Response to the list of issues with regard to the consideration of the 4th and 5th periodic reports submitted by Austria under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 5 and 6 May 2010 in Geneva

Articles 1 and 4

1. ***Please update the Committee with respect to the new Government's declared commitment to legally define torture in full conformity with article 1 of the Convention and to include a crime of torture in the Penal Code. Would this definition include all the elements contained in article 1 of the Convention?***

The government programme for the 24th legislative period (2008 – 2013) states (item F.3, page 131) that a definition of torture shall be included in the Penal Code (*Strafgesetzbuch, StGB*) and that protection from torture under penal law shall be revised. Moreover, on 29 January 2010, the Austrian National Council passed a resolution regarding the implementation of the Convention against Torture (78/E), requesting the Minister of Justice to submit an amendment to the Penal Code and any ancillary laws to the National Council for a decision that would comply with the objective (inclusion of a definition of torture in the Penal Code and revision of protection from torture under penal law). Work on the implementation of the resolution is ongoing.

2. ***Please clarify whether the attempt to commit torture and the complicity or participation in torture are also (with the introduction of the new crime of torture) punished under the State party's criminal law.***

Attempts to commit torture and complicity or participation in torture will be covered by the provisions of the general part of the Penal Code (sections 15 and 12) and would also be punishable.

3. ***Please update the Committee on the envisaged amendment in Penal Code aimed at incorporating the obligations deriving from the Rome Statute of the ICC regarding crimes against humanity and war crimes.***

The Ministry of Justice intends to work out a relevant preliminary draft in the course of the year 2010.

4. ***As requested in the previous concluding observations, please provide to the Committee information on cases of torture and ill-treatment since the consideration of last report where the aggravating circumstances as stated in section 33 of the Austrian Criminal Code, including racism and xenophobia, have been invoked in the determination of the sanctions for the crimes.***

The court must list all aggravating circumstances (section 33 of the Penal Code) in the reasons for the judgement. Together with special and general considerations of deterrence, these circumstances determine the sentence to be imposed in the individual case within the range of punishment provided by law for the offence in question. The public prosecutor's offices, whose members are familiar with the circumstances of the cases, were instructed to report on cases where section 33(5) of the Penal Code (invocation of racism and xenophobia) was applied in early 2009, but there were no reports for 2009. However, it cannot be excluded that in view of the

great workload of the everyday duties of the public prosecutor's offices, this reporting duty was not accorded sufficient attention, leading to no reports being made. In cases where application of section 33(5) of the Penal Code may suggest itself, i.e. charges under section 283 of the Penal Code (incitement to hatred) and under the National Socialism Prohibition Act, application of item 5 is excluded for legal reasons, as a racist motive already determines the punishment to be imposed (prohibition of double jeopardy).
The Ministry of Justice has installed a working group to improve the database for criminal statistics that also deals with the assessment of criminological phenomena such as racist motivation of offences regardless of the type of offence; options for assessment are being discussed in the working group. The results of the reporting obligation will continue to be collected and evaluated.

Article 2

5. ***Please elaborate on the measures taken, if any, to prevent ill-treatment of women in places of deprivation of liberty. Does the State party monitor sexual violence in places of deprivation of liberty, and if so, with what results? Please provide statistical data on the number of complaints received and investigated in this respect during the reporting period, as well as the number of prosecutions and convictions thereof.***

In the Austrian penitentiary system, there is only one separate prison for women (Schwarzau prison) due to the low imprisonment rate of women. The advantages of this are that fewer security measures are necessary and that a focus can be put on the specific problems of female offenders, serving to better achieve the objective of reintegration. The special requirements of women's prisons and prevention are taken into account specifically by assigning female prison officers to that prison. The Ministry of Justice has received no reports on sexual violence in prisons.

6. ***Please provide updated information to the Committee on the status of the legal aid program initiated in consultations with the Austrian Bar Association.***

Under the structures of the legal aid system in Austria, the Ministry of Justice transfers a lump sum to the Austrian Bar Association (*Österreichischer Rechtsanwaltskammertag, ÖRAK*) annually. This contribution serves to cover all legal aid services provided in civil and criminal proceedings. The lump sum compensation allocated by the Ministry of Justice is distributed to the service institutions of the bar associations of the *Länder* and serves to cover the tasks carried out by these institutions. The lump sum compensation came to a total of EUR 18.4 million (for civil and criminal proceedings) in 2009.

7. ***With reference to paragraph 11 of previous concluding observations and 67 of the State party's report, please indicate:***

> (a) ***Which authority - and at what stage - decides the instances where the defendants may be refused permission to call his or her counsel during interrogation;***

The Criminal Procedure Reform Act (*Strafprozessreformgesetz*, Federal Law Gazette I No. 19/2004), which entered into force on 1 January 2008, enshrined the

right of the defendant to have a counsel present during interrogation (section 164 paragraphs 1 and 2 of the Code of Criminal Procedure [*Strafprozessordnung, StPO*]). Under section 59 paragraph 1 of the Code of Criminal Procedure, the right of a defendant who has been arrested to contact a counsel may only be restricted if it appears necessary to prevent interference in ongoing investigations or corruption of evidence; in addition, the defendant may communicate with the counsel without surveillance under section 59 paragraph 1 of the Code of Criminal Procedure. Before commitment to a prison, surveillance of such contact is only permitted if there is a risk of interference and/or corruption. The option of refusing contact with a counsel and monitoring talks with a counsel is used very sparingly in practice. If contact with a counsel is refused or monitored, the defendant may raise an objection on grounds of violation of a right under section 106 of the Code of Criminal Procedure against such measures. Such objections will be decided by court order. The court reviews if the restriction of contact or surveillance of talks with a counsel was justified. Decisions on whether or not contacts with a counsel are admissible or monitored are taken by the criminal investigation department until commitment of the defendant to a prison, and by the public prosecutor after commitment.

(b) ***What is meant for "interference in ongoing investigation" and "corruption of evidence";***

Under section 59 paragraph 1 of the Code of Criminal Procedure, contacts of the defendant may be monitored before transfer to a prison and limited to the extent necessary for the granting of power of attorney and a general legal consultation if such measures appear necessary to prevent interference in ongoing investigations or corruption of evidence. This flexible rule makes it possible to take into account the specificities of the individual case as required by the European Court of Human Rights (ECtHR). There may be just cause for limiting contact with a counsel, for instance, if the defendant is suspected of being a member of a criminal organisation, if other members of such criminal organisation have not yet been arrested (cf. the report of the Justice Committee, 406th annex to the minutes of the National Council, 22nd legislative period, page 8), and if the risk of collusion or suppression of evidence (e.g. by means of "coded" instructions to inform certain persons) could not be prevented even by monitoring contact with a counsel. However, presumption of such risks is not sufficient; instead, there must be certain outcomes of the evidence on the basis of which it can be assumed that the presence of a counsel could interfere in ongoing investigations.

(c) ***What is the evidentiary value of the statements given during the interrogation by the defendant in the absence of the counsel;***

The Code of Criminal Procedure does not provide for a reduced evidentiary value of the record of the interrogation of the defendant in the absence of a counsel. Under section 164 paragraph 1 of the Code of Criminal Procedure (introduced by the Criminal Procedure Reform Act, Federal Law Gazette I No. 19/2004, in force as from 1 January 2008), the defendant is to be informed before interrogation that his testimony may serve in his defence, but may also be used as evidence against him. However, the defendant is free to recant his statements in the further course of proceedings or to present a different account of his actions. In such cases, it rests on the court (or on the public prosecutor in preliminary investigations) to consider such new information accordingly. The inadmissibility of testimony as evidence is governed by section 166 paragraph 1 of the Code of Criminal Procedure, which rules

out testimony to the detriment of the defendant obtained in interrogations by torture, or if the interrogation was carried out exerting other inadmissible forms of influence on free will and exercise thereof by the defendant, or using inadmissible interrogation methods if these violated fundamental rules of procedure, and if exclusion of such testimony is necessary to remedy such violations. Testimony given or obtained in such ways is null and void (section 166 paragraph 2 of the Code of Criminal Procedure).

(d) ***Whether this exclusion may apply to children in police custody.***

The right to have a counsel present during interrogation under section 164 paragraph 2 of the Code of Criminal Procedure applies to adolescents and young adults without limitations. The exception provided for in section 164 paragraph 2, 3rd sentence, of the Code of Criminal Procedure, applicable if the risk of interference in ongoing investigations or corruption of evidence must be averted, is not applicable to juvenile defendants (cf. section 37 paragraph 1, last sentence, of the Juvenile Court Act [*Jugendgerichtsgesetz, JGG*], for young adults in conjunction with section 46a paragraph 2 of the Juvenile Court Act). Furthermore, under section 37 paragraph 1 of the Juvenile Court Act, if an adolescent is not represented by a counsel during interrogation, the adolescent may have a trusted person present if he wishes. The adolescent is to be informed of this right in the legal information in the summons or, at the latest, before the interrogation begins.
Persons under the age of 18 must be allowed to inform a parent or legal guardian, or a family member living in the same household, youth welfare services or, if applicable, a representative of juvenile court or parole officer assigned to them, of their arrest (if they cannot be released immediately).
Children, i.e. minors under the age of 14, are only detained in exceptional cases until delivery to a parent, legal guardian or youth welfare services.

8. ***Please provide additional information to the Committee on the measures taken to expand representativeness of the police force through recruitment procedures which would better reflect the gender and ethnic composition of the population. Furthermore, please update the Committee on the results of the initiative taken by the Ministry of Interior in 2007 to encourage applications from naturalized and second-generation immigrants for the Vienna police. Is this initiative going to be replicated elsewhere in the country?***

Like the preceding programme, the government programme for the 24th legislative period (2008-2013), specifically the section on “Internal Security”, provides for a higher percentage of Austrian police officers with a migrant background (item B.1.2). Law enforcement is to reflect the composition of society so as to achieve the greatest acceptance possible and therefore also be able to work more efficiently. The aim of the current mid-term and long-term recruiting initiative “Vienna needs you” *(“Wien braucht Dich”*) is to encourage people with a migrant background to apply to pursue law enforcement careers. In this context, in view of the high percentage of citizens with a migrant background in Vienna, the Vienna Provincial Police Command began in late 2006, in cooperation with the city government, to explicitly address Austrian citizens with a migrant background using information events and print media such as posters, brochures etc. and to encourage them to apply to become police officers. The aim of the campaign was to increase the number of future law enforcement officers with specific linguistic and cultural background knowledge, in the interest of

modern, efficient and culturally sensitive police work, so as to make better use of the talents, skills and experience of population groups with a migrant background and therefore also take their interests into account to a greater extent. The target group comprised, in particular, adolescents and young adults who are second-generation immigrants, who were born in Austria or immigrated and grew up here, as they usually speak both German and their parents' native language, and have intercultural skills as well as access to migrant circles. As regards integrating migrants into police services, there is also constant, organisational information exchange with the other EU countries. In this context, however, it must also be pointed out that Austria's public administration, and therefore also law enforcement, can only accept applicants with Austrian citizenship, regardless of their ethnic background, who have passed the relevant selection procedure (education, health, good repute and citizenship). Under the applicable legal provisions in the Federal Constitution, the Competitive Tender Act (*Ausschreibungsgesetz*), the Public Service Act (*Beamtendienstrechtsgesetz*) and the Federal Equal Treatment Act (*Bundes-Gleichbehandlungsgesetz*), no exceptions can be made and no preferential treatment granted in selection procedures, including those for the police force, for Austrian citizens born in other countries or for applicants from ethnic minorities.

In addition, it should be mentioned that for new recruiting, the provincial police commands contact the regional placement services of the job centres (*Arbeitsmarktservice, AMS*) in their districts and provide them with the calls for applications also published in the media. The job centres therefore also serve as additional points of recruiting and information. Measures above and beyond those listed are as yet limited to new recruiting for the Vienna Provincial Police Command, but could be expanded to other *Länder* after this pilot phase. They include information events where jobseekers can get comprehensive, first-hand information on the law enforcement professions. The further education measures provided by the job centres to jobseekers are integrated to the extent that a minimum standard required for passing the entrance exams has been defined for job centre contractors that organise grammar and spelling courses. Due to the routine tasks required in police service, that standard is very high compared to other professions, which is why these further training courses – and the information events – are not limited to people with a migrant background, but are offered for all clients of the job centres equally. Under the provisions of the Competitive Tender Act of 1989, the applicants are ranked according to the scores achieved on the exam. Moreover, the entrance requirements are the same for all Austrian citizens. There are no special provisions for certain population groups.

In summary, it should be noted that under the existing admission criteria, numerous Austrians with a migrant background have been admitted. The success of these measures in general will determine in which way the programme can also be applied to the other *Länder*, which have already launched similar campaigns along the same lines.

As regards the ratio of women in the police force, as of 1 February 2010, 27,244 persons were employed as police law enforcement officers, of whom 3,274 were women, represented in all service groups and levels of qualifications. This amounts to a share of 12%.

Article 3

9. ***Please provide information on the number of reported cases of ill-treatment or physical abuse committed by law enforcement officials against asylum-seekers since the consideration of last periodic report. Please also indicate what the outcome of these reports/complaints have been, including investigations carried out, disciplinary and/or criminal proceedings initiated and sanctions imposed.***

Cases of alleged abuse of asylum seekers by law enforcement officers have been statistically recorded since 2009. In 2009, a total number of 28 preliminary investigations were initiated for alleged abuse by law enforcement officers reported by asylum seekers. Proceedings were dismissed in 16 of these cases and discontinued in one case, while proceedings are pending in 11 cases.

10. ***Please clarify whether and how the new Asylum Law effective as from 1 January 2006 meets the Committee's concerns expressed in its previous concluding observations.***

The comprehensive revision of the Asylum Act (*Asylgesetz*) as part of the amendments of the laws relating to aliens (*Fremdenrechtspaket*) in 2005 already made it possible to address a majority of the reservations expressed by the Committee in earlier observations. Moreover, further revisions were made by means of the Aliens Law Amendment Act (*Fremdenrechtsänderungsgesetz, FrÄG*) in 2009. In addition, it should be noted that all currently valid European directives have been implemented by Austria and that the steps necessary for implementation have made the Asylum Act easier to read and understand for laypersons.
Furthermore, the law now explicitly stipulates that asylum seekers who claim to have been victims of sexual abuse or to have been exposed to such a threat must be interrogated by persons of the same gender (for more details, see question 11c).
Meanwhile, the Basic Welfare Support Agreement (*Grundversorgungsvereinbarung*) – article 15a of the Federal Constitutional Act between the federal government and the *Länder* on the harmonisation of support for aliens in need of aid and protection – which has been in force since May 2004 has been implemented in provincial legislation by all *Länder*. Because the nature and extent of welfare services are set down in the Federal Assistance Act (*Bundesbetreuungsgesetz*) – which, though it concerns care provision in federal institutions, has served as the model for the relevant provincial laws – welfare services and conditions have now been clearly defined, and uniform and comprehensive care for aliens in need is now guaranteed throughout Austria.

