



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

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**Committee on the Elimination of Racial Discrimination**

**Reports submitted by States parties under article  
9 of the Convention**

**Eighteenth to twentieth periodic reports of States parties due  
in 2011**

**Austria\* \*\***

[22 December 2011]

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\* This document contains the eighteenth to twentieth periodic reports of Austria due in 2011, submitted in one document. For the fifteenth to seventeenth periodic reports and the summary records of the meetings at which the Committee considered this report, see documents CERD/C/AUT/17 and CERD/C/SR.1890, 1891 and 1900.

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

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## I. General remarks

1. The present report has been drawn up in accordance with the reporting guidelines (CERD/C/2007/1) issued in 2008 by the Committee on the Elimination of Racial Discrimination (hereinafter referred to as the Committee). These guidelines contain specific questions regarding the individual provisions of the Convention on the Elimination of All Forms of Racial Discrimination. The present report is limited, to a large extent, to describing the legal and factual changes that have occurred since the submission of the previous report (combined fifteenth, sixteenth and seventeenth reports). In some cases, several questions referring to one and the same article and, where necessary for reasons of comprehensibility, the respective recommendations made by the Committee in 2008, have been dealt with jointly under the same item. Comments on those recommendations by the Committee which are not dealt with in the report itself are included in the annex.
2. Current figures, data and indicators regarding migration and integration in the fields of population development, language and education, work and employment, social affairs and health, safety, and housing can be found in the statistical part of the 2011 Integration Report. An overview of the most recent integration measures, most of which are designed to prevent or remedy discrimination, is provided in the Integration Report published in July 2011. The annual statistics of the Federal Ministry of the Interior on asylum and immigration matters contain detailed data including, for example, the numbers and countries of origin of aliens residing in Austria. General reference should also be made to the MIDIS Report drawn up by the European Union Agency for Fundamental Rights in 2010, which gives a very positive assessment of Austria's treatment of migrants from Turkey and former Yugoslavia.
3. The Convention itself is not directly applicable in Austria, but it can be assumed that the rights granted in this document have to a large extent been laid down in Austrian legislation. The general prohibition of discrimination has even been enshrined in constitutional law (see the comments on article 1, A). All laws and any action taken by courts and administrative authorities must therefore comply indirectly with the rights enumerated in the Convention.
4. Generally, it should be mentioned that the Austrian legal system provides for well developed individual legal protection (see the comments on article 6, A). In addition, pursuant to article 18 of the Federal Constitutional Law (Bundes-Verfassungsgesetz, Federal Law Gazette No. 1/1930 as amended by Federal Law Gazette Vol. I No. 43/2011), a strict principle of legality is applicable in Austria which stipulates that the entire public administration must be based on law. Finally, it should also be mentioned that the European Convention for the Protection of Human Rights and Fundamental Freedoms has been given the status of a constitutional law in Austria.
5. It should also be mentioned that Austria assumes that none of Austria's ethnic groups is an indigenous people within the meaning of the Convention.

## II. Article 1

### A. Assessment of the compliance of the definition of racial discrimination in domestic law with the definition provided in article 1, paragraph 1 of the Convention

#### Questions 1-5 of the Committee's reporting guidelines (CERD/C/2007/1)

6. Article I of the Federal Constitutional Law on the Implementation of the International Convention on the Elimination of all Forms of Racial Discrimination of 1973 (Bundesverfassungsgesetz zur Durchführung des Internationalen Übereinkommens über die Beseitigung rassistischer Diskriminierung 1973, Federal Law Gazette No. 390/1973) defines the term "racial discrimination" as "any distinction based solely on race, colour, descent, or national or ethnic origin". According to the well-established case law of the Austrian Constitutional Court, this Federal Constitutional Law prohibits both the legislative and the executive branch from making any distinctions among aliens that cannot be justified by factual reasons. Moreover, all statutory provisions addressed to aliens must, in general, be objective. The administrative branch is furthermore bound by a prohibition of arbitrariness and the principle of proportionality (see for instance the Constitutional Court's recent decision of 2 July 2011, U 2106/10). Furthermore, article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which has the status of a constitutional law, prohibits, inter alia, discrimination on any ground such as "race, colour, language, religion, [...] national or social origin, [...] association with a national minority". On this basis, comprehensive anti-discrimination legislation has been enacted which is continuously further developed (see below). In the fields of administrative and civil law, the transposition of the relevant EU Directives<sup>1</sup> has contributed to strengthening anti-discrimination legislation in Austria.

