police officers, the relationship between police and human rights will be addressed and discussed. In addition, legal problems and - usually in a much wider scope - value yardsticks and thus ethnic issues will be discussed. The content is designed in cooperation with representatives from Amnesty International and Caritas, who will present their work and the tasks of law-enforcement officers from their perspective.</p>
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126. In connection with the initial and continuing training of law-enforcement staff, the Security Academy offers different activities and measures which serve to sensitize law-enforcement officers to the need to respect human rights. During the initial training, which every civil servant must follow, these issues are dealt with in the following different subjects - parallel to teaching purely legal matters such as human rights, basic rights and freedom rights:

- Applied psychology
- Professional ethics
- Rhetoric, communication and conflict management
- Sociology

Furthermore, this range of topics is also given adequate room in other relevant areas such as, for example, in the course of teaching participants security-police operations. As a result, a considerable part of the civil servants in this department are reached through the various training measures.

127. At two-year intervals, the course “Police actions in a multicultural society” is offered. With this course, the civil servants who are in frequent contact with migrants in their day-to-day work are given the opportunity of reinforcing their experience and knowledge in theory and practice. The course covers two semesters. During that time, participants have the opportunity to deal with this topic in detail. The individual seminars should not be regarded as closed units. In the course of the course, awareness is created of the complexity of the subject and the linkages among the individual aspects. The course is meant to be a place for exchanging and jointly elaborating strategies and theories that are based on the background of already existing competencies and experiences of the participants and thus to contribute towards increasing their professional conduct at the workplace.

128. The course objectives are:

- To analyse and reflect on the personal challenges and burdens in day-to-day police work;
- To consider one's own conduct in communication and one's own culture, paying special attention to police work;
- To deal with other cultures and to be aware of the different forms of communication in intercultural contexts and in contacts between the police and the people;
- To acquire knowledge about the political, social, historical and economic background of migration;
- To present and to discuss the fundamental ideas and lines of development governing human rights;
- To create awareness of mechanisms of discrimination and of prejudices;
- To communicate knowledge and facts relating to the situation of migrants in Austria;
- To develop new practice-oriented approaches and alternatives to action for law-enforcement officers;
- To form personal contacts with people who have immigrated to Austria.

129. With its programme "A World of Difference", the United States human rights organization the Anti-Defamation League (ADL) has developed a method to make people aware of the issue of discrimination. It has been used in the initial and continuing training of Austria's law-enforcement officers since 2002. The training is meant to allow participants to perceive their own cultural specificities and socialization, as well as to experience in conscientious contacts their own and foreign identities. Building on that basis, the individual competencies in dealing with differences and various forms of discrimination and racism will be expanded. It is also a goal to generate and strengthen understanding and tolerance within communities of different homogeneous cultural and social groups. The training offers the setting for revising one's knowledge about other lifestyles, attitudes and cultures and to experience them anew with authenticity. By providing access to this sector of topics, which is significant for law enforcement, an additional contribution is made to sensitizing Austrian law-enforcement staff for typical official acts in this field.

130. In this connection, there is ongoing evaluation for the purpose of quality assurance and ensuring optimum subject content - if necessary, by drawing upon external experts. The trainers are kept up to date by mandatory attendance at continuing training activities, which also accounts for a permanent evaluation of the processes and the content. Moreover, external experts are always included in all initial and continuing training activities on human rights education, in order to facilitate the broadest possible access to this range of subjects. In most cases, these experts also act as trainers. The Advisory Board for Human Rights was and is also involved in the design of these seminars.

131. The participants are civil servants from all units. They are sent to attend the seminars on the basis of a distribution key, so that all organizational units can be reached. Since 2004, organizing such seminars is also mandatory for the initial training. Since 2005, the seminar is also being offered in the seminar catalog for civil servants at the central management unit.

132. In addition to developing the curriculum subjects “applied psychology” and to training psychology trainers and/or participating in further relevant training measures, the subject of racial discrimination is also covered in the course of training for the psychological services in connection with deportation by air transport. Two female psychologists have been working for the police detention system since 1 June 2006 in order to take account of the psychological burden to which law-enforcement officers are exposed, especially in connection with police detention.