11. ***Please provide the Committee with further information on:***

(a) ***The content of the Aliens' Police Act, which have reportedly resulted in an increased use of detaining asylum-seekers as well as of pre-deportation detention:***

As part of the amendments of the laws relating to aliens, section 76 paragraph 2 of the Aliens Police Act (*Fremdenpolizeigesetz, FPG*) provided for new grounds for pre-deportation detention so as to ensure better implementation of expulsion under the Asylum Act, in particular in the context of the application of the Dublin II Regulation (the reason being that numerous transfers to the state responsible under the Dublin Regulation were prevented or delayed by the "disappearance" of asylum seekers).

Due to restrictive court rulings (complaints against pre-deportation detention to the Independent Administrative Tribunals in the *Länder* and individual complaints to the Administrative Court and the Constitutional Court) and cautious application by the Austrian authorities, the number of persons in pre-deportation detention has continuously decreased in recent years.

In detail, developments in the numbers of persons in pre-deportation detention and more lenient measures have been as follows:

Year	2000	2001	2002	2003	2004	2005	2006*	2007*	2008*	2009*
Pre-deportation detention, incl. Dublin	14329	17306	11816	11173	9041	7463	8694 1330	6960 779	5398 331	5995 320
More lenient measures	1934	681	807	618	363	285	927	1158	1809	1877

*The increase in 2006 was related to the revised provisions for pre-deportation detention as a consequence of the entry into force of the amendments of the laws relating to aliens as of 1 January 2006.

(b) ***The number of persons below 18 in pre-deportation detention;***

The numbers of cases of pre-deportation detention imposed on aliens up to the ages of 18/19 years have developed as follows:

Year	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Pre-deportation detention of persons up to the ages of 18/19 years	1050 up to 19*	315 up to 19*	399 up to 19*	376	275	171	185	163	181	144

*For the years 2000 through 2002, statistics recorded the number of young adults up to the age of 19 years.

(c) ***The measures taken, if any, to adopt gender and age-sensitive approach to refugee status determination;***

Measures to address age-specific aspects:
Under section 64 of the Asylum Act, asylum seekers are to be supported by persons versed in law with special knowledge of asylum law and aliens legislation during the procedure on admissibility (legal advisers for the procedure on admissibility). In the case of asylum seekers who are unaccompanied minors, the legal adviser must take part in all interviews in the Initial Reception Centre (*Erstaufnahmestelle*) and in all interrogations in the course of the procedure on admissibility as the legal representative. Minors of age (14 years or older) whose interests cannot be represented by their legal representatives have the right to file and submit

applications. Upon submission of the application, the legal representative for procedures under this Act is the legal adviser in the Initial Reception Centre; after admission of the procedure and allocation to a care centre, it is the local youth welfare service institution of the *Land* in which the minor (under the age of 18) has been allocated to a care centre. If the legal adviser objects to an interview (section 19 paragraph 1) of a minor of age before the first interrogation in the procedure on admissibility, that interview is to be repeated in his presence. In the case of underage minors (younger than 14) whose interests cannot be represented by their legal representatives, the legal adviser serves as the legal representative from arrival at the Initial Reception Centre. Such aliens can only be interviewed in the presence of the legal adviser.
Article 17 of Council Directive 2005/85/EC of 1 December 2005 (Asylum Procedures Directive) further stipulates that in cases where an asylum seeker who is a minor is questioned, the personal interview must be carried out by a person who has the necessary knowledge of the special needs of minors. The Federal Asylum Agency *(Bundesasylamt*) has met this need so far by regularly integrating this specific issue into general training modules (e.g. dealing with vulnerable groups, general interrogation strategies and methods). A training project is currently being developed that is to specifically address the issue of dealing with underage refugees in asylum procedures.
As part of that training project (planned start of training: March 2010), the legal framework of the issue (national, European and international legislation), will be discussed in particular, and the expected UNHCR guidelines as well as the best practices of the various member states in this field will be communicated; in addition, the specific psychological aspects and requirements of the persons responsible in the procedure on admissibility and the decision-making process will be explored. Further training will also include specific interrogation methods and methods to ascertain the credibility of minors.

Measures to address gender-specific aspects:
Section 20 paragraph 1 of the Asylum Act explicitly stipulates that asylum seekers who claim to have been victims of sexual abuse or to have been exposed to such a threat are to be interrogated by persons of the same gender. In this context, the UNHCR has, for instance, invited States party to provide trained female chief interrogators for the asylum procedures in question wherever necessary and to ensure that female asylum seekers have access to such resources. For this reason, female interpreters must also be hired for such procedures wherever necessary and possible, for instance. Upon request, victims of violation of sexual self-determination also have the right to demand that the procedure be closed to the public. These needs are addressed in the training project mentioned above, with participation requirements ensuring that for each organisational unit, at least one person of each gender takes part in the training programme.

(d) ***The construction of a new and modern pre-deportation facility for 250 persons in observance of the recommendations made by the Council of Europe CPT and the Human Rights Advisory Board with respect to the concept of "open stations";***

With a view to meeting national and international requirements as well as guidelines for the implementation of pre-deportation detention in the best way possible, the construction of a modern pre-deportation detention centre is planned in Vordernberg, Styria.

The primary objective for the construction of a new detention centre to ensure aliens police procedures, departure or expulsion is to improve the current detention conditions for aliens in pre-deportation detention (in particular as compared to the traditional detention areas of police detention centres), incorporating human rights standards as well as national and international recommendations.
Based on international experience as well as the recommendations of the Human Rights Advisory Board and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), it is necessary to improve conditions in particular in the following respects:

- Respect for human dignity, especially as regards language and culture
- Treating detainees with the greatest possible consideration
- Giving detainees control over the course of their day and providing adequate activities
- Organisational and spatial separation from detainees under administrative law

The new pre-deportation detention centre is to provide room for up to 220 persons obliged to leave the country whose asylum or aliens police procedures make it necessary to impose restrictions on their freedom of movement.

In this context, the law enforcement strategy in Austria is based on a multi-tier programme, and detainees may in principle go through several phases of detention. As a rule, a person is initially detained in a secure unit in a police detention centre until it has become clear (e.g. by means of history and social assessment, willingness to return) what form of detention is appropriate for the person. If, after several days and according to objective criteria, it has been determined that the person can be integrated into regular detention, he/she will be transferred to the new pre-deportation detention centre in Vordernberg. By means of special support for the detainees and intensive, return-oriented counselling, willingness to voluntarily leave the country (in particular within the framework of the European Return Fund) is to be additionally promoted.
Characteristic features of the new centre include special provisions for establishing the identity of detainees and achieving their cooperation in order to obtain so-called return certificates (replacement travel documents).
In this context, special attention is accorded to vulnerable persons (unaccompanied minors) and families with children (age- and family-appropriate detention), on whom pre-deportation detention can be imposed only “in extreme cases and only for the shortest period possible”.
Uncooperative persons or persons with behavioural problems (conflict-prone or aggressive persons, persons who resisted arrest, persons who resisted deportation etc.) will continue to be detained in the existing police detention centres.

As regards the need for such an institution, reference is made in particular to Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJEU no. L 348 of 24 December 2008, p. 98ff). According to the Directive, detention is to be effected in special detention centres in principle. Under constitutional law provisions, all national law enforcement tasks as well as organisational responsibility for the pre-deportation detention centres are the duties of the state. In view of the complexity of tasks in detention, however, there is also room for cooperation between the state and private enterprises (e.g. building management, standard medical care, psychological and social care services etc.). Cooperation between public and private sector institutions

can be expected to lead to an efficient and effective provision of services while at the same time improving local job markets.

In the course of its involvement in the project to build a detention centre for returning third-country nationals under section 43 of the Federal Budget Act (*Bundeshaushaltsgesetz, BHG*), the Federal Ministry of Finance granted approval in principle for the conclusion of an agreement for the drafting of lease documents by the Federal Real Estate Corporation (*Bundesimmobiliengesellschaft, BIG*) in its letter dated 18 October 2007. Currently, there is a planning agreement with BIG which provides for the drafting of such a lease offer. After conclusion of the relevant zoning procedures, an EU-wide open, single-stage architecture and construction competition for architectural preliminary design and a subsequent negotiated procedure for the awarding of general contractor services under the Purchase Contract Awards Act (*Bundesvergabegesetz*) are planned for 2010.

12. ***With respect to paragraph 3 of the State party's comments to the Committee's previous concluding observations, please indicate:***

(a) ***The measures/safeguards taken to ensure that asylum-seekers are not deported/extradited before a decision on their appeal has been taken;***

In extradition cases, it is important to distinguish, first of all, if the extradition request was made by the (alleged) persecuting state or by a (safe) third country. In the latter case, there are no concerns to prevent extradition before a final decision has been taken in asylum procedures.

If, however, the extradition request was made by the (alleged) persecuting state, extradition is inadmissible under the provisions of section 33 of the Extradition and Mutual Legal Assistance Act (*Auslieferungs- und Rechtshilfegesetz, ARHG*), according to which the request must be reviewed by the independent courts in particular with regard to the existence of obstacles to extradition under international law resulting from the ECHR and the protocols thereto and other agreements under international law, especially the UN Convention against Torture. In this context, the provisions of section 19 paragraph 3 of the Extradition and Mutual Legal Assistance Act are also relevant, according to which extradition is to be declared inadmissible by the competent court if the person to be extradited is at risk of persecution due to his national origin, race, religion, ethnicity, social status, nationality or political views in the requesting state (so-called extradition asylum).

Austrian law currently includes no explicit stipulation of the circumstance that extradition to the (alleged) persecuting state is only admissible after a final decision has been taken in asylum procedures. Such a rule is, however, to be included in the course of the planned amendment of the provisions of section 13 of the Extradition and Mutual Legal Assistance Act, which relates to the case of concurrently pending extradition and asylum procedures.

During asylum procedures, asylum seekers are de facto protected from deportation. The decision on expulsion is taken by the asylum authorities (the Federal Asylum Agency [*Bundesasylamt*] and the Asylum Court [*Asylgerichtshof*]) concurrently with the denial of the application for international protection (asylum/subsidiary protection).

This decision is the basis of subsequent (if necessary forceful) removal from national territory initiated by the aliens police and carried out by the police. The question of deportation therefore arises only once a decision on expulsion has been taken, after the refoulement situation has been reviewed in the preceding procedure.

Removal from national territory during ongoing asylum procedures has only been admissible under certain conditions as from 1 January 2010 (as a measure against the wrongful filing of subsequent applications to prevent deportation). This is only possible, of course, on the condition that a legally effective decision has been taking in the preceding asylum procedure.

An appeal against a decision denying asylum on procedural grounds does not cause a stay of extradition, as a stay of extradition does not change the position of the appellant in appeal procedures in the case of a mere decision of jurisdiction (safe third country, Dublin decisions and decisions on inadmissible subsequent applications). However, to provide for special cases in which the lack of a stay of extradition as a result of the appeal would pose an unacceptable burden on the appellant, a stay of extradition may be granted by the Asylum Court as the court of appeal within 7 days based on a need for protection from refoulement. Granting a stay of extradition is therefore a matter for the Asylum Court – the legal successor of the Independent Federal Asylum Senate (*Unabhängiger Asylsenat*) as from 1 July 2008 – so that different decision-makers rule on the consequences of a decision denying asylum.

An appeal against a decision other than one denying asylum on procedural grounds, on the other hand, has the effect of a stay of extradition ex lege, though it may be disallowed under certain conditions (section 38 of the Asylum Act). In family procedures, if the appeal of one family member has that effect, all appeals have such an effect. This is not applicable in the reverse case, i.e. a decision denying asylum (non-granting of asylum) must be reviewed and pronounced separately in each individual case.

(b) ***The criteria used by the Independent Federal Asylum Senate to determine whether an asylum-seeker is at risk of refoulement;***

It is the duty of the judges of the Asylum Court to review, in the course of their decision, if deportation would violate Articles 2 or 3 of the ECHR or Protocols no. 6 or no. 13 to the Convention concerning the abolition of the death penalty, or if it would constitute a serious threat to the life or the physical integrity of the asylum seeker as a civilian as a consequence of arbitrary violence in the course of an international or domestic conflict. In this context, the following criteria are to be taken into account, for example (also on the basis of relevant court rulings):

- Massive detriment to the asylum seeker's health and treatment options in the country of deportation
- Extreme danger in the country of deportation (e.g. due to civil war)
- Threat to existence due to deprivation of the most basic means of subsistence (no income, no way of earning an income, no shelter, no social outreach to the asylum seeker)

In addition, the deportation of an asylum seeker must be preceded by a review under Art. 8 of the ECHR. This decision-making process of the judges of the Asylum Court

includes, without being limited to, the results of the following criteria ruled by the Constitutional Court and set down as law in the amendment to section 10 paragraph 2(2) of the Asylum Act:

- The nature and duration of residence so far and the question if the alien's residence so far has been illegal
- The actual existence of a family life
- Protection of private life
- Degree of integration
- The alien's links to his country of origin
- Lack of a criminal record
- Breaches of public order, in particular as regards asylum law, aliens police law and immigration law
- The question if the private life and family life of an alien originated at a point in time when all those involved should have been aware of his uncertain residence status

(c) ***How many cases of appeal for a stay of extradition based on possible non-refoulement have been rejected by the Independent Federal Asylum Senate;***

The judges of the Asylum Court have to decide whether or not to grant a stay of extradition in the following cases:

- In so-called Dublin procedures (procedures to decide on the jurisdiction of Austria or another EU Member State for carrying out the asylum procedure)
- In procedures on subsequent applications (res judicata)
- In procedures in which the court of first instance, the Federal Asylum Agency, denied a stay of extradition (for instance in procedures where the asylum seeker is from a safe country of origin)

In 2009, the Asylum Court granted stays of extradition in about 600 cases:

- in approx. 100 procedures on subsequent applications,
- in approx. 420 Dublin procedures and
- in approx. 70 other procedures.

(d) ***To what extent legal aid is provided in the context of deportation and expulsion procedures;***

Currently, legal aid in the sense of assuming the costs of legal advice in aliens police procedures is not provided, with the exception of legal aid for procedures before the supreme courts. Aliens are at liberty to be represented by a legal counsel. However, a system of legal aid is to be created as part of the relevant provisions of the EU's Return Directive to be implemented by the end of the year 2011.

(e) ***The number of applicants who have been deported or extradited while an appeal of a decision denying asylum based on a procedural issue has been waiting a decision, disaggregated – if possible – by age, gender, ethnicity and country of origin.***

Such statistical data are not collected. We would ask your understanding that no estimates or approximate data can be made or given.

13. ***Please update the Committee on the case of the extradition to Egypt of Muhammad ‘Abd al-Rahman Bilasi-Ashri - which was stayed pending appeal before the European Court of Human Rights - and indicate:***

(a) ***At what level diplomatic assurances were sought;***

(b) ***The legal enforceability of the guarantees sought;***

(c) ***If there are follow-up monitoring mechanisms in place to assess whether these assurances would be honoured.***

(d) ***How this case is compatible with the State party’s statement that “Austria has never ordered an extradition on the basis of diplomatic assurance for the protection against torture”.***

Under Austrian Law, decisions relating to requests for extradition are taken by the competent courts. In case an extradition is declared admissible by the competent courts, the final decision on extradition rests with the Minister of Justice, who has to take into account i.a. Austria’s obligations under international law.