7. Part II (Sects. 16 et seq.) of the Equal Treatment Act (Gleichbehandlungsgesetz, Federal Law Gazette Vol. I No. 66/2004 as amended by Federal Law Gazette Vol. I No. 7/2011) governs equal treatment in employment without any distinction based on ethnicity, religion or belief, age or sexual orientation (anti-discrimination provisions; Part II). These provisions for the private sector were also enacted for the public-service sector with more or less the same content (by means of the Act concerning Equal Treatment in the Public Service Sector [Bundes-Gleichbehandlungsgesetz], Federal Law Gazette No. 100/1993 as amended by Federal Law Gazette Vol. I No. 6/2011 for the federal sector, and by means of corresponding provincial laws for provincial and municipal public services). Moreover, the Equal Treatment Act (Part III) also prohibits any discrimination on grounds of ethnicity in other areas. These include, for instance, social protection (including social security and health care), social benefits, education and access to and supply of goods and services that are available to the public, including housing. These are primarily goods and services that are publicly offered (e.g. in shops, restaurants, bars, leisure facilities). Regarding discrimination based on sex, the scope of protection includes access to and supply of goods and services that are available to the public, including housing.

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<sup>1</sup> See in particular Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (referred to as Anti-Racism Directive, OJ L 180/22 of 19 July 2000) and Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (referred to as Anti-Discrimination Directive, OJ L 303/16 of 2 December 2000).

8. Although neither the Equal Treatment Act nor the Act concerning Equal Treatment in the Public Service Sector contains a definition of the term “association with a national minority” (“ethnicity”), it is an undisputed fact that this expression has to be interpreted in the broader sense within the meaning of the Anti-Racism Directive and on the basis of obligations under international law, such as, explicitly, the Convention on the Elimination of All Forms of Racial Discrimination. At any rate, the term does not refer to biological relations with a certain ethnic group. Rather, according to the explanatory notes, it has to be understood in a cultural sense. Therefore, protection from discrimination on grounds of “ethnicity” applies to all persons who are perceived as foreign because, due to certain differences, they are not considered to belong to the regional majority (legislative materials: 307 BlgNR 22. GP 14).

9. The Equal Treatment Act and the Act concerning Equal Treatment in the Public Service Sector prohibit both direct and indirect forms of discrimination. Direct discrimination takes place if a person, for instance on grounds of his/her ethnicity, is, was or would have been treated less favourably than another person in a comparable situation. In cases of indirect discrimination, the unequal treatment is not openly based on the person’s ethnicity, but, in fact, a regulation that per se is neutral has typically disadvantageous consequences for a certain group of people, without being justified by a legitimate goal, and without the means for the attainment of this goal being adequate and necessary (see section 5 of the Equal Treatment Act, sections 13 and 13a of the Act concerning Equal Treatment in the Public Service Sector). As an example from the provinces (“Länder”), it can be reported for Vienna that the Vienna Anti-Discrimination Act (Wiener Antidiskriminierungsgesetz, Provincial Law Gazette for Vienna No. 35/2004 as amended by Provincial Law Gazette No. 44/2010) prohibits, as punishable offences, both direct and indirect forms of discrimination on grounds of ethnicity in the fields of social affairs, healthcare, education, access to and supply of goods and services that are available to the public, including housing, and access to self-employment.

10. The interpretative explanation made regarding article 4 of the Convention serves the purpose of clarifying the relationship between the obligations under international law relating to freedom of expression and the right of assembly as laid down in the Convention and other human rights obligations under international law, such as the International Covenant on Civil and Political Rights and primarily the European Convention for the Protection of Human Rights and Fundamental Freedoms.

11. Where the Aliens’ Police Act (Fremdenpolizeigesetz, Federal Law Gazette Vol. I No. 100/2005 as amended by Federal Law Gazette Vol. I No. 38/2011) and/or the Settlement and Residence Act (Niederlassungs- und Aufenthaltsgesetz, Federal Law Gazette Vol. I No. 100/2005 as amended by Federal Law Gazette Vol. I No. 38/2011) provide for differential treatment on the basis of nationality, this is objectively justified, not least on the basis of the requirements of international law and the laws of the European Union.

12. Insofar as the school system is concerned, it can be reported that citizenship or migration background are no criteria for access to public schools in Austria. Section 4, paragraph 1 of the School Organisation Act (Schulorganisationsgesetz, Federal Law Gazette No. 242/1962 as amended by Federal Law Gazette Vol. I No. 44/2010) expressly affirms that public schools are “generally accessible without any differentiation based on birth, sex, race, status, social class, language or creed”. Only with regard to private schools does section 4, paragraph 3 of the School Organisation Act allow for a selection of pupils, for instance based on the criterion of “language”.

13. Like compulsory schooling – which requires, inter alia, a permanent residence in Austria – the option of (voluntary) schooling, a right available to children staying in Austria only temporarily, is not bound to any criteria such as citizenship, race or migration

background (sect. 1, para. 1 and/or sect. 17 of the Compulsory School Act of 1985 [Schulpflichtgesetz 1985], Federal Law Gazette No. 76 as amended by Federal Law Gazette Vol. I No. 113/2006).