133. Training to avoid any type of discrimination is also a priority in the training of junior judges. Furthermore, initial and continuing training modules on anti-discrimination law are offered to judges, public prosecutors and lawyers in order to improve legal protection in cases of discrimination. In the course of special training and information activities, the new legal situation, generated by the transposition of the EU directives against discrimination, is also dealt with, in order to achieve effective application of the new legal situation (in this connection see also the aforementioned comments on article 4).

134. The Federal Office for the Protection of the Constitution and the Fight against Terrorism applies an increasing number of measures against extreme right-wing skinhead activities, especially skinhead concerts, as these serve as major developers of and catalysts for extreme right-wing, xenophobic and racist thoughts. A “sensitization folder” was disseminated, inter alia, in May 2005, directed at potential lessors of premises for extreme right-wing skinhead activities and/or concerts. This is meant to alert them to the problems caused by skinhead activities and to win them over to cooperating with the security authorities.

135. The staff members of the Labour Market Service, of vocational adult-education institutes and political labour-market institutions can attend the course “Siqua - A course to expand the competency for intercultural action”, as part of the Vienna EQUAL development partnership “qualifications give you strength”. “Siqua” stands for sensitization, information, qualification and aims at promoting intercultural competencies, at communicating relevant knowledge in connection with migration, as well as at providing initial training to multipliers who are available to deal with migration issues and act as contact persons for migrants in the respective institutions.

136. The continuing training programme comprises the following contents:

- Diversity training;
- Alien law and employment of foreigners;
- Violence in the family;

- The myth of culture - focus on the workplace;
- Intercultural didactics and practical counselling;
- Gender mainstreaming.

#### **F. Ad paragraph 14**

137. In connection with the concerns expressed by the Committee concerning the care of asylum-seekers, the State party provides the following information.

138. In the meantime, the Federal Ministry of the Interior has reacted to the concerns expressed by the Committee, insofar as the 2005 Federal Basic Care and Maintenance Act, Federal Law Gazette I No. 100/2005, and the agreement according to article 15a of the Federal Constitution Act regarding the basic care and maintenance of asylum-seekers (Agreement on Basic Care and Maintenance, Federal Law Gazette I No. 80/2004) now ensure the necessary supply of services to needy asylum-seekers. According to § 2 of the 2005 Federal Basic Care and Maintenance Act, they have a legal title to be included in the federal care and maintenance programme if the requirements are fulfilled. The Federal Asylum Office is the first-instance body that decides on admission to the federal care and maintenance programme. It is only for very specific reasons, provided by law (e.g. criminality, subsequent applications, obviously unfounded and obviously inadmissible applications) that asylum-seekers are excluded from receiving the services of the federal care and maintenance programme. In case the basic care and maintenance programme fails, a decree must be issued against which appeal can be lodged with the Independent Administrative Senates of the federal provinces. The Independent Administrative Senates are tribunals as defined in article 6 of the European Convention on Human Rights, the members of which are free from any instructions and cannot be removed or transferred during their term of office.

139. The Agreement on Basic Care and Maintenance between the federal and the regional authorities, which entered into force on 1 May 2004, is the first nationwide harmonization within the framework of the existing areas of competence under constitutional law that ensures temporary basic care and maintenance to foreigners in need of assistance and protection (asylum-seekers, persons entitled to asylum, displaced persons and other persons who for legal or factual reasons cannot be deported). As a matter of principle, the costs for the basic care and maintenance afforded to these foreigners are divided between the federal and the regional authorities at a ratio of 60:40.

140. The services covered by the basic care and maintenance programme include, inter alia, accommodation in appropriate lodgings, respecting human dignity and providing for the unity of families, provision of appropriate food, payment of a monthly allowance, benefits in kind and cash for school items and clothing, health insurance and medical services, travel costs when being summoned or transferred by authorities, payment of costs in case of a voluntary return, funeral costs, information, advice and care.

141. Article 7 of the aforementioned Agreement contains special provisions for unaccompanied minor foreigners. The care and maintenance of unaccompanied minor foreigners comprise, inter alia, a daily schedule and a clarification of perspectives for the future. Moreover, sociopedagogical and psychological support is given, if necessary. In addition, the model for basic care and maintenance also comprises measures for persons requiring special care (e.g. old, fragile persons with handicaps, victims of torture, traumatized persons).