In the case of Mr. Bilasi Ashri, the Appellate Court of Vienna, on 12 November 2001, consented to the extradition under several conditions. The Minister of Justice approved the extradition subject to the conditions set out in the court‘s decision. Furthermore, it was decided that the extradition would only take place if Mr. Bilasi Ashri would be allowed to leave the territory of the requesting State within 45 days in case of acquittal; also a request was made to allow Austrian officials regular visits. The decision was communicated by the Foreign Ministry of Austria through diplomatic channels to the Egyptian side on 10 January 2002 and accepted by Egypt on 20 December 2004.

Due to the sensitivity of the case no order was given for an actual extradition. On 14 November 2005, the ECtHR, which was seized by Mr. Bilasi Ashri, decided to indicate to the Austrian Government under Rule 39 of the Rules of the Court that the applicant should not be extradited until further notice. The extradition procedure was suspended in the interest of the proper conduct of the proceedings before the ECtHR. The proceedings before the ECtHR are still ongoing.

The Austrian position concerning diplomatic assurances was further clarified, e.g. in the written response to a parliamentary inquiry on diplomatic assurances of 5 January 2006. Accordingly, Austria is firmly committed to the absolute prohibition of torture and the full respect for the obligations of States in relation to the question of extraditions, in particular under Art. 3 of CAT and Art. 3 of ECHR, which clarify that an extradition to a third country is permissible only, when it can be ascertained that the person to be extradited would not be subjected to torture or inhuman or degrading treatment. Any concern that a person to be extradited might be subjected to torture or inhuman or degrading treatment can not be compensated by diplomatic assurances.

Based on this policy, no extradition took place on the basis of diplomatic assurances. Also in the case of Mr. Bilasi-Ashri, an extradition has not been ordered and he continues to live in Austria. Due to the overall policy regarding diplomatic assurances, there is no relevant experience relating to sub-questions b) and c).

Articles 5 and 7

14. ***Please provide information on whether domestic legislation may provide for the establishment of universal jurisdiction for the crime of torture. Please inform on any application of this jurisdiction by the State party's courts, if any.***

Section 64 paragraph 1(2) of the Penal Code provides for universal jurisdiction, regardless of punishability in the state in which the crime was committed, if the perpetrator is an Austrian civil servant. Moreover, universal jurisdiction, on the condition of punishability in both states, applies to Austrian perpetrators in general and to foreign perpetrators if they are resident in Austria and have not been or cannot be extradited.

15. ***Please provide information on cases where the State party has directly applied the Convention to extradite offenders suspected of having committed acts of torture, or otherwise has establish its jurisdiction for the purpose of prosecution of such offenders before domestic courts.***

Under section 64 paragraph 1(6) of the Penal Code, Austrian penal laws apply to crimes committed in other countries if Austria is under an obligation to prosecute such crimes regardless of the penal laws of the country in question. Section 64 paragraph 1(6) of the Penal Code, which expands Austrian jurisdiction in line with international standards, governs the obligation to extradite or prosecute (*aut dedere aut judicare*). Prevailing jurisprudence and court decisions reject primary prosecution of genocide based on section 64 paragraph 1(6) of the Penal Code with reference to article VI of the Convention on the Prevention and Punishment of the Crime of Genocide, Federal Law Gazette no. 1958/91, as this provision primarily requires prosecution by the state in which the crime was committed or by an international tribunal (*Brandstetter/Hafner* in WK2 StGB section 321(57); *Mayerhofer*, JBl 1994, 568; *Höpfel/U.Kathrein* in WK2 StGB preliminary remarks on sections 62 to 67 margin no. 10).

Article 10

16. ***Please provide detailed information on training programs for judges, prosecutors, forensic doctors and medical personnel dealing with detained persons, to detect and document physical and psychological sequelae of torture. Do such programs include specific training with regard to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, known as the Istanbul Protocol?***

<u>Judicial further education:</u>
Instruction on the issue of torture is an integral element of seminars on fundamental rights that judges and public prosecutors have to take in the course of their training and that are regularly offered in the course of further education. Since early 2008, training has included a mandatory three-day module on human rights, a seminar during which future judges and public prosecutors also receive information on article 3 of the ECHR. Moreover, fundamental rights are one of the subjects of bench examinations as regulated by section 16 of the Service Regulations for Judges and Public Prosecutors (*Richter- und Staatsanwaltschaftsdienstgesetz, RStDG*).

In judicial further education, the issue is addressed in courses on the topics of victim protection and human trafficking, as well as extradition and asylum, that regularly take place every year (for instance, in a seminar on human trafficking in Graz in June 2008). In 2007, the annual conference of the judiciary (*RichterInnenwoche*) focused on the issues of the judiciary and human rights, and a two-day event on the issues of human rights and criminal justice took place in late September 2008 in Innsbruck.
In 2009, several seminars on the topic of fundamental rights were held that also dealt with the issue of torture (e.g. “Body codes: Medical options, physical realities and the classic fundamental rights of persons” on the 2nd Fundamental Rights Day and the seminar “Fundamental rights in judiciary practice, dogmatic basics and knowledge of fundamental rights provisions relevant to civil law and penal law practice”).
An excursion to the ECtHR for Austrian judges is held once a year.
Austrian judges and public prosecutors also take part in international conferences on the issue, e.g. OSCE conferences or events of the Ludwig Boltzmann Institute of Human Rights.

In the course of training and further training for police physicians, raising doctors’ awareness of traumatic and psychological events is emphasised. In addition, increasing attention is paid to intercultural differences in the presentation of symptoms. There are plans for such training courses to also include joint training sessions for doctors, psychologists and legal experts in 2010.

Arrested persons are given a standardized patient history sheet agreed on with the Human Rights Advisory Board which they complete themselves and which is discussed with the police physician in the course of the initial medical exam. If psychological after-effects of torture are detected, the person is immediately referred to a psychiatrist. If physical signs or injuries are detected in the course of the initial exam, the detainee will be extensively questioned as to their causes and the injuries documented.

17. ***Please elaborate on the kind of training provided to officials dealing with the expulsion, return or extradition of asylum-seekers.***

Working in the field of asylum poses great demands on the staff of the Federal Asylum Agency: as regards technical knowledge, they are confronted with national, European and international legislation that is frequently amended and the interpretation of which is subject to constant change due to court decisions. Constant further education and quality assurance are vital and necessary to enable decision-makers to take sound decisions in this difficult context. In the past years, the Federal Asylum Agency has therefore developed an internal training model consisting of several basic modules and additional modules building on that basis. The model is flexible and can be adjusted to new requirements in training. As a matter of course, such training also includes the exhaustive legal review of the presence of the conditions for a decision to extradite. The Ministry of the Interior has defined specific implementing rules for the return of aliens (including asylum seekers) that both ensure the implementation of the measures decided by the authorities and offer the officers of the public security service accompanying them the necessary legal certainty.
Based on these rules, the following training programme has been developed for officers assigned to accompany returning aliens:

Introduction to legal matters relevant to their assignment (relevant provisions of the Security Police Act (*Sicherheitspolizeigesetz, SPG*), Ordinance on Guidelines (*Richtlinien-Verordnung*), laws relating to aliens, Tokyo Convention and relevant aviation law etc.), applied psychology and conflict management, human rights and fundamental freedoms (ECHR), tasks in preparation for return (care during pre-deportation detention), operational tactics (employing the necessary control and restraint techniques) and operational resources, English, emergency training in First Aid, medical lecture on positional asphyxia, familiarisation with airport procedure (check-in, security checks, boarding etc. for deportation procedures).
These topics are the subject of training on five working days during basic instruction and the focus of annual three- to four-day seminars.

18. ***Is there mandatory training provided on racism awareness and cultural diversity for relevant authorities, including law enforcement officials and migration authorities? Furthermore, is there special training provided for or available to police officers dealing with victims of racist crimes?***

In principle, an obligation for staff of the Federal Asylum Agency to actually participate in such further education (see above) derives from section 58 (5) of the Asylum Act. For this purpose, the Agency's human rights department keeps a centralised further education list in which the training and further education courses taken by each employee are recorded. After training modules have been completed, the Agency's human rights department issues certificates to the participants. In addition to the basic training course mentioned above and the additional modules that build on it, employees of the Federal Asylum Agency can also (voluntarily) take part in training courses conducted by the Federal Security Academy of the Ministry of the Interior (SIAK) and in seminars of the Anti-Defamation League (ADL). Courses offered in the past years have comprised social skills (including intercultural communication – encounters with different cultures, dealing with human crises) as well as human rights education (including ethic and human rights dimensions of police action, fundamental rights and human rights, police and Africans).
In the course of the training and further education of Austrian police officers and employees in the public security service, the issue of human rights and related topics such as racism and intolerance are given high priority by means of a broad range of training courses.
These topics are addressed by means of different approaches. While awareness-raising as regards the language used by officers had been a focus of attention on the part of the Ministry of the Interior in the past, the recommendations of the Human Rights Advisory Board have led to the implementation of important specific elements as part of existing training courses.
Heightened attention is given to language use during training and further education of trainers, so that police officers undergo relevant awareness-raising measures as early as their initial training. The projects “Police.(Em)power.Human.Rights” (*Polizei.Macht.Menschen.Rechte*) and “Police and Africans” in particular contribute to addressing prejudice that may be held by some and working against potentially held generalisations.
Furthermore, the project “Police action in a multicultural society” should be mentioned, which employs confidence-building measures to promote close contact between police officers and minorities or persons of non-Austrian origin.
In addition to the activities listed, the seminars “A World Of Difference” have been carried out in cooperation with the Anti-Defamation League as part of further

education for police officers since 2001. These seminars serve to raise awareness among all officers with regard to racism and discrimination. Participation is mandatory, both during basic training and further education. Promoting empathy and understanding for others and their life contexts is one of the essential basics of these training seminars. Using interactive individual work and group work, role-playing exercises, case analyses, films and simulations, solutions and alternative ways of acting are developed.
The systemic approach stipulated in the structural plan for human rights education is implemented in coordination with instruction on relevant legal standards in the course of the training and further education of police officers. The priority topic “Human rights, ethics and police action” represents as broad a basis as possible of contents that have repeatedly been priorities in training and further education in the past years. This topic, considered a “temporary priority focus”, is intended to underline the special significance of these issues in further education and is implemented by means of various kinds of further education measures. This focus exhaustively covers the issues that often arise between human rights and police action, and therefore also includes the issue of racism in general and in the context of the police force.
Moreover, the structural plan for human rights education is also implemented in the Ministry of the Interior using the human rights manual prepared by a member of the Human Rights Advisory Board.
Constant evaluation of all measures taken in training and further education, as well as integration of external experts into all projects, ensures a continually high standard for all training courses and events initiated and conducted by the General Directorate of Public Security (*Generaldirektion für die öffentliche Sicherheit*).
Human rights were also a focus of further education for operational trainers in 2007. In addition, communication and how to talk to offenders were a focus in the annual priorities for operational training.
A focus on “Human rights and language use in police action” is planned for further education for operational trainers in 2010.

Article 11

19. ***Please provide up-dated information on the number of persons and the occupancy rate of all places of deprivation of liberty.***

Number of prisoners/occupancy level (as of 13 January 2010):

	Court remand detention		Administrative remand detention		Administrative penal imprisonment		Pre-deportation detention		Total	
	m	f	m	f	m	f	m	f	m	f
Bludenz	0	0	0	0	11	1	2	0	13	1
Eisenstadt	0	0	0	0	7	0	10	0	17	0
Graz	2	0	1	0	21	2	32	2	56	4

Innsbruck	0	0	0	0	4	1	12	0	16	1
Klagenfurt	1	0	1	0	18	0	17	1	37	1
Leoben	0	0	1	0	4	0	7	0	12	0
Linz	2	0	0	0	11	0	0	0	13	0
Salzburg	0	0	0	0	8	0	18	1	26	1
Schwechat	0	0	2	0	0	0	10	0	12	0
St. Pölten	2	1	1	0	5	0	5	0	13	1
Steyr	0	0	0	0	6	0	6	0	12	0
Villach	0	0	0	0	9	1	7	0	16	1
Wels	1	0	1	0	5	1	17	0	24	1
Vienna	17	0	11	3	91	11	210	12	329	26
Wr. Neustadt	0	0	0	0	1	0	2	0	3	0
Current day	25	1	18	3	201	17	355	16	599	37
Previous day	22	0	23	4	192	17	356	15	596	37
Change	3	1	-5	-1	9	0	-1	1	3	0

The following figures were recorded for the prisons (number of detainees and capacity utilisation as of 1 December 2009):

As of 1 December 2009	Occupancy	Capacity utilisation
Prison Eisenstadt	164	101%
Prison Vienna - Favoriten	89	88%
Prison Vienna - Favoriten, detached unit Münchendorf	10	83%
Prison Feldkirch	137	113%
Prison Feldkirch, detached unit Dornbirn	36	92%
Prison Garsten	378	105%
Prison Gerasdorf	110	90%
Prison Göllersdorf	162	98%
Prison Hirtenberg	367	98%
Prison Hirtenberg, detached unit Münchendorf	48	100%
Prison Innsbruck	435	92%
Prison Jakomini	449	101%
Prison Jakomini, detached unit Paulustor	51	73%
Prison Vienna - Josefstadt	1223	124%
Prison Vienna - Josefstadt, detached unit Wilhelmshöhe	43	64%
Prison Graz - Karlau	467	99%
Prison Graz - Karlau, detached unit Lankowitz	32	62%
Prison Klagenfurt	322	95%
Prison Klagenfurt, detached unit Rottenstein	43	86%

Prison Korneuburg	179	103%
Prison Korneuburg, detached unit Stockerau	55	93%
Prison Krems	61	102%
Prison Leoben	183	89%
Prison Leoben, detached unit Judenburg	24	57%
Prison Linz	206	92%
Prison Linz, detached unit Asten	122	82%
Prison Vienna - Mittersteig	92	97%
Prison Vienna - Mittersteig, detached unit Floridsdorf	44	80%
Prison Ried	112	78%
Prison Salzburg	225	109%
Prison Vienna - Simmering	189	83%
Prison Vienna - Simmering II	260	129%
Prison Sonnberg	357	102%
Prison St. Pölten	230	94%
Prison Stein	673	88%
Prison Stein, detached unit Oberfucha	20	53%
Prison Steyr	59	94%
Prison Suben	216	94%
Prison Schwarzau	171	89%
Prison Wels	150	96%
Prison Wr. Neustadt	239	113%
Total occupancy as of 1 December 2009	**8433**	**98.56%**
Total capacity	**8556**	

20. ***Please provide disaggregated statistical data regarding reported deaths in custody according to location of detention, sex, age, ethnicity of the deceased and cause of death since the consideration of last periodic report. Please make available detailed information on the results of the investigations in respect of those deaths, and notably alleged suicides, and measures implemented to prevent the reoccurrence of similar violations.***

Information of the Ministry of the Interior:

	Date	Place of detention	Sex	Age	Ethnicity	Cause of death
a)	22 Feb. 2005	Vienna, police detention centre	male	38	Algerian citizen	Suicide by hanging
b)	4 July 2005	Stainz, police station	male	58	German citizen	Suicide by ingesting disinfectant
c)	24 Jan. 2008	Feldkirch, police station	male	25	Austrian citizen	Suicide by hanging

Ad a) The Algerian citizen who had been in pre-deportation detention was found hanged in his cell in the course of a regular half-hourly cell inspection. He had tied strips of a sheet together, put them around his neck and tied them to the bars on the window.
Measures taken: Focused exploration of previous histories and earlier integration of psychiatrists initiated, awareness-raising among correctional officers.