**B. Information on whether the legal system of the State party allows or provides for special measures to secure the adequate advancement of groups and individuals protected under the Convention**

14. The Equal Treatment Act expressly provides for the possibility of affirmative action. Specific measures enacted in laws, regulations or otherwise (e.g. in instruments of collective labour law) to promote equal treatment that are taken with a view to preventing or compensating for disadvantages based, inter alia, on ethnicity, are therefore not deemed to be discriminatory. By way of example, the Minorities School Acts (*Minderheiten-Schulgesetze*) for Carinthia (Federal Law Gazette No. 101/1959) and Burgenland (Federal Law Gazette No. 641/1994) and their implementing provisions for the groups of national minorities (ethnic groups) resident in these provinces are designed to ensure that disproportionately high attention – compared to the number of members of such groups – is paid to such groups (for details, see the comments on article 5, I.E, paragraphs 76-87 below). Members of minorities receive special support from the Public Employment Service (*Arbeitsmarktservice*) (see the comments on article 2, D). Moreover, the Ethnic Groups Act (*Volksgruppengesetz*, Federal Law Gazette No. 396/1976 as amended by Federal Law Gazette, Vol. I No. 46/2011) provides that the federal state – notwithstanding general supportive measures – is to award financial support to ethnic group organizations as affirmative action. In this context, primarily measures aimed at the preservation of the language and culture of the respective ethnic groups as well as intercultural projects fostering the coexistence of different ethnic groups are supported (for details, see the comments on article 5, I.E, paragraphs 76-87 below).

**III. Article 2**

**A. Brief description of the legal framework and general policies to eliminate racial discrimination**

15. Austria regards the fight against xenophobia and racism a priority task and takes measures, at several levels, to promote equal treatment, eliminate prejudice and advance integration. The government programme for the current legislative period (2008 – 2013) provides, inter alia, for the reinforcement of protection against discrimination under criminal law (regarding the general legal situation, see the previous periodic reports). Not least for this reason, the National Action Plan for Integration, which is also instrumental in addressing anti-discrimination aspects, was drawn up with the participation of civil-society organizations. Based on scientifically developed integration indicators, the integration process is to be continuously analysed.

16. In the course of the 2010/2011 universal periodic review of Austria, a structured human rights dialogue with the civil society was initiated. The human rights coordinators of the federal ministries and the offices of the provincial governments play a central role in the topic-related dialogue of their departments with non-governmental organizations. The structured dialogue is supported by the Federal Chancellery and the Federal Ministry for European and International Affairs (hereinafter referred to as the Foreign Ministry). General questions arising from this dialogue are dealt with by a steering group composed of

representatives of the two aforementioned ministries and of non-governmental organizations.

17. In April 2011 a state secretary for integration was appointed within the Ministry of the Interior to ensure better implementation of the Austrian integration policy as a social responsibility.

## **B. Specific and detailed information on the legislative, judicial, administrative or other measures taken**

### **Questions 1-5 of the Committee's reporting guidelines**

18. Examples of anti-discrimination measures taken by the federal ministries are included in the 2011 Integration Report (including a statistical overview). For details, see the comments in the annex. Moreover, the established case law of the Constitutional Court on the Federal Constitutional Law on the Implementation of the International Convention on the Elimination of all Forms of Racial Discrimination of 1973, which in article I, paragraph 1 guarantees aliens an individual right to equal treatment, needs to be mentioned in general here. A decision is in violation of such a right if it is based on a law in breach of this provision, if a public authority or the Court of Asylum has erroneously alleged that the simple law applied has a content which – if the law actually had such content – would make it appear to be in contradiction to said Federal Constitutional Law, or if arbitrariness was involved in making the decision. Arbitrary conduct on the part of the public authority and/or the Court of Asylum, which interferes with the constitutional sphere, includes, *inter alia*, a cumulative misapprehension of the legal situation but also the omission of any investigative activities regarding a crucial point or the total omission of a proper preliminary investigation, in particular in conjunction with a disregard of the pleadings made by the parties and a careless departure from the content of the files or a disregard for the precise facts of the case. In particular, conduct is deemed to be arbitrary where an administrative decision or a judgment is based on statements which have no value as supporting reasons.

19. In the field of legislation in particular the following novelties introduced since the 2008 periodic report have to be mentioned:

(a) With the amendment of the Equal Treatment Act and the Federal Act on the Equal Treatment Commission and the Ombud for Equal Treatment (Bundesgesetz über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft), Federal Law Gazette Vol. I No. 98/2008, for instance, the minimum claims for damages were raised and the period of limitation for asserting cases of harassment was extended from six months to one year. For a more efficient execution of the Equal Treatment Act, the proceedings before the Equal Treatment Commission were improved as well. See also, annex, reply to the recommendations contained in paragraph 13 of the concluding observations.