142. The Agreement on Basic Care and Maintenance stipulates that the respective benefits can be restricted or suspended if the person concerned “imperils the maintenance of order in a lodging on account of his/her conduct, on a continued and sustainable basis” or if a case as defined in § 38a of the Security Police Act applies (article 6 (3) of the Agreement). However, even in the case of restricted and/or suspended care services, access to medical emergency services must not be limited (§ 6 (4) of the Agreement; § 2 (4) of Federal Care and Maintenance Act). Medical emergency services must therefore always be guaranteed.

143. In the course of the year 2005, an average of 27,800 persons received benefits under the basic care and maintenance programme.

#### **G. Ad paragraph 15**

144. As to the appeal to the State parties to ratify the amendments to article 8, paragraph 6, of the Convention, Austria believes that the question of the ratification of the provisions at issue has to be treated in the context of the ongoing efforts towards a comprehensive reform of the entire United Nations human rights treaty body system, and the outcome of this reform should be awaited.

#### **H. Ad paragraph 17**

145. In connection with the recommendation of the Committee, i.e. to take into account the relevant parts of the Durban Declaration and Programme of Action, the following is noted. Since the Durban Conference, Austria has taken a number of measures at the federal level and at the level of the federal states (Länder) which are outlined in this report and which correspond to the Durban Declaration and Programme of Action. These include:

(a) The implementation of EU Directive 2000/43/EC through the amendment of the Equal Treatment Act, which realizes the extension of the hitherto existing legal guarantee of equal treatment of the sexes to other areas, notably the areas of ethnic origin and religion (see also the comments under paragraph 10);

(b) Austria’s national measures to implement the EU Action Programme on Combating Racism and Discrimination 2001-2006. Inter alia, awareness-raising training projects were implemented for key personnel of the Ministries of the Economy and Labour, of Justice and of the Interior (see also paragraph 14);

(c) Sensitization training as regards interaction with persons and groups from diverse ethnic and cultural backgrounds for police officers, including compulsory training for all police recruits (in this connection see the comments under paragraph 13);

(d) The ongoing measures in the field of tolerance and human rights education in schools (in this connection see the comments on article 7);

(e) The efforts of the Federal Government and the governments of several federal states and municipalities to promote dialogue with Austria's main religious denominations, notably the Islamic community, and thereby to contribute to the positive development of interfaith and inter-ethnic relations in Austria.

146. All these measures and activities will form the basis for an envisaged comprehensive national Programme of Action.

### **III. SELECTED EXAMPLES OF GOOD PRACTICE PROJECTS**

#### **Vienna's integration and diversity policy**

147. The diversity of the population domiciled in Vienna is meant to be reflected both in the services of the City of Vienna and in the staff structure of the municipal administrative authorities. Municipal Department 17 (Integration and Diversity Issues) was set up on 1 July 2004 as a centre of competence in integration and diversity issues in order to support the municipal administrative authorities in implementing that goal and to act as an interface between migrants' organizations, NGOs and the City of Vienna. As a result, the task of the City of Vienna, i.e. to help shape the integration process of immigrants, was given key status, and its importance as a cross-sectional responsibility of the city and its administrative departments was emphasized.

148. This municipal department offers the following types of services:

- Expertise, support, suggestions for solutions and training for the service units of the City of Vienna, with the goal of further adjusting its services to the diversity of its clients;
- Proposals for measures that make it easier for new immigrants and migrants to become integrated;
- Support for measures to learn the language (especially for new immigrants);
- Support for associations and initiatives that carry out projects of relevance to integration;
- Information about associations of migrants, networks and media at the level of the city and its districts;
- Information events;
- Networking between district institutions, the immigrated population and the organizations of migrants;
- Conflict prevention and conflict resolution.



149. In the context of the accompanying process called “Diversity Management (DM)”, launched by the Vienna municipal authorities in early 2005, a strategy is being drawn up in reaction to the fact that the population structure has changed, on account of the continuous arrival of immigrants. What must be done so that the city is in a position to cope with the existing cultural, linguistic and social diversity so that all sides can benefit from it? This question is addressed to all service units of the city (diversity management as a cross-sectional task). As part of this process, plans for measures concerning staff, day-care centres for children, municipal district offices, demographics and statistics, as well as communication are being developed as examples, and success indicators are formulated for the implementation of the measures and contributions.

150. As part of a national tender for the EU Action Programme for the Fight against Discrimination, the European Commission together with the Federal Minister for the Economy and Labour developed the following two good-practice projects in Austria in the year 2004/2005.