Ad b) On 4 July 2006, a suicide occurred at a police station by means of ingesting a chemical substance (sanitary cleaning agent). A trusted person had appeared and asked the officers for a drink of water for the suspect. A short while later, the detainee

collapsed and vomited. At the intensive care unit, the suspect suffered respiratory arrest and could not be revived. It was determined that he had come into possession of a disinfectant, which he had ingested with suicidal intent.
Measures taken: In the course of reality-based training and further education carried out to ensure fulfilment of primary tasks, the departments concerned were explicitly sensitised to any automatic actions and routines in daily operations so as to prevent similar cases.

Ad c) On 22 January 2008 at 5.05 pm, a 25-year-old man was arrested by officers of the Feldkirch police station. On 23 January 2008 at 8.05 pm, the detainee was examined by the physician assigned by the city at his request. An illness was detected, medical measures were ordered and implemented, and the detainee was found to be physically fit to remain in custody. On 24 January 2008 at 6.50 am, the detainee was found hanged in the arrest cell of the Feldkirch police station. No indications relevant to suicide were found before or during detention, and the detainee's behaviour was described as "civil and polite" by officers.
Measures taken: raising awareness among officers. A joint interdisciplinary working group has been installed. In the course of case analyses, it was found that in all three cases, there had been no behavioural abnormalities and no preceding indications of suicidal intent.

Information of the Ministry of Justice:
Suicide prevention research has shown that single cells are the major factor facilitating suicide. For this reason, a cell allocation programme has been developed to allow for a better assessment of this risk. Upon initial commitment of a detainee, prison officers also record circumstances that might contribute to suicide, which facilitates subsequent situational assessment. As only objective criteria are recorded in the process, even in the case of a positive result, no statement about suicide risk can be made for individual cases, but this measure broadens the basis for decisions on cell allocation. Although the programme is not a psychiatric or psychological history and diagnosis tool, it provides significant support when deciding on the form of detention (single cell or shared cell).
As a result of data collection, a guideline for cell allocation based on the traffic light system is established:
- "Green" means that there are no objective circumstances that speak against detention in a single cell.
- "Amber" also means that there is no special need for action. However, if possible, a single cell should not be allocated. If that is not possible, a reason must be given in the relevant input box. In such cases, the prisoner is to be presented to the prison's in-house specialists in the course of regular operations.
- "Red" means that the prisoner is not to be given a single cell. As soon as the resources of the prison in question permit it, the prisoner is to be presented to specialists (psychologist, psychiatrist or general physician/emergency physician). Until such time, the "listener model" is to be used, if applicable. Moreover, the prisoner is to be integrated into a daily structure (work, ergotherapy etc.) as much as possible.
As from 4 December 2007, the programme has been implemented throughout Austria (with the exception of the prisons at Vienna-Josefstadt and Göllersdorf, as immediate additional medical exams are carried out at these prisons).

Deaths in 2009:

	Sex	Date of birth	Prison	Date of death	Cause of death
1	m	10/05/1978	Göllersdof	18/01/2009	Cardio-respiratory arrest
2	m	23/07/1962	Göllersdof	05/02/2009	Run over by train
3	m	30/07/1986	Feldkirch	09/02/2009	Drug abuse
4	m	31/05/1957	Stein	18/02/2009	Cardio-respiratory arrest
5	m	22/11/1977	Stein	21/02/2009	Hanging
6	m	19/02/1939	Suben	21/02/2009	Kidney and heart failure
7	m	01/04/1959	Stein	01/03/2009	Liver cirrhosis
8	m	28/12/1965	Stein	16/03/2009	Hanging
9	m	26/03/1963	Garsten	17/03/2009	Suffocation
10	m	21/01/1980	Sonnberg	21/03/2009	Drug abuse
11	m	06/04/1980	Garsten	01/05/2009	Drug abuse
12	m	01/03/1948	Stein	27/04/2009	Liver cirrhosis
13	m	24/10/1975	Josefstadt	19/05/2009	Multiple organ failure
14	m	24/01/1961	Josefstadt	01/06/2009	Unknown
15	m	08/03/1980	Karlau	14/06/2009	Epileptic seizure
16	m	27/03/1964	Jakomini	24/06/2009	Hanging
17	m	12/09/1954	Linz	11/06/2009	Hanging
18	m	26/03/1960	Stein	02/07/2009	Cancer
19	m	12/03/1951	Stein	24/07/2009	Coma hepaticum
20	m	16/06/1974	Karlau	19/10/2009	Hanging
21	m	20/03/1979	Karlau	26/11/2009	Hanging
22	m	16/07/1953	Linz	21/11/2009	Suffocation

Deaths in 2008

	Sex	Date of birth	Prison	Date of death	Cause of death
1	m	30/09/1976	Stein	27/01/2008	Pulmonary embolism
2	m	06/04/1940	Jakomini	02/02/2008	Cardio-pulmonary arrest
3	m	22/07/1976	Josefstadt	02/02/2008	Drug abuse
4	m	10/11/1949	Leoben	04/02/2008	Heart failure
5	m	14/05/1924	Josefstadt	04/02/2008	Shot to the head
6	m	09/03/1962	Stein	08/02/2008	Heart attack
7	m	09/08/1961	Jakomini	11/02/2008	Cerebral oedema
8	m	21/09/1965	Linz	15/03/2008	Hanging
9	m	28/04/1949	Stein	16/03/2008	Lung cancer
10	m	21/05/1950	Göllersdorf	06/04/2008	Drowning
11	m	12/01/1953	Josefstadt	15/04/2008	Cardio-respiratory arrest
12	m	10/03/1948	Josefstadt	20/04/2008	Heart attack recurrence

13	f	16/01/1988	Schwarzau	08/05/2008	Drug abuse
14	m	24/03/1985	Karlau	29/05/2008	Hanging
15	m	07/06/1957	Garsten	31/05/2008	Liver cirrhosis
16	m	18/11/1989	Gerasdorf	16/06/2008	Hanging
17	m	22/12/1957	Göllersdorf	17/06/2008	Cardio-respiratory arrest
18	m	06/07/1959	Krems	23/06/2008	Hanging
19	m	01/01/1935	Stein	07/07/2008	Cardo-respiratory arrest
20	m	11/02/1955	Göllersdorf	16/07/2008	Lung cancer
21	f	24/05/1951	St. Pölten	25/07/2008	Liver cancer
22	m	14/04/1975	Innsbruck	02/08/2008	Hanging
23	m	06/04/1972	Leoben	09/09/2008	Cerebral swelling
24	m	28/08/1972	Suben	10/10/2008	Drug abuse
25	m	03/02/1964	Suben	19/10/2008	Heart and lung failure
26	m	06/06/1962	Salzburg	08/11/2008	Hanging
27	m	25/06/1970	Stein	09/11/2008	Tumor, heart attack
28	m	01/05/1976	Stein	01/12/2008	Drug abuse

Deaths in 2007

	Sex	Date of birth	Prison	Date of death	Cause of death
1	m	13/08/1960	Graz-Karlau	16/01/2007	Hanging
2	m	02/05/1981	Innsbruck	18/1//19/1/07	Drug abuse
3	m	16/06/1969	Salzburg	15/02/2007	Hanging
4	m	03/03/1937	Stein	19/02/2007	Gastric haemmorhage
5	m	11/06/1965	Josefstadt	04/03/2007	Heart attack
6	m	23/12/1938	Stein	25/03/2007	Myocardial infarction
7	m	10/08/1980	Stein	03/04/2007	Hanging
8	f	01/08/1947	Josefstadt	14/04/2007	Suicide
9	m	25/08/1985	Wr.Neustadt	20/04/2007	Hanging
10	m	12/12/1973	Linz	28/05/2007	Hanging
11	f	20/09/1948	Schwarzau	05/03/2007	Fall from a window
12	m	02/12/1960	Garsten	31/05/2007	Hanging
13	m	24/10/1986	Korneuburg	03/06/2007	Hanging
14	m	01/10/1974	Stein	14/06/2007	Cardio-respiratory arrest
15	m	02/12/1974	Simmering	29/06/2007	Drug abuse
16	m	12/12/1975	Josefstadt	12/07/2007	Hanging
17	m	17/07/1973	Simmering	22/07/2007	Drug abuse
18	m	12/04/1971	Krems	26/07/2007	Drug abuse
19	m	30/11/1956	Sonnberg	06/06/2007	Bronchial carcinoma
20	m	08/01/1955	Göllersdorf	07/08/2007	Bronchial carcinoma
21	m	31/07/1967	Göllersdorf	19/08/2007	Terminal AIDS

22	m	07/05/1970	Josefstadt	11/09/2007	PML (HIV positive)
23	m	30/09/1953	Stein	04/11/2007	Heart attack recurrence
24	m	15/03/1984	Leoben	15/11/2007	Hanging
25	m	28/02/1978	Salzburg	22/11/2007	Cut injury
26	m	27/04/1943	Graz-Karlau	24/06/2007	Hanging

Any death occurring in a prison is immediately reported to the public prosecutor's office, which initiates preliminary investigations to determine whether or not third-party responsibility can be excluded. To determine third-party responsibility, where applicable, the public prosecutor's office generally orders a forensic post-mortem.

In addition to the public prosecutor's investigations, the governor of the prison conducts investigations in cases of suicide to determine if and how a suicide could have been prevented. This includes reviews of what measures are to be taken in similar cases in future in order to reduce the number of suicides and apply preventive measures in a more effective way.

21. ***Please inform the Committee of measures taken to protect and guarantee the rights of vulnerable persons deprived of their liberty, notably; women, persons suffering from mental illness and children.***

As part of the justice system, the prisons are under the control of the Ministry of Justice. Like all public institutions, the prison authorities are regularly audited by the Court of Auditors as an agency of Parliament. In addition, the Ministry of Justice invites all representatives to the National Council to visit and inspect prisons at any time without prior announcement.

Legal, effective, economic and efficient administration is ensured by the Internal Audit Department, which has the duty of regularly carrying out and reporting on inspections of all prisons and the prison authorities. In the process, the Internal Audit Department is charged with paying particular attention to respect for human rights in prison practice.

A prison committee is installed at the seat of each provincial court responsible for penal matters in the provincial capitals (and the seat of the provincial court of Feldkirch in Vorarlberg); these committees are tasked to ensure exact compliance with regulations on prisons, in particular as regards the treatment of sentenced prisoners. The prison committees in the *Länder* have to visit each prison situated in the *Land* without prior announcement at least once a year. Their observations are to be reported to the Ministry of Justice. Based on the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the relevant Commission of the Council of Europe (CPT) has the right to visit any Austrian prison.

A further instrument to ensure the legality of the action taken by prison authorities is the right of all sentenced prisoners to lodge complaints. Prisoners can file complaints against any decision, instruction or action of prison staff that has a bearing on their rights. Under section 11a of the Execution of Sentences Act (*Strafvollzugsgesetz, StVG*), complaints against instructions given by the prison governor are handled by the complaints tribunals established at the Higher Provincial Courts. The complaints

tribunals are panels of judges corresponding to the requirements to tribunals under article 6 of the ECHR. Prisoners can also file complaints to the supervisory authorities. Complaints to the Constitutional Court and the Administrative Court as well as the Ombudsman Board are also admissible.

As regards the present situation in prisons, it should be noted that women are detained separately from men, either in separate units or in a separate prison, the Schwarzau prison. Under certain conditions, female prisoners are allowed to have their children with them (until the latter are 3 years old at the latest). They are housed in so-called mother-child units. In addition, work programmes and various leisure time activities take into account the special needs and interests of women.

There is also separate detention of juvenile offenders, who are detained separately from adults in distinct units. Moreover, there is a prison exclusively for juvenile offenders (Gerasdorf prison). During imprisonment, the focus is on training and education for juvenile offenders; in general the care for juvenile inmates is far more comprehensive than for adults. Leisure time activities emphasise sports and physical exercise. Prison officers receive additional specific training for dealing with this special group of prisoners.

Similar provisions are made for mentally ill prisoners, for whom there are three major prisons in Austria. Apart from these separate prisons, such prisoners are also detained in distinct units, separate from other prisoners. Medical care and psychiatric care are the priorities for this group of prisoners.

As regards police detention facilities, constant efforts are made to improve the conditions of detention and confinement. In this respect, the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), which most recently visited Austria from 15 to 25 February 2009, are being integrated into strategies for action. Detention conditions in the federal police directorates and police stations visited were satisfactory and were observed without comment. In the past years, special attention has been devoted to dealing with prisoners in emergency situations and exceptional situations, and to professional crisis management in such situations. Police detention facilities are also regularly inspected by the Human Rights Advisory Board. The obligation to treat prisoners in a way that respects their dignity and shows as much consideration as possible derives from article 1 paragraph 4 of the Personal Freedoms Act (*Bundesverfassungsgesetz über den Schutz der persönlichen Freiheit, PersFrSchG*) and article 3 of the ECHR.

Section 3 paragraph 2 of the Ordinance of the Federal Ministry of the Interior on the detention of persons by the security authorities and officers of the public security service, Federal Law Gazette II 1999/128, as amended by Federal Law Gazette 2005/439 on 22 Dec. 2005, explicitly stipulates a duty of care on the part of the officers supervising them, in particular as regards vulnerable persons. For the detention of women, provisions are made that there are female officers in charge.

All persons who are detained in police detention centres or in police custody have to be examined by a police physician to ascertain their physical fitness to remain in custody without undue delay, though at the latest within 24 hours of the beginning of detention. Such exams are documented exhaustively, with the patient history sheet

completed by the detainee taken into account in the process. If a detainee indicates a group of symptoms relating to psychiatry, mental illness, epilepsy etc. in the list of questions (available in 42 languages), a psychiatrist must be called in for further specialist examination and evaluation in case of uncertain psychological conditions. Detention of persons with severe mental or physical illnesses, pregnant women and women during a period of eight weeks after giving birth is inadmissible.
Children under 14 years old are not detained in police detention centres or in police custody.

22. ***Please update the Committee on the result of the work of the group of experts appointed by the Federal Ministry of Justice who are studying the possible reintroduction of the use of Taser X26 stun guns in the penal service.***

The Taser X26 stun gun has been reapproved as a weapon in the Austrian penal system since June 2009 following final trial use. Before trial use, all previous cases of taser use in the Austrian penal system (12 cases of use in the period from 2005 through 2008) were evaluated in depth by external experts (medical experts and weapons experts). The final expertises submitted by the experts contained no indications whatsoever of any abusive use of tasers in the Austrian penal system. Quite to the contrary, the reviewing experts described the prison staff’s way of proceeding as professional and commended the high training standards of employees in the penal system.
The Austrian penal administration has complied with the provisions now required by the CPT: the Taser X26 stun gun is provided for use in situations that would also justify use of a life-threatening weapon under Austrian law, under consideration of the principle of proportionality. The weapon can only be used by prison staff trained in use of the weapon in special training courses. The qualifications are reviewed annually by means of a mandatory exercise.
In addition, all staff trained in the use of the Taser X26 are also under an obligation to take an 8-hour First Aid course. The contents of the course specifically refer to First Aid situations that may arise related to taser use in prisons. Moreover, all participants in the course are trained to employ a defibrillator. A defibrillator must be available if the Taser X26 is used. The First Aid course must be repeated after 5 years on a mandatory basis.
The relevant internal instruction, which is now final, was worked out in cooperation with representatives of the specialist services working in the Austrian penal system (physicians, psychologists, social workers, care workers) as well as external experts in the fields of medicine and weapons technology. The contents of the internal instruction were presented to and debated with staff responsible for ordering the use of tasers in the course of 11 events.
The representatives of the Austrian penal system responsible for the matter are convinced that the Taser X26 is a long-range weapon that can be used to prevent harm both to staff and to prisoners, given appropriate use. In this respect, the great preventive effect of the Taser X26 is also pointed out.
The internal instruction regarding the beginning of final trial use was also communicated to representatives of Amnesty International in Austria in the summer of 2009. The internal instruction on final trial use was positively noted by representatives of Amnesty International Austria and described as an exemplary regulation.

Articles 12 and 13

23. ***Please provide disaggregated statistical data since the consideration of last periodic report regarding reported ill-treatment and/or torture during or after apprehension according to location of detention, sex, age and ethnicity of the victim. Please also make available detailed information on the results of any investigations undertaken in respect of those allegations as well as on prosecutions and convictions thereof.***

Allegations of abuse by law enforcement officers, complete with socio-demographic information on the victims (sex, age, geographical origin) and broken down by regions, have been recorded statistically since 2009. The data are not broken down by ethnicity of the victims.
In 2009, 445 cases of abuse with a total of 455 victims were recorded.

Statistical assessments of the results of investigations of allegations of abuse and the penal measures taken are ongoing. Supplementary information on this issue could be given orally in the course of the review in Geneva.

Allegations of abuse by law enforcement officers
by regional location in Austria

Year 2009	Number
Burgenland	6
Carinthia	11
Lower Austria	28
Upper Austria	30
Salzburg	11
Styria	54
Tyrol	18
Vorarlberg	2
Vienna	285
Total	445

Allegations of abuse by law enforcement officers
by sex of victims

Year 2009	Number
Male victims	383
Female victims	69
Unknown victims (no further information known)	3
Total number of victims	455

Allegations of abuse by law enforcement officers
by age of victims

Year 2009	Total	male	female
Under 14 years old	7	5	2

14 to 18 years old	39	35	4
18 to under 25 years old	120	110	10
25 to under 40 years old	167	141	26
40 to under 65 years old	117	90	27
65 years and older	2	2	--
Age and sex unknown	3		unknown
Total	455	383	69

Allegations of abuse by law enforcement officers
by geographical background of victims

Year 2009	Number
Afghanistan	5
Algeria	3
Austria	245
Azerbaijan	1
Bosnia-Herzegovina	9
Bulgaria	4
China PR	2
Congo Republic	1
Cote d'Ivoire	1
Croatia	3
Dominican Republic	1
Egypt	4
Estonia	1
France	1
Gambia	3
Georgia	1
Germany	9
Greece	1
Guinea	1
Hungary	8
India	1
Iran	5
Iraq	2
Italy	2
Lebanon	1
Lithuania	1
Luxembourg	1
Macedonia	1
Morocco	6
Nigeria	18
Poland	14
Romania	15
Russia	12
Saudi Arabia	1
Senegal	1
Serbia	32
Slovakia	8
Somalia	1
Spain	2

Switzerland	2
Tunisia	3
Turkey	16
Ukraine	1
Unknown	3
USA	1
Zimbabwe	1
Total	455

24. ***According to the State party's report, only 55 out of 106 recommendations presented since 2003 by the Human Rights Advisory Board (HRAB) to the Federal Ministry of Interior have been fully implemented. Please clarify what kind of follow-up is given to HRAB recommendations and whether this body can handle individual complaints. If not, is there an independent body tasked with receiving and investigating complaints against law enforcement officials?***

There are follow-up mechanisms for the recommendations.

The recommendations of the Human Rights Advisory Board are administered by an office installed specifically for that purpose at the Ministry of the Interior. Immediately after their submission by the HRAB, recommendations are assessed and processed for a first time by the specialist departments responsible. As the HRAB's recommendations have widely varying objectives and contents, the implementation measures that follow them are also very varied. In some cases, recommendations can be implemented by means of immediate measures such as individual or general instructions. Other recommendations require long-term implementation processes. After appropriate investigation and a positive assessment by the specialist departments, these are integrated into ongoing projects or serve as the initiative for new projects.

However, recommendations are also kept on record and taken up again in case of changes in the relevant areas, so that they can be appropriately taken into account.

Handling of individual complaints by the Human Rights Advisory Board:
It is the task of the HRAB to monitor the activities of the security authorities, all other authorities subordinate to the Ministry of the Interior and all administrative agencies authorised to directly exercise powers of command and control and to review them for respect for human rights while they are ongoing. Based on such monitoring and review, the HRAB submits proposals for improvement to the Ministry of the Interior. The HRAB's activities are concerned with the structural and institutional level, and not with reviews of individual cases or individual persons. This orientation of its activities very clearly sets the HRAB apart from the tasks of the penal justice system, the Independent Administrative Tribunals and the disciplinary authorities.

It is therefore the task of the HRAB to analyse the structural conditions of police action from the perspective of human rights. This may happen on the occasion of or based on the example of significant individual cases. However, even in such cases, the review by the HRAB hinges on understanding abuses and infringements not as isolated, individual events, but as events the cause of which lies in the system. By submitting appropriate proposals for improvement, the HRAB also has the task of

working preventively to ensure the protection of human rights in the course of the security police's exercise of its duties.

23. Please inform the Committee on the reason why most of the appeals lodged by the public prosecutor's office in the case "Cheibani WAGUE" were denied in their entirety by the Vienna Higher Provincial Court. Could you also provide more information on the reasoning behind the conviction in this case of an emergency physician and a police officer for the crime of "involuntary manslaughter" with only few months suspended terms of imprisonment?

In the case of Cheibani WAGUE, the following additional information can be supplied: the appeals lodged by the indicted emergency physician, the victim's widow, who was a private party joining the proceedings, and the Vienna public prosecutor's office were dismissed in their entirety. The appeal lodged by the police officer indicted was dismissed as regards the claim of nullity and the appeal against the verdict, while the appeal against the sentence was granted and the (suspended) term of imprisonment imposed on him was reduced to four months.
The court of appeal justified the reduction of the sentence by invoking the mitigating circumstance, which the court of first instance had not considered, of the essential contribution to ascertaining the facts made by the police officer, who had demonstrated the restraint he had used on the expert and therefore facilitated the submission of the expertise. In addition, the court of appeal considered the lack of training with regard to the phenomenon of positional asphyxia as not being the responsibility of the police officer and therefore a mitigation cause.
The court of appeal held that the nullity appeal lodged by the public prosecutor's office had not been made in accordance with procedural law, as it had not been in line with the findings of fact of a negligence offence and had failed, in particular, to distinguish between the subjective and objective predictability of results. A defect in the finding of facts had also not been asserted in the appropriate way. The appeal against the verdict, which was essentially based on the nullity appeal, was also considered without justification.
According to the court of appeal, the referral of the private party joining the proceedings (the widow of Cheibani WAGUE) to civil proceedings will also have to remain without results because both the emergency physician, as a public servant of the municipality of Vienna, and the police officer had acted in enforcement of the law, so that only the legal entity liable under section 1 paragraph 1 of the Liability of Public Bodies Act (*Amtshaftungsgesetz, AHG*) can be held liable for the damage caused.

24. ***With respect to conviction of four security police officers for the ill-treatment of Bakary J, please indicate:***

> *(a)* ***The type of crime the officers were charged and convicted of as well as the reasoning behind the determination of only few months suspended terms of imprisonment;***
>
> *(b)* ***On what ground the Disciplinary Senate denied the request of the Disciplinary Ombudsperson that the accused officers be dismissed from office;***
>
> *(c)* ***What have been the developments, if any, before the Higher Disciplinary Commission after that the Administrative Court has accepted the claim of the Disciplinary Ombudsperson and asked it to reconsider the case?;***

(d) ***Why the victim has not received any compensation yet, despite he was awarded by the Court 3,000 Euros for the damages resulted from the pain and suffering.***

24(a) The Vienna public prosecutor's office filed a demand for prosecution under section 312 paragraphs 1 and 3, 1st instance, of the Penal Code (tormenting or neglecting a prisoner), against the four officers of the Vienna Emergency Operations Group Alert Division (*Wiener Einsatzgruppe Alarmabteilung, WEGA*) who severely abused and consequently injured the pre-deportation detainee Bakary JASSEY in a warehouse on 7 April 2006, and under section 12 of the Penal Code for being an accessory against one officer.
All four defendants were found guilty as charged in the demand for prosecution by judgement of the Vienna Provincial Court for Criminal Matters on 31 August 2006; three officers were sentenced to terms of imprisonment of eight months each, and one officer was sentenced to six months of imprisonment. The execution of the sentence was suspended for all the officers convicted for a probationary period of three years. The victim was awarded the amount of EUR 3,000. The judgement became final with immediate effect.

24 (b) During the trial, the disciplinary tribunal received the impression that all defendants were repentant and felt guilty, and that the offence was to be considered a singular act of aggression resulting from the situation, which caused errors with severe consequences. The fact that all four officers had clean disciplinary records and were described as very reliable officers by the authorities was considered a mitigating circumstance. Their emotional, financial and family situation was also taken into account.
After disciplinary proceedings before the Supreme Disciplinary Commission, the appeal lodged by the Disciplinary Ombudsperson was denied by decision of 11 September 2007. The Administrative Court repealed the disciplinary judgement contested by the Disciplinary Ombudsperson in its decision of 18 September 2008. In its decision, the Administrative Court reasoned that the Disciplinary Commission should have based its assessment of the punishment to be imposed on the very great wrongfulness of the offence and a great disciplinary backlog. Under section 63 paragraph 1 of the Administrative Court Act (*Verwaltungsgerichtshofgesetz, VwGG*), once the Administrative Court has allowed an appeal, the administrative authorities are under an obligation to immediately bring about the legal state complying with the legal view of the Administrative Court in the case in question, using the legal means at their disposal.

24 (c) In the second proceedings, the appeal of the Disciplinary Ombudsperson was granted to the extent that the disciplinary punishment of dismissal was imposed on two officers, and the disciplinary punishment of loss of all rights and claims deriving from employment was imposed on one officer who had retired in the meantime. In the case of one officer, a disciplinary fine in the amount of 5 monthly salaries was confirmed. The appeals of the four officers against the punishments was denied under section 66 paragraph 4 of the General Administrative Procedure Act (*Allgemeines Verwaltungsverfahrensgesetz, AVG*) in conjunction with section 105(1) of the Public Service Act.

24 (d) With regard to the inadmissibility of an award to the private party joining the proceedings – which should have been asserted as a public liability claim – the

Vienna senior public prosecutor's office suggested lodging a plea of nullity to uphold the integrity of the law. The Procurator General's Office lodged the appeal with the Supreme Court of Justice on 8 February 2007. On 11 April 2007, the Supreme Court of Justice upheld the plea. Under Austrian law, compensation for the victim, Mr Bakary J., can therefore only be based on the Liability of Public Bodies Act, Federal Law Gazette 20/1949 of 1 February 1949. Under section 1 paragraph 1 of the Liability of Public Bodies Act, the federal state is the legal entity liable, among other things, for wrongful and illegal action on the part of its agents. For this purpose, claims are based on general civil law. Such claims are to be asserted by means of a civil action preceded by an administrative request procedure under section 8 of the Liability of Public Bodies Act. Accordingly, the victim must first make a request in writing to the legal entity liable (the Republic of Austria, represented by the Attorney General's Office [*Finanzprokuratur*]), and must receive a response within three months stating whether the claim for compensation has been recognized or denied wholly or in part. If the claim has not been recognised out of court, the claim for compensation must be asserted by means of an action before the competent regional court (section 9 of the Liability of Public Bodies Act). To date, neither Mr Bakary J. nor his lawyer has contacted the Attorney General's Office or the Ministry of the Interior in this regard.

25. ***Please clarify what happens once the public prosecutor's office and the Office for Internal Affairs are informed of all complaints regarding alleged abuses by law-enforcement officials.***

To ensure effective, rapid and unbiased handing of all allegations of abuse, the Ministry of Justice and the Ministry of the Interior have formed an interdepartmental working group so as to coordinate joint action in cases of suspected abuse. The need for a revision also arose from the fact that the legal basis for investigations has changed due to the entry into force of the Criminal Procedure Reform Act (Federal Law Gazette I no. 19/2004) on 1 January 2008.
As a result of these discussions, the Ministry of Justice issued an internal instruction regarding allegations of abuse by officers of the security authorities and the penal system (BMJL880.014/0010-II 3/2009) so as to guarantee the objective course of proceedings and prevent any impression of bias. A copy of the instruction in English is annexed to the statement.
The internal instruction stipulates that the criminal investigation department and the public prosecutor's office have a duty ex officio to investigate any cases of suspected abuse they are made aware of (section 2 paragraph 1 of the Code of Criminal Procedure). They are under a legal obligation of objectivity (section 3 of the Code of Criminal Procedure). With the exception of official acts that cannot be delayed, investigations can therefore only be carried out by agents that are considered unbiased. If an allegation of abuse is made, such suspicion must be reported immediately, and at the latest within 24 hours, by the provincial criminal police responsible or, in Vienna, by the Office for Special Investigations (*Büro für besondere Ermittlungen*) or the Federal Bureau of Anti-Corruption (*Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung, BAK*) under section 100 paragraph 2(1) of the Code of Criminal Procedure. To accelerate the procedure, the internal instruction states that the offices listed must in principle continue investigations, unless the public prosecutor's office responsible has given other instructions or assumes partial or total control of the investigations. To avoid any appearance of bias, the internal instruction underlines the option of charging the

court with investigations (section 101 paragraph 2(2) of the Code of Criminal Procedure), which is to be considered in particular if higher-ranking or superior officers of the criminal investigation department (or the public prosecutor) are involved in allegations of abuse.
The Criminal Procedure Reform Act provides for the same grounds for bias for agents of the criminal investigation department and the public prosecutor's office (section 47 of the Code of Criminal Procedure). If an officer biased under section 47 of the Code of Criminal Procedure has been involved in investigations, this violation of the Code of Criminal Procedure can be asserted in an objection on grounds of violation of a right under section 106 paragraph 1 of the Code of Criminal Procedure; such objection will be decided by the court. If the objection is granted, the public prosecutor's office and the criminal investigation department have to ensure the appropriate legal state (section 107 paragraph 4 of the Code of Criminal Procedure), meaning that the taking of evidence has to be repeated.
The Code of Criminal Procedure and the more detailed elaboration in the internal instruction quoted guarantee rapid, objective and unbiased investigations when allegations of abuse are made.