### **Series of workshops to fight and prevent discrimination in Austria**

151. The project aims at addressing three central aspects in the workshops, which have a different design and are adapted to the respective target group:

- (a) Information about the rights, orders and prohibitions in connection with discrimination; information about titles, orders and prohibitions as part of the equal-treatment legislation;
- (b) Creating awareness regarding the dynamics and effects of discrimination;
- (c) Targeted elaboration of countermeasures to avoid discrimination.

152. In this connection, the Ludwig Boltzmann Institute for Human Rights organized a total of 11 workshops in two project phases throughout Austria, of which two dealt exclusively with the facts constituting discrimination on the grounds of “race”, ethnic origin and religion. The workshops addressed a broad group of persons concerned, inter alia, representatives of interests, multipliers, works council members, company consultants, staff members of large human-resources departments, as well as interested individual persons, etc. In addition, two workshops were organized that specifically addressed works council members and informed about the rights of employees in connection with mobbing and discrimination, and discussed possible solutions and appropriate countermeasures. A further special workshop addressed the target group of judges and lay judges of the Vienna Labour and Social Court, as well as lawyers specializing in labour law and representatives of the social partners.

153. In the course of the workshops, the following questions, in particular, were discussed;

- (a) Objective of anti-discrimination provisions; why does the State interfere with the private autonomy of every entrepreneur?;
- (b) Economic damage of discrimination at the workplace: impact on the working climate, decrease in performance and damage to health as a result of mobbing, claims for damages whenever the equal-treatment requirement is violated;

- (c) In what areas are distinctions admissible, considering the characteristics for differentiation which the law disapproves, and when are they inadmissible?;
- (d) What rights does a staff member and/or job applicant have in the event of discrimination?;
- (e) What are the obligations of employers when offering job vacancies and/or when selecting a candidate?;
- (f) How can discrimination at the workplace be avoided, and/or what possible solutions are there if there is a case of discrimination in a company?;
- (g) What good-practice examples in connection with fighting discrimination at the workplace were developed in Austria and in other Member States in recent years?.

***ABAD: Arbeit - Bildung - AntiDiskriminierung (Work/Education/Anti-Discrimination)***

154. The goal of ABAD is to work to create awareness among decisionmakers, (seized) organizations, the public and individual persons regarding the anti-discrimination directives of the EU in connection with persons aged 40+. The priorities are the labour market, older women, older migrants, older persons with special needs in homosexual partnerships, older persons as such and with special needs, as well as older persons who encounter difficulties on account of their race/religion.

155. The project content comprises:

- (a) Survey of the status quo regarding the implementation of the anti-discrimination directives in the federal provinces (inquiry);
- (b) Involving the persons concerned, who are excluded from education and work on grounds of discrimination (focus group), as participants;
- (c) In-depth discussions with persons and organizations that deal with affected persons ("race"/ethnic origin, religion/ideology, handicap, age, sexual orientation) (special workshop and workshop conference (concluding event));
- (d) Providing as much information to the public as possible, sensitizing people to the anti-discrimination directives, as well as their successful application at all levels (newspapers, folders, handouts, concluding reports, etc.).

156. ABAD addresses the persons affected by discrimination, as well as persons and organizations that are in contact with these persons (experts, legal advisers, NGOs working in this field). The organizations, decisionmakers, experts, legal advisers, etc. dealing with this subject participate in the project in the course of the special workshops (in all four of the federal provinces involved) and/or in the workshop conference, which is the concluding event.

157. The project schedule is as follows:

- (a) Inquiry into the state of transposition of the EU anti-discrimination directives in general throughout Austria, as well as on a regional level according to specific topics;
- (b) Developing a questionnaire for evaluation purposes;
- (c) Focus groups on specific priority issues organized by the GEFAS partners in Carinthia, Upper Austria, Tyrol and Styria (size of the focus groups: 8 to 10 persons). involving the persons concerned, who are excluded from education and work on grounds of discrimination, as participants (see [www.stop-discrimination.info](http://www.stop-discrimination.info));
- (d) Special workshops organized in the federal provinces. The results of the special workshops and of the inquiries will be merged (size: approximately 35 participants, organizations/persons from the public/private sector, decisionmakers, etc.), to:
  - (i) Pinpoint practical problems in connection with discrimination;
  - (ii) Summarize the results/suggestions for improvement and undertake preparatory work;
  - (iii) Produce a final report;
  - (iv) Make suggestions for solutions regarding anti-discrimination;
  - (v) Promote sustainability by sensitizing the public;
  - (vi) Embark upon future activities offering (continuing) training programmes to the persons concerned;

The workshop conference covers all federal provinces and concludes the project.