The Federal Bureau for Internal Affairs (*Büro für interne Angelegenheiten, BIA*), established by internal instruction of the Ministry of the Interior of 31 January 2001, became active either on its own initiative or based on an instruction by the public prosecutor's office as soon as an allegation of abuse was reported. The necessary procedure (duty to report to the BIA) is explicitly stipulated both in the internal instruction of 31 January 2001 establishing the BIA and in the internal instruction of the Ministry of the Interior dated 8 May 2008. The BIA either took charge of the case itself, supervised the investigations, or assigned the case to another organisational unit, with the power to stipulate reporting on the course of the matter on an ongoing basis or prior to certain decisions.
With the entry into force of the Federal Act on the Establishment and Organisation of the Federal Bureau of Anti-Corruption (*Bundesgesetz über die Einrichtung und Organisation des Bundesamts zur Korruptionsprävention und Korruptionsbekämpfung, BAK-G*, Federal Law Gazette I no. 72/2009) as of 1 January 2010, the BIA was transformed into the Federal Bureau of Anti-Corruption.
An internal instruction on the Bureau's establishment specifies the procedure in accordance with the list of the Bureau's legal duties and stipulates a duty to (immediately) report in writing for the security authorities and security departments. Under section 4 paragraph 1(14) of the above-mentioned Act, the Federal Bureau of Anti-Corruption can only take charge of or initiate investigations if it is instructed to do so in writing by a court or a public prosecutor's office.

Article 14

26. ***Please provide statistical information on compensation provided to victims of torture or cruel, inhuman or degrading treatment that occurred in the State party since the consideration of the last periodic report. Please also indicate how this breaks down according to sex, age and ethnicity.***

Such statistics are not recorded.

27. ***Please clarify whether the right to compensation depends on the existence of a judgment in criminal proceedings ordering compensation. Can***

compensation be obtained by a victim of torture or cruel, inhuman or degrading treatment if the perpetrator has been subjected to a disciplinary, but not to a penal, sanction?

A victim's right to compensation does not depend on an award in a penal judgement. Claims in civil proceedings against the perpetrator (or the legal entity liable) are unaffected by such a judgement. Regardless of a conviction in court, victims who are Austrian citizens (and, under certain conditions, also EU citizens or citizens of the European Economic Area, EEA) are entitled under the Crime Victims Act (*Verbrechensopfergesetz, VOG*) if it can be assumed to be likely that they have suffered a bodily injury or harm to their health due to an illegal and intentional act punishable by more than six months' imprisonment, or suffered a bodily injury or harm to their health as uninvolved parties related to such an act, unless claims under the Liability of Public Bodies Act arise from such an act (cf. section 1 paragraph 1 of the Crime Victims Act). Under section 1 paragraph 7 of the Crime Victims Act, this claim to compensation also applies to non-Austrian nationals, non-EU citizens and EEA citizens if the act was committed after 30 June 2005 in Austria or on an Austrian ship or aeroplane, regardless of where these vessels were, and if the victim had lawfully been at that place at the time of the act.
Compensation covers the resulting treatment costs as well as loss of income or livelihood. For non-physical damage (compensation for pain and suffering), lump-sum compensation is provided (cf. section 6a of the Crime Victims Act).
Disciplinary law does not provide for proceedings on claims under private law modelled on the penal proceedings.

Another law to be mentioned in this context is the Federal Act of 18 December 1948 that regulates the liability of the federal state, the *Länder*, the districts, the municipalities and other public law entities and institutions for damage inflicted in execution of the laws (Liability of Public Bodies Act), Federal Law Gazette 1949/20 as amended. If the case arises, any person, regardless of sex, nationality or similar considerations, has a claim to compensation from the legal entity liable, but not its agent. Compensation for damage can only be made financially. In such cases, the victim must request that the legal entity liable recognise the claim for compensation.

28. ***Please provide more information on the services available for the treatment of trauma and other forms of rehabilitation of torture victims.***

It is not only the responsibility of penal law to prosecute and punish offenders, but also to provide effective help to victims of crimes, and in particular also support to crime victims seeking redress and elimination of the consequences of a crime. The Crime Victims Act of 9 June 1972, Federal Law Gazette no. 288, on the granting of support to crime victims created a legal basis for compensation of crime victims. In cases of bodily injury in violation of penal law (e.g. abuse) or harm to health, the law provides for ongoing support, such as compensation for loss of income or livelihood, but also compensation for treatment costs and professional and social rehabilitation. The amendment of the law (Federal Law Gazette no. 620/1977) created the conditions for the granting of support, both as regards the extent of claims covered and the potential amount of compensation. A further amendment (Federal Law Gazette no. 112/1993) expanded the group of persons entitled to make claims to citizens of EEA countries (section 1 paragraph 6 of the Crime Victims Act). The amendment of the Act that entered into force on 1 January 1999 (Federal Law Gazette I no. 11/1999) created the basis for reimbursement of costs for causally

related psychotherapy of crime victims and their surviving dependants. Under the Act Amending Support Legislation (*Versorgungsrechts-Änderungsgesetz, VRÄG*) of 2005 (Federal Law Gazette no. 48/2005), the services and legal relief offered to crime victims were further improved as of 1 July 2005, and the group of persons entitled to make claims further expanded (section 1 paragraph 7 of the Crime Victims Act). In addition to granting income-related additional benefits to compensate for loss of income or livelihood, the right of crime victims or their surviving dependants to receive psychotherapy was substantially expanded. As regards treatment, care and rehabilitation, the state is also obligated to reimburse causally related co-pays and prescription fees incurred by the victims. Moreover, enforcement of the Crime Victims Act is now on a national basis and permits free appeals to the Federal Appeals Commission, which is responsible for welfare and compensation matters. In addition to the persons entitled to make claims so far, EU citizens – under the conditions detailed in the Crime Victims Act – and all other persons who had legal residence in Austria at the time of the acts that led to the claim are now entitled to make claims under the Crime Victims Act. Access to compensation in cross-border cases is also considerably facilitated by the amendment. The Second Violence Protection Act (*2. Gewaltschutzgesetz*, Federal Law Gazette I no. 40/2009), which also amended the Crime Victims Act and has been in force since 1 June 2009, expanded the range of support provided to crime victims. Victims now also have a support claim to lump-sum compensation for pain and suffering (section 2(10) of the Crime Victims Act) in the amount of EUR 1,000 in case of severe bodily injury and of EUR 5,000 in case of bodily injury with continuing effects.

In 2007, support payments under the Crime Victims Act in the total amount of approx. EUR 2.2 million were granted; an amount of EUR 2.063 million had been budgeted for 2007. For 2008, the same amount of EUR 2.063 million was budgeted for compensation under the Crime Victims Act, and the budget expense for 2008 came to EUR 2.866 million. The amounts budgeted for compensation under the Crime Victims Act for 2009 and 2010 is EUR 2.482 million for each year.

Improving victim protection has been a priority of practically all changes in penal procedure in recent years. In the process, an essential objective has been not only to develop and safeguard the procedural rights of the victims and support for victims seeking redress, but also protection from severe psychological harm due to prosecution as such (secondary victimisation). Especially children and adolescents who have been victims of violence or sexual abuse need competent psychological, social and legal advice and support to assert their claims and to deal with the demands made of them.

In addition to various instruments in penal law aimed at aiding victims, such as instructions or conditions for repair of damage as part of a conditional mitigation of sentences or out-of-court settlements, measures that have served to progressively expand victim protection should also be mentioned in this respect.

It should be noted in this context that based on an allocation of responsibility introduced by the Criminal Procedure Amendment Act (*Strafprozessnovelle*) of 1999 (cf. Article VI of the Criminal Procedure Amendment Act), the state has an obligation to support institutions that support and aid persons whose rights have been violated by punishable acts (assistance during proceedings). The Minister of Justice grants such support after consultation with other government ministers who may have

responsibility for the subject matter. Support is to be given by granting subsidies in accordance with the federal funds available for this purpose under the Federal Finance Act (*Bundesfinanzgesetz*) and, if possible, is to be made dependent on the granting of subsidies in the same amount by other local authorities. There is no legal right to granting of such support. Funding is to benefit in particular institutions that provide care to victims who are minors or to persons who have suffered sexual abuse.

As part of the budget for the year 2000, an initial amount of ATS 3 million was made available, which was increased to ATS 6 million in 2001, to approx. EUR 725,000 (ATS 10 million) in 2002 and to around EUR 900,000 in 2003. In 2004, aid to victims (assistance during proceedings) was granted to 1,825 persons in a total amount of EUR 740,727.39, and in 2005, the number of persons supported rose to 2,371, with the amount of EUR 1,021,656.40 expended for their support. In 2006, aid to victims (assistance during proceedings) served to support 2,223 persons with a total amount of EUR 2,228,147.53, and in 2007, 2,606 persons were supported with a total amount of EUR 2,847,176.85. In 2008, recourse to aid to victims (assistance during proceedings) was taken by 2,829 persons, who were supported with a total amount of EUR 3,917,784.44. Around EUR 600,000 annually are expended for the Competence Centre for Victim Support (*Kompetenzzentrum Opferhilfe*), established in September 2008, which also operates the victim helpline 0800 112 112.

Moreover, the Institute for Psychosocial and Legal Assistance (*Institut der psychosozialen und juristischen Prozessbegleitung*), which had been supported by the Ministry of Justice since the year 2000, was given a legal basis as of 1 January 2006. The Ministry of Justice contractually assigned the provision of assistance during proceedings to institutions that had proven their suitability, so as to ensure nationwide coverage of institutions providing such assistance. In addition, federal laws will introduce further improvements in the legal position of the victims under the valid Code of Criminal Procedure (expanded duties to actively instruct and inform victims especially on the conditions of assistance during proceedings and on defendants' release from custody before the court of first instance has issued a verdict, right to inspect files and translation aid, duty to treat victims in a way that respects their dignity, legal clarification of the admission of victim protection institutions recognised under section 25 paragraph 3 of the Security Police Act as representatives of private parties joining the proceedings).

Finally, the Criminal Procedure Reform Act in force since 1 January 2008, and the related comprehensive revision of preliminary proceedings in criminal procedure, brought an even farther-reaching improvement in the legal position of victims. Under section 66 of the Code of Criminal Procedure, as amended by Federal Law Gazette I no. 109/2007, victims are granted farther-reaching rights to information and capacity to be a party in proceedings above and beyond the rights due to private parties joining the proceedings in certain cases, regardless of the assertion of claims for physical damages (e.g. right to information on procedural rights, right to inspection of files, right of notification, right to participate in the adversarial interrogation of witnesses and defendants, in the elaboration of findings and in the re-enactment of the crime, right to psychosocial and legal assistance during proceedings for victims suffering a particular emotional impact). Moreover, victims now have the right to request the continuation of proceedings discontinued by the public prosecutor's office (section 195 of the Code of Criminal Procedure). Victims who have asserted a claim for compensation have the status of private parties joining the proceedings (section

67 of the Code of Criminal Procedure), which grants them further special rights to act and participate (e.g. right to demand the taking of evidence); moreover, if the necessary conditions are met, they can also be assigned legal counsel free of charge under the legal aid system.

To provide unbureaucratic, rapid and effective support to victims, the Ministry of Justice has operated the free hotline 0800 112 112 in cooperation with the association “Weisser Ring” since 1 July 2007. This helpline for victims is staffed by competent social workers every day, guaranteeing professional advice by trained experts and absolute anonymity. Victims are given a free first consultation and information on which institutions working in victim support they can turn to.

For (traumatised) victims of domestic violence, there is a nationwide network of specialised victim aid organisations that receive support from the state.

The NIPE network (network for intercultural psychotherapy for extremely traumatised persons), a nationwide cooperation of organisations specialised in supporting severely traumatised people from different countries of origin, has been in operation since the year 2000 (e.g. Hemayat – counselling centre for victims of torture and war survivors in Vienna, ZEBRA Vienna, Omega in Graz, Ankyra in Innsbruck, Oasis in Linz and Oneros in Salzburg). Since 2003, the NIPE network has been coordinated by Asylum Coordination Austria (*Asylkoordination Österreich*), which has its seat in Vienna. All organisations that are part of the network provide intercultural psychotherapy. In addition, various members also provide psychological and psychiatric counselling, physiotherapy, diagnostics and medical expertises.

Article 16

29. ***Please describe measures taken to combat racism and discrimination, in particular racially motivated ill-treatment or violence against ethnic minorities, including at hands of law enforcement or public officials. In this respect, please also provide information on the number of complaints, investigations, prosecutions, convictions and sanctions applied in cases of allegations of racially motivated ill-treatment or violence.***

Commitment to the protection and promotion of human rights and fundamental freedoms and to fighting any kind of discrimination has always been a fundamental principle of Austrian policies and consequently of the Ministry of the Interior.
The Ministry of the Interior is dedicated to fighting any form of discrimination, intolerance and incitement to hatred of people for whatever reason. Measures to protect disadvantaged or especially vulnerable groups (such as Roma, Sinti and many others) are therefore accorded high priority. This includes guaranteeing the rights of members of national, ethnic or religious minorities as well as guaranteeing the rights of other especially vulnerable population groups (in particular children and adolescents). Equal treatment of men and women is also given special attention. Among the instruments and measures used to achieve these objectives, human rights education is accorded particularly high priority. Work in this core area of human rights is primarily determined by the conviction that respect and understanding for all people, regardless of their origin, ethnicity or religion, are the basic conditions for ensuring that everyone in Austria can live a life of dignity. Equal rights are therefore essential to ensure that everyone can fully enjoy their human rights and fundamental

freedoms. These principles are actively espoused by Austria within the international community and also implemented in practice on the national level. The police play an active role in implementing human rights; the police force is a human rights organisation with the special means of a monopoly on the legitimate use of force, from which derives a special responsibility.
As regards the duty to take measures to eliminate incitement to racial discrimination and racially discriminating acts, the most important relevant legal foundations are as follows:
The statutorily defined crimes to be listed in this respect are incitement to hatred (section 283 of the Penal Code) and revival of Nazi ideology (National Socialism Prohibition Act [*Verbotsgesetz*]), the aggravating circumstances of racist or xenophobic commission of a crime (section 33(5) of the Penal Code) and the administrative offence of discrimination on grounds of race (article III of the Introductory Act to the Administrative Procedure Acts [*Einführungsgesetz zu den Verwaltungsverfahrensgesetzen, EGVG*]), as well as grounds to dissolve illegal associations and assemblies (Association Act [*Vereinsgesetz*] and Assemblies Act [*Versammlungsgesetz*]).