### **Equal opportunities in companies - Companies without racism**

158. The EQUAL project “Equal opportunities in companies - Companies without racism” pursued the goal of supporting companies in realizing that the cultural diversity of their staff is an enriching factor for companies. It also served to empower companies to use this diversity to the benefit of all, i.e. employees and employers, and to ensure equal opportunities for all staff members when following this course.

159. Between 2003 and 2005 institutions planned and implemented the development partnership “Equal opportunities in companies - Companies without racism”. In seven “model companies” the following measures promoting equal opportunities were implemented that were developed in the project:

- (a) A detailed definition of a company’s position with regard to discrimination/equal treatment in the company;
- (b) Drawing up codes of conduct together with the companies;

- (c) Advising and monitoring the specific implementation of the codes of conduct;
- (d) Implementing training sessions in the companies for specific target groups.

160. It deserves special mention that the project also includes one municipal department of the City of Vienna. At the end of the year 2003, Municipal Department 20 (now Municipal Department 35), Alien-Law Matters, and the association ZARA signed an agreement on assistance services, as part of the EQUAL development partnership “Equal Opportunities in companies - Companies without racism”. The subject of this agreement is essentially to give advice and support to Municipal Department 20 when drawing up codes of conduct. The costs incurred by ZARA on account of this project are covered from funds provided by the European Commission and the Federal Ministry for the Economy and Labour as part of the “Equal” programme.

161. The result of this project was that the already existing model guidelines of Municipal Department 20 were supplemented, training and team-building seminars were made accessible and staff members and customers were interviewed.

162. It can be said, by way of summary, that the measures triggered by the codes of conduct have led to better routine processes within Municipal Department 20, which can be used as a basis when implementing the new establishment and residence legislation, Federal Law Gazette I No. 100/2005. In addition, an e-learning tool and a manual for companies were developed which is accessible at <http://www.gleiche-chancen.at/manual/start.htm>, as well as a Best Practice Inventory, a collection of model examples of in-house measures against discrimination in Europe which addresses the issue of discrimination against persons with a migrant background (migrants, ethnic minorities) in private-sector companies.

### **Projects in the health sector**

163. Kaiser-Franz-Josef Hospital at the Sozialmedizinisches Zentrum Süd. The EU project “Migrant-Friendly Hospital”, in which 12 European hospitals participated, tried to identify emerging problems in everyday hospital life when caring for patients of different origins, as well as to analyse the problems and - in a next step - to develop models for solving them which are then implemented. These measures are meant to enhance the satisfaction of the patients concerned, but also of the hospital staff.

164. The project measures comprise identification of the medical departments where interventions will be required in the future; initial and continuing staff training (e.g. a course on intercultural contacts with patients); communication and patient information (e.g. comprehensive information for pregnant women at the department for obstetrics, in cooperation with FEM-Süd); promoting in-house and extramural projects to create awareness of the problem; forming networks to exchange information.

165. Head Office of the Vienna Hospital Association - Staff Development. Under the heading “Health Tandem”, ongoing continuing measures for medical staff in Vienna are meant to jointly develop strategies to create awareness and more understanding in contact with patients from other cultures and with different mother tongues. The idea is that the medical staff of the Vienna Hospital Association (nurses and doctors) should discuss personal experiences together with black women, and test new possibilities for communication.

166. Under the project participants from the medical staff of the Vienna Hospital Association are nominated; three follow-on seminars and three workshops are organized as a pilot project. A concluding event is planned for November 2005.

167. Academy for Continuing and Special Training/Medical-Technical Services. The series of lectures “Intercultural competence by encounters with the five world religions” is intended to communicate basic knowledge about the five world religions in order to be able to avoid conflicts in contacts with patients and their relatives with different religious backgrounds. Stereotypes will be examined in order to foster tolerance, as well as to contribute to cooperation characterized by mutual understanding. The needs of patients will be better met when staff are aware of the different concepts of disease, as well as of the ways of expressing pain. In order to reduce the conflict potential between the personal understanding of one’s disease and “Western medicine”, the series aims to create awareness in contacts with persons having different religious or cultural backgrounds.

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