The term “racial discrimination” is more closely defined as a concept in legislation. In addition to article 14 of the ECHR, which has the status of a constitutional law in Austria, the Federal Constitutional Act of 3 July 1973 to implement the International Convention on the Elimination of All Forms of Racial Discrimination, Federal Law Gazette no. 390/1973, should be mentioned in particular.
Determining the number of offences committed with xenophobic and anti-Semitic motives, and of cases of ethnic and religious discrimination, is only possible in a limited way with regard to the offence to be considered in each case. In the Austrian legal system, there is no generally defined offence of xenophobic or anti-Semitic motivation or ethnic or religious discrimination. Instead, such acts are covered by specific provisions in various fields of law, in particular penal law. In addition to offences under the National Socialism Prohibition Act and section 283 of the Penal Code (incitement to hatred), offences prosecutable on complaint under section 115 in conjunction with section 117 paragraph 3 of the Penal Code are to be considered. With regard to this provision, a reporting duty of public prosecutor’s offices was stipulated by internal instruction of the Ministry of Justice of 19 February 2001.
Section 283 of the Penal Code provides for punishment by a prison term of up to two years for public incitement to hatred of certain groups of people (for instance members of a certain religious community, or ethic group), for insults or derision of such groups in a way that violates their human dignity (paragraph 2), and for public incitement to hostile acts against such groups in a way that can pose a threat to law and order (paragraph 1). Xenophobic statements are to be considered as offences under section 3 of the National Socialism Prohibition Act if they are manifestations of the racially motivated ideology of the Nazi mindset, if foreigners are rejected precisely for their supposed “racial inferiority”, and in particular if such thoughts are uttered in a way that approximates the wording of propaganda of the Third Reich.
Administrative offences related to racist discrimination have been clearly regulated since 1 August 2008 in article III paragraph 1(3) of the Introductory Act to the Administrative Procedure Acts (previously in article IX paragraph 1(3) of the same Act). Administrative offences related to the dissemination of Nazi ideology within the meaning of the National Socialism Prohibition Act have been regulated in article III paragraph 1(4) of the Introductory Act since 1 August 2008 (previously in article IX paragraph 1(4) of the same Act).

Historically speaking, police and human rights are often considered to have a problematic or ambivalent context. The police are often thought to be a threat to human rights, and human rights considered restrictive for the police. With the aim of providing an overview, the Human Rights Advisory Board appointed the working group “Law enforcement as a human rights protection organisation” in 2006. The project “Police.(Em)power.Human.Rights” evolved from the working group. The aim of this interdisciplinary project is to ensure that police officers are systematically committed to protecting and defending human rights. To this end, the general thrust in everyday police practice, structural conditions and hardened patterns of thought and behaviour are to be critically reviewed and improved, and error management by the police is to be investigated in depth. The modern understanding of this context, in which a paradigm shift is gaining ground internationally, assigns an active role in implementing human rights to the police.

In this context, human rights are defined not as a restriction, but as the basis and aim of police work. The police are not seen primarily as a threat to human rights, but as a human rights organisation with the special means of a monopoly on the legitimate use of force, from which derives a special responsibility. In a policy paper, a working group underlined the conditions inherent to the organisation with regard to the fundamental understanding of the police forces as a human rights organisation and identified the cornerstones of further development (focus on the police’s self-conception, definition of services, HR management, organisational structures and processes). Since 2007, the Federal Office for the Protection of the Constitution and the Fight against Terrorism (*Bundesamt für Verfassungsschutz und Terrorismusbekämpfung, BVT*) has collected and analysed more detailed data on all acts relevant to national security and the phenomena in question, amongst other things on the motives and the acts committed by the suspects reported, and on the offences committed. Offences under section 283 of the Penal Code (incitement to hatred) are also included in this assessment. To make developments of these phenomena in Austria more transparent, acts with an Islamophobic motivation have been assessed separately in statistics, in addition to acts with anti-Semitic, extreme-right and xenophobic motivations, by the national security authorities since 2007. Data collection and analysis is continuously evaluated and improved. The BVT is currently developing a further education seminar on the issue of right-wing extremism for law enforcement officers in the field, which is to be implemented before the end of this year at the Security Academy. It should also be mentioned that the General Directorate of Public Security issued an internal instruction entitled “Use of language by law enforcement officers” on 7 August 2002, which reiterated the relevant legal framework. It also emphasized the role, significance and power of language, and highlighted instances of linguistic discrimination. Reported cases of racist or racial discrimination by police officers are primarily prosecuted by the Federal Bureau of Anti-Corruption if they are punishable under penal law. Nevertheless, beneath this level of escalation, the public and disciplinary authorities responsible also have a duty of in-depth investigation to ensure the initiation of the necessary measures where applicable.

In addition, the HRAB also has a review competence in these matters.

The relevant offences that have become known were committed, for the most part, out of a general hate of foreigners, or anti-Semitism based on fairly diffuse and traditional prejudice rather than on physical aggression, and only a small number were committed with an ideologically based, extreme-right motivation. The overwhelming majority of the offenders determined were not members of extreme-

right groups. In more than half of the cases of bodily injury, however, the offenders were found to be members of skinhead groups.

Measures taken by the authorities:
Since 2007, more detailed data on all acts relevant to national security have been collected, including information on the motives and the acts committed as well as the suspects reported. The measures taken by the national security authorities target both potential perpetrators in extreme-right circles and other subcultures with a certain affinity to right-wing extremism, such as football hooligans. In addition to the task of suppressing such crimes, the main focus is put particularly on intensive measures to collect information in conspiratorial circles and on constant tactical adaptation to the behaviours of the various sections of the extreme-right scene. International cooperation with European police authorities, raising awareness among the associations organising events and potentially hosting events of the scene, and increased patrols of hot spots and meeting points of the scene are further priorities in security police measures against right-wing extremism.
As part of their preventive tasks, the above-mentioned authorities also regularly organise awareness-raising and information events for the public on request, especially in various educational institutions.
An increasing number of police training courses serve to impart intercultural skills and to prevent instances of discrimination.
As has been made clear, proven racist behaviour is by no means tolerated by police officers, and is subject to strict prosecution under penal law and administrative law, i.e. reported to the courts or other prosecuting authorities.

Police action is carried out in accordance with a clearly defined code of professional conduct (Ordinance on Guidelines), legal mandates and service instructions, and police officers are constantly committed to carrying out their duties with complete impartiality. As a matter of course, this also means avoiding discrimination based on gender, skin colour, national or ethnic origin, religious faith or political beliefs.
In this context, it is underlined that police officers are subject to strict service regulations and disciplinary regulations, and must expect due sanctions if they commit offences while on duty or violate their duties. The past decade in particular has been distinguished by intensive efforts of policy-makers and senior officials to eradicate any hints of racism and discrimination in the police force. The measures taken have ranged from tolerance training in training and further education to operational training courses with the issue of human rights as an essential element and the establishment of the Human Rights Advisory Board.
Leaders and supervisors are emphatically urged both to raise awareness among their staff and to monitor their actions. Despite some criticism, it has been apparent that in proven cases of racist or racial discrimination, decision-makers and senior officials at all levels of the police force have made public statements denouncing such acts.

In the justice system, all forms of racism or discrimination in prisons are immediately investigated. If racist remarks or acts of discrimination were to be made by prison staff, they would be subject to disciplinary action.

The issues of racism and xenophobia are also addressed in training and further education for correctional officers. There are training courses that address the issue of dealing with foreign cultures.

To prevent racist acts or remarks, prisons make sure that only prisoners with the same ethnic background or religious beliefs are detained together. This is intended to prevent ethnic tensions among prisoners. There are no statistics on incidents or infringements in this respect in prisons.

The Ministry of the Interior also does not record special statistics regarding the number of complaints, investigations etc., since there is no duty to report back on the results of relevant procedures on the part of the penal courts. Though there are statistics on complaints as such, the parameters addressed, racism and discrimination, cannot be derived from the statistics, which therefore yield no conclusions relevant to this issue.

30. ***Please comment on measures taken to tackle violence against women. Did the State party introduce a comprehensive strategy to combat all forms of violence against women, including domestic violence, as recommended by the CEDAW in 2007?***

Legislative measures, cooperation and victim protection:
The Federal Act on Protection against Domestic Violence (*Bundesgesetz zum Schutz vor Gewalt in der Familie*), referred to as the Violence Protection Act (*Gewaltschutzgesetz*) for short, is a set of legislative measures that entered into force on 1 May 1997 and has since been amended several times.
It served to create a reform project that held a unique pioneering role in Europe and serves as a socio-political model for preventing violence while protecting domestic privacy. Victims of domestic violence have been offered comprehensive protection and enabled to remain in their homes and receive support. Before the Violence Protection Act entered into force, victims often had to leave their homes in order to be safe, while the perpetrators were allowed to remain.
Concurrently with the Violence Protection Act, an advisory board for fundamental issues of violence prevention, the Prevention Board (*Präventionsbeirat*), was established. In particular, it organises the coordination at the national level of all public and private institutions working in the field of violence prevention. The Prevention Board is the agency primarily responsible for implementing the Violence Protection Act; it ensures cooperation between public authorities and private organisations, and is a driver of continued reform.

The 3 elements of the Violence Protection Act are the following:
1. Restraining orders issued by police to remove and keep someone from the home, originally for 7 days, now for 2 weeks
2. Long-term protection by means of a preliminary injunction under civil law
3. Support for the victims, violence prevention measures and coordination of interventions by establishing intervention centres

Restraining orders issued by police to remove and keep someone from the home serve to immediately remove a person who poses a threat to others from the home and its immediate surroundings, and to prohibit the person from entering that area. Such restraining orders are valid for 2 weeks, and for 4 weeks if a preliminary injunction of a court is requested within that 2-week period. Originally, such temporary injunctions could only be requested by certain family members. As of 1 January 2004, the group of family members was expanded to include all persons living or having lived together as a family or in a community similar to a family.

Furthermore, the persons concerned no longer have to have lived together within the previous three months; instead, it is sufficient if they have lived together in a family or a community similar to a family at some point in time.
In June 2007, the Ministry of Justice appointed an interdepartmental working group including NGOs and other experts to work out significant improvements of the Federal Act on Protection against Domestic Violence.
These improvements entered into force as the so-called Second Violence Protection Act on 1 June 2009.

In addition to improving the existing set of instruments allowing removal of a violent offender from a home, preliminary injunctions issued by courts were also improved, both to provide protection from violence in the home – which now refers simply to living together in a home, and no longer to a family relationship – and to provide protection from unacceptable contact with a violent offender (prohibition of contact), as well as protection from stalking.

Furthermore, a new offence under penal law, “persistent use of violence”, was introduced. This offence serves to include the persistent fear and restrictions suffered by the victim in a violent relationship of longer duration and the resulting experience of injustice in its entirety.
In addition, victims of bodily injury are granted an advance on compensation for pain and suffering in the amount of a lump sum of EUR 1,000 in cases of severe bodily injury and of EUR 5,000 in cases of bodily injury with continuing effects.

As an accompanying measure to the Violence Protection Act, intervention centres against domestic violence were established. These are legally recognised victim protection organisations for persons, predominantly women, suffering domestic violence and their children. Under the Penal Code Amendment Act (*Strafrechtsänderungsgesetz*) of 2006, which entered into force on 1 July 2006, they were also assigned to provide support to victims of stalking. The intervention centres are organised by private sponsoring associations and financed by public funds. Interventions focus on ending violence, not on maintaining or ending the marriage or partnership in question. A priority in support is establishing both a short-term and a long-term individual safety strategy with the victims. The threat posed by the perpetrator is assessed together with the victim, and a crisis plan is worked out. The intervention centres can also be contacted if there has been no police intervention beforehand. However, if police issue a restraining order to remove an offender from the home, the police transmit the necessary data to an intervention centre, which then contacts the victim and offers to provide support.
All the *Länder* have had intervention centres since 1999, and there are additional regional centres in some of them. To make their tasks clearer, most intervention centres have chosen the designation “violence protection centres”.
The intervention centres/violence protection centres to provide support to victims of domestic violence have been continuously expanded since their implementation throughout Austria in 1999, and particularly in recent years (e.g. by establishing further regional centres), and the funds made available annually have been increased.

2006	€ 3,368,324.97	
2007	€ 5,459,208.00	+ 62.1%

2008	€ 5,630,740.00	+ 3.14%
2009	€ 6,179,740.00	+ 9.75%

The total number of persons supported by the intervention centres/violence protection centres has also risen considerably: from 11,601 persons in 2006 to 14,059 persons (approx. 91% of whom were women) in 2008. Final figures for 2009 are not yet available, but the preliminary figure of 14,626 cases of persons supported indicates a further increase.

Coordination Committee to Protect Children from Sexual Exploitation:
To improve the protection of children from sexual exploitation, an interdepartmental working group headed by the Ministry of Family Affairs and including NGOs, the so-called "Coordination Committee to Protect Children from Sexual Exploitation", was established in September 2009. In addition to information exchange, the task of the Committee is to continuously coordinate and evaluate the implementation of international commitments to combat (commercial) sexual abuse of children.

Assistance during proceedings:
An interdepartmental working group chaired by the Ministry of Family Affairs and including NGOs, the so-called interdepartmental working group on assistance during proceedings (*IMAG "Prozessbegleitung"*), was established in 2001. Since 2006, victims of violence have had the right to free legal and psychosocial assistance during proceedings. With the entry into force of the Second Violence Protection Act, there is now also a right to psychosocial assistance during civil proceedings that are related to criminal proceedings.
Financed from public funds, further training seminars for persons providing assistance to children and adolescents during proceedings have been conducted on a regular basis since 2001. In 2008, funds for the development of a specific curriculum for persons providing psychosocial assistance during proceedings were also provided. Seminars for persons providing psychosocial assistance during proceedings based on the curriculum were supported in 2009, which is also planned for 2010.

Training:
Training of police officers plays a particularly pivotal role in the effective prevention of domestic violence. The priority is to teach officers an understanding of the nature and dynamics of violent relationships, and of the situation of people who are victims in a violent relationship.
Training of prevention officers focuses on the following aspects:

- Forms, patterns and effects of violence on women and children
- Talking to children
- Situation of the women affected, crisis plans for victims, victims' rights, advice on how to deal with victims
- Offender psychology, offender strategies
- Threat assessment
- Operational recommendations in cases of domestic violence
- Legal basis
- Information on intervention centres, women's shelters, counselling centres for men and other NGOs

Awareness-raising and outreach work:
Raising awareness among the general public and all relevant stakeholders is a vital element of activities to prevent and combat violence.
Some measures taken in recent years are listed in the following:

The travelling exhibition “Behind the Façade” has been shown in Austria since 2006. It addresses domestic violence, its extent, causes, forms etc., but also legislation and aid institutions, therefore offering ways to escape violence. It is designed as an apartment; the issue is addressed in different ways in four rooms, a kitchen, a bedroom, a child’s room and a living room.
The exhibition addresses in particular the target groups of school children, social work academies, social workers, police officers, judges and judicial trainees, staff of family counselling centres, youth welfare offices etc. The exhibition comes with a free booklet that also reflects the current state of legislation.
As part of the Council of Europe’s campaign “Stop domestic violence against women”, raising public awareness was made a special priority, and in particular, the women’s helpline (a nationwide, free helpline available around the clock) was greatly publicised. Posters, free cards, ads and TV spots were used. Outreach began in November 2007 and continued until August 2008 with interruptions. In schools, the so-called Gender Days, which have been further developed into the Gender Now Initiative (*Initiative Gender Aktuell*) in the meantime, were introduced in 2007. This is an initiative launched by the Ministry of Education, Arts and Culture in cooperation with the Federal Chancellery’s division for women and the Ministry of Social Affairs and Consumer Protection (responsible for men’s affairs); among other things, it establishes annual priorities for violence prevention. The initiative serves to promote schools’ development with regard to gender mainstreaming. Current topics relevant to (education) policy are presented in a gender-aware way for teachers. Moreover, the initiative seeks to raise awareness among teaching staff of the fact that gender-sensitive teaching materials, background information, advice and training are available all year round.

Publications of the Federal Chancellery’s division for women on the issue of violence against women in 2008 and 2009 (free of charge):

- Translation of Recommendation Rec(2002)5 of the Committee of Ministers to member states on the protection of women against violence into German (2008)
- New edition of the booklet “Gender-sensitive offers for violence prevention in schools”, which provides up-to-date and exhaustive information on lectures and workshops about violence and on counselling centres (2008)
- Study “So far, yet so near” (download only) and a booklet based on it, “Tradition and violence against women” (2008)
- “Women have rights”: updated edition providing well-structured, specific information on the issue of violence against women, complete with a comprehensive list of addresses and information on institutions providing counselling and support in the *Länder* (2009)
- Publication of the expert conference on the 10th anniversary of the Austrian Violence Protection Act, in German and English (2008)

Trafficking of women/human trafficking:
An interdepartmental working group chaired by the Foreign Ministry including NGOs, the so-called Task Force on Human Trafficking (*Task Force Menschenhandel*), was

established in 2004. The issue is discussed from the different perspectives of the ministries responsible and together with independent experts within the task force. In addition, the task force works towards the constant development and improvement of measures against human trafficking.
In order to prevent human trafficking and in particular the trafficking of women as far as possible, but also to provide more effective support to victims where needed, a National Action Plan Against Human Trafficking for the years 2007 and 2008 prepared by the Task Force on Human Trafficking was adopted in March 2007.
The measures taken to implement the National Action Plan are summarised in the so-called First Austrian Report on Combating Human Trafficking. The report was compiled by the Task Force on Human Trafficking and covers the period from March 2007 to February 2009; it was submitted to the council of ministers on 10 March 2009. One of the aims of the First Austrian Report on Combating Human Trafficking was to make the issue of human trafficking accessible to a broader public and to raise awareness of the issue among the Austrian population. In addition, a number of public events were carried out in recent years (including as part of the EU Day Against Human Trafficking and an expert conference on the occasion of the 10th anniversary of LEFÖ-IBF, the Counselling and Education Centre for Migrant Women and Intervention Centre for Victims of Trafficking in Women, in October 2008).
To ensure that efforts to achieve improvements are continuously pursued, a further National Action Plan for the years 2009-2011 was worked out by the Task Force on Human Trafficking and adopted by the federal government on 26 May 2009.
Both National Action Plans and the First Austrian Report on Combating Human Trafficking have been translated into English and are available on the websites of the Foreign Ministry and the Federal Chancellery's division for women.

To ensure effective protection of victims, the counselling centre for victims of trafficking in women funded by the Federal Chancellery's division for women and the Ministry of the Interior, LEFÖ-IBF, received substantial increases in funding in the past years.

2006	€ 276,675	
2007	€ 330,000	+ 19.27%
2008	€ 413,000	+ 25.15%
2009	€ 464,000	+ 12.35%

In March 2007, a transitional flat for victims of human trafficking was established in addition to the existing shelter. Victims of trafficking in women who no longer need around-the-clock care and can therefore leave the shelter can be housed in the transitional flat.
The number of victims supported has risen continuously. In 2006, care was provided to 162 women; in 2008, the number of victims in care was 203. In 2008, 37 victims were housed in the shelter and 10 victims in the transitional flat. The preliminary figures for 2009 indicate the following trend: care was provided to 180 women, 47 women were housed in the shelter and 10 women in the transitional flat.

Furthermore, an improvement in the regulation of the humanitarian right of residence for victims of human trafficking in the Settlement and Residence Act (*Niederlassungs- und Aufenthaltsgesetz*) entered into force as of 1 June 2009 (introduction of a right to apply for the right of residence in addition to granting of the right of residence ex officio, decision by the authorities within 6 weeks).

31. ***Please provide information on any independent inspections of psychiatric institutions and their follow-up, and elaborate on the bodies undertaking these activities. Please also elaborate on their findings and describe the situation of patients, including the use and extent of any coercive measures.***

A prison committee is installed at the seat of each provincial court responsible for penal matters in the provincial capitals (and the seat of the provincial court of Feldkirch in Vorarlberg); these committees are charged with ensuring exact compliance with regulations on prisons, in particular as regards the treatment of sentenced prisoners. The prison committees in the *Länder* have to visit each prison situated in their jurisdiction without prior announcement at least once a year. Their observations must be reported to the Ministry of Justice.
Visits to the Göllersdorf prison (a special prison for the imprisonment of mentally ill prisoners lacking the capacity for criminal responsibility under section 21 paragraph 1 of the Penal Code) by the prison committee no. I with its seat at the St. Pölten provincial court under section 18 paragraph 5 of the Execution of Sentences Act took place on 7 October 2005, 9 May 2006, 19 April 2007 and 29 October 2008; no grave defects were found, neither in structural conditions nor in the treatment of patients, especially not as regards the use of coercive measures.

32. ***Please inform the Committee on any concrete measure aimed at ensuring that deprivation of liberty for children is always a measure of last resort used for the shortest appropriate period of time. Please also indicate whether measures alternative to detention are applied and whether children deprived of liberty are systematically separated from adults.***

Within the scope of application of the Federal Act on the Protection of Personal Freedom during a Stay in a Home or other Care Institution (*Heimaufenthaltsgesetz, HeimAufG*, section 2: in particular in nursing homes and homes for people with disabilities where at least three mentally ill or mentally disabled persons can be given permanent support or care, as well as hospitals, with the exception of psychiatric wards), regardless of the age of the person in question, deprivation of liberty can only be ordered under the following circumstances (section 4 of the Act):
1. if the person is mentally ill or mentally disabled and poses a serious and considerable threat to his own life and health or the life and health of others as a consequence;
2. if such deprivation of liberty is necessary and apt to avert such a threat, as well as of a duration and intensity appropriate in relation to the threat; and
3. if such a threat cannot be averted by other measures, in particular less restrictive support or care measures.
By operation of the law, as soon as a resident is deprived of liberty or such a deprivation of liberty is announced, the resident will be represented by the association responsible for naming residents' representatives based on the location of the care institution, in addition to any representative the resident may have appointed (representation of residents).
The director of the care institution is under an obligation to immediately report any deprivation of liberty under the law to the resident's representative (and, if applicable, to a representative and trusted person of the resident), all of whom are entitled to submit an application for review by a court. The law does not provide for systematic segregation of children, adolescents and adults in care institutions governed by the

above-mentioned law (and such segregation is not known to be customary in practice, also not in the case of deprivation of liberty due to a serious and considerable threat as a result of mental illness or mental disabilities).
Depriving minors of their liberty as part of measures taken by youth welfare services is not permitted in Austria.
Under the Hospitalisation Act (*Unterbringungsgesetz*), mentally ill persons, including minors, can be deprived of their liberty against their will in psychiatric wards if such measures are necessary to avert a serious and considerable threat to their own health or the health of others. The right to liberty is defended in a special court procedure by a special legal representative, the patient advocate (*Patientenanwalt*). Since, as an effect of the Hospitalisation Act, only a small number of psychiatric patients are deprived of their liberty, and since separate psychiatric wards for children and adolescents are not available at all psychiatric hospitals, it can be assumed that the special treatment of minors, which is in principle the objective, is not guaranteed without fail.
In accordance with the provisions of the Juvenile Court Act, adolescents serve their prison terms in special prisons (special prison for juvenile offenders in Gerasdorf) or in separate units, if possible, of other prisons. Juvenile sentenced prisoners are to be separated from adult sentenced prisoners who are not subject to the juvenile prison regime. However, such separation may not be effected if, under the circumstances, neither a harmful influence nor any other disadvantage for juvenile sentenced prisoners is expected. Adult sentenced prisoners may be made subject to the juvenile prison regime by the court of enforcement until they have reached the age of 27 at the latest.
The primary goal of the administration of juvenile penal justice in Austria is to solve the problems of juvenile delinquency not only with the means provided by penal law, but also to prevent negative side effects and long-term effects of a conviction or an offence. All relevant sanctions, measures and programmes are therefore aligned with the principles of re-socialisation and integration.

33. ***Please provide information, disaggregated by sex, age, ethnicity or origin of victims, on the number of complaints, investigations, prosecution, convictions and sanctions applied in cases of human trafficking and commercial sexual exploitation since the consideration of the last periodic report.***

In 2008, 203 victims (all of them female) received care. The women came from EU countries, Asia, Latin America, Nigeria and other African states. In 2008, there were six convictions for human trafficking and 61 convictions for cross-border sex trafficking, of which in 18 cases cross-border sex trafficking is listed as main offence. Crime statistics only show those convictions in which the offence is listed as main offence, i.e. no other offence carrying a higher penalty was judged at the same time. For these 18 convictions, this means that cross-border sex trafficking was the offence relevant for the sentence imposed. In these 18 cases, the following sentences were handed down: 1 suspended prison sentence of more than 3 months up to 6 months, 2 suspended prison sentences of more than 6 months up to 12 months, 1 suspended prison sentence of more than 1 year up to 3 years, and 3 unconditional prison sentences of more than 1 year up to 3 years. In 2 cases, partially suspended sentences combining an unconditional fine and a suspended prison sentence were handed down (section 43a paragraph 2 of the Penal Code), and in nine cases,

partially suspended prison sentences were imposed (section 43a paragraphs 3 and 4 of the Penal Code).

As regards the "number of complaints, investigations, prosecution", the following figures from the electronic registry can also be provided (these figures differ from the courts' crime statistics because the registry does not differentiate by main offence and counts every offence recorded, though assessment in the registry may lead to imprecision depending on the precision of recording; inclusion in the registry is essential for administration of the files and also covers statistical requirements, though collecting and evaluating data is not the primary goal of electronic recording in the registry):

	Section 104a of the Penal Code	Section 217 of the Penal Code
Total cases (by number of cases)	23	196
Total indictments (by number of defendants)	5	61
Total convictions (by number of defendants)	6	61
Total acquittals (by number of defendants)	6	39
Total out-of-court settlements (by number of defendants)	0	1
Total cases dismissed (by number of defendants)	49	191
Total cases discontinued (by number of defendants)	4	50
Total cases withdrawn (by number of defendants)	10	80
Total others	16	144

34. ***Please provide statistical data on inter-prisoner violence since the review of the last periodic report. What measures have been taken to prevent such violence?***

To prevent inter-prisoner violence, Austrian prisons offer a wide range of activities, such as comprehensive training and leisure time activities, which are accepted well by the prisoners. In addition, providing work opportunities for prisoners is a priority. In the juvenile unit of the Vienna-Josefstadt prison, a project involving affect control training has been launched. An important goal of affect control training is to identify and apply socially acceptable solutions to conflicts.

In 2008, 216 cases of inter-prisoner violence took place in Austrian prisons. The number dropped to 153 cases in 2009.

Other

35. ***Please indicate whether there is legislation in the State party aimed at preventing or prohibiting the production, trade, export and use of equipment specifically designed to inflict torture or cruel, inhuman or degrading treatment. If so, please provide information about its content or implementation. If not, please indicate whether the adoption of such legislation is being considered.***

The Austrian legal system currently includes numerous laws that deal with the concept of weapons in the broadest sense, as well as their use, authorisation, prohibition etc.

In the broadest sense, the following can be considered relevant:

- Art. 3 in conjunction with Annex II of Council Regulation (EC) No. 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (“anti-torture regulation”). The unauthorised import of such weapons is prohibited under Art. 4 in conjunction with Annex II of the Regulation. Annex I of the Regulation lists the authorities that can grant such authorisation.
- Federal Act on the prohibition of blinding laser weapons, Federal Law Gazette I no. 4/1998
- Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended on 3 May 1996 (Protocol II to the 1980 Convention as amended on 3 May 1996) to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects of 10 October 1980, and the Protocol on Blinding Laser Weapons (Protocol IV) of 13 October 1995 to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, Federal Law Gazette III no. 171/2002
- Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, Federal Law Gazette III no. 38/1999
- Convention on cluster munitions (due to enter into force on 1 August 2010)
- Weapons Act (*Bundesgesetz über die Waffenpolizei, WaffG*) of 1996
- Ordinance on War Material, Federal Law Gazette no. 624/1977

36. ***With reference to paragraph 4 of the State party’s report, please inform the Committee on whether there is any development about the State party’s ratification of the Optional Protocol to the Convention, which the State party signed in September 2003. If so, has the State party adopted measures to set up or designate a national mechanism which would conduct periodic visits to places of detention in order to prevent torture or other cruel, inhuman or degrading treatment?***

The government programme of the Austrian federal government for the 24th legislative period provides for the implementation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 18 November 2002 (OPCAT). Austria signed the OPCAT on 25 September 2003. Pursuant to article 3 of the OPCAT, each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (so-called national preventive mechanism). The government programme provides for a responsibility of the public prosecutor’s office for these tasks, which is to create the basis for the ratification of the OPCAT. Preliminary work on drafting legislation to implement this project is in the preparatory stage.

37. Please provide information on the legislative, administrative and other measures taken by the State party in response to the threat of terrorist acts and explain how it has ensured that these measures have not affected human rights safeguards in legislation and in practice. In that connection, the Committee would recall Security Council resolutions 1456 (2003), 1535 (2004), 1566 (2004) and 1624 (2005), in the first of which the Council stated that States “must ensure that any measure taken to combat terrorism comply with all their

obligations under international law, and should adopt such measures in accordance with international law, in particular international human rights, refugee and humanitarian law". Please describe the relevant training given to law and order officials, the number and type of sentences handed down in accordance with the law and the legal resources available to persons who have been the object of anti-terrorism measures. Please also state whether there have been claims of non-compliance with international law in this respect and the result of such claims.

The draft for the "Terrorism Prevention Act of 2010" is currently under expert review; as the review period has not yet been completed, further information on new developments will be supplied once a decision has been taken by the National Council.

Basic training for the executive forces of the Federal Office for the Protection of the Constitution and the Fight against Terrorism (BVT) is organised and conducted by the Security Academy and is no different from training provided for other law enforcement officers.

Operational training for officers of the BVT is conducted by the Vienna Provincial Police Command.
Training for the duties of the BVT is provided as part of the "special training course on protection of the constitution".