(b) The latest amendment of the Equal Treatment Act, Federal Law Gazette Vol. I No. 7/2011, expanded the scope of protection against discrimination to include, *inter alia*, persons who are discriminated against on the basis of their close relationship to persons with a protected attribute;

(c) The latest amendment of the Employment of Foreigners Act (Ausländerbeschäftigungsgesetz, Federal Law Gazette No. 218/1975 as amended by Federal Law Gazette Vol. I No. 25/2011) abrogated, without substitution, section 8, paragraph 2, pursuant to which foreign employees were to be dismissed first in the case of redundancies. Moreover, access to the labour market for family members who have come to Austria by way of family reunification was made easier (sect. 1, para. 2 of said Act) and the

one-year waiting period for access to the labour market was abolished. In addition, section 4, paragraph 3 of the Employment of Foreigners Act substantially expands the employment options for foreign students and for foreign victims of violence and human trafficking;

(d) Another example is that, pursuant to section 42 of the Universities Act of 2002 (Universitätsgesetz 2002, Federal Law Gazette Vol. I No. 120/2002 as amended by Federal Law Gazette Vol. I No. 45/2011), working groups for equal treatment issues have been set up at all universities. Their task is to counteract discrimination by university bodies on grounds of sex, ethnicity, religion or belief, age or sexual orientation. In addition, arbitration committees (sect. 43 of the Universities Act) are in place at all universities to decide on complaints of discrimination on grounds of sex, ethnicity, religion and belief, age or sexual orientation;

(e) It should also be remembered that pursuant to the Associations Act (Vereinsgesetz, Federal Law Gazette Vol. I No. 66/2002) as well as on the basis of individual criminal-law provisions it is prohibited to found and/or maintain associations that promote and/or incite racial discrimination. See also the comments on article 4, A.

(f) The planned ratification of the UNESCO Convention against Discrimination in Education, which is currently being debated by the Committee on Education of the National Council (Nationalrat) (legislative materials: 1061 BlgNR 24. GP), should also be mentioned. For details on the efforts being made in schools to combat racial discrimination, in particular in the course of “civic education” (politische Bildung), see the comments on article 7

(g) An example of other measures taken at the federal level is the dialogue tour of the Federal Minister for Women and the Civil Service through all provinces, which started in March 2010. In the course of this tour, model projects for a better coexistence of Austrians and migrants are being presented and their implementation all over Austria encouraged;

(h) In addition, measures to ensure non-discriminatory treatment through targeted training and further training of staff are being taken at the federal ministries. The Federal Ministry of Finance, for instance, offers a special course on intercultural competence when dealing with migrants (“Interkulturelle Kompetenzen im Umgang mit Migrantinnen und Migranten”) in the field of taxation and customs. The employees at the Federal Ministry of the Interior have been obliged, since 2001, to participate in the “A World of Difference” programme designed in cooperation with the Anti-Defamation League (ADL)<sup>2</sup>. In addition, an information centre for equal treatment issues has been set up at the Federal Ministry of the Interior;

(i) Several advisory boards make recommendations to support the executive authorities. The Human Rights Advisory Board (Menschenrechtsbeirat) for the safeguarding of human rights and the regular monitoring of the activities of the security police authorities (sect. 15a of the Security Police Act [Sicherheitspolizeigesetz], Federal Law Gazette Vol. I No. 146/1999 as amended by Federal Law Gazette Vol. I No. 2/2008) and the Integration Advisory Committee (Integrationsbeirat) for the exchange of opinions on integration-related matters and the consultation on the implementation of recommendations of the Expert Council for Integration (Expertenrat für Integration, section 18 of the Settlement and Residence Act, Federal Law Gazette, Vol. I 100/2005 as amended by Federal Law Gazette Vol. I No. 38/2011) deserve special mention;

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<sup>2</sup> American organization headquartered in Washington D.C., which fights against the discrimination and defamation of the Jewish people.

(j) As an example from the provinces, it may be reported that integration-oriented diversity management has been pursued for several years in Vienna in order to cope in the best possible manner with the challenges posed by a culturally, linguistically and socially diverse population. For instance, numerous measures have been taken to effect relevant changes and/or developments within the city administration and further measures have been planned. A separate division for integration and diversity matters, which serves as a competence centre assisting the city administration, was founded to make sure that all branches, departments and agencies receive the best possible support. Special attention is paid to whether the programmes and services offered are equally accessible for all Viennese citizens, irrespective of their origin, whether they are appropriate and target-group-oriented and/or whether they need to be adjusted to the needs of people with migration background. The main purpose is to guarantee non-discriminatory access to the programmes and services offered. For further information, see: <http://www.wien.gv.at/menschen/integration/diversitaet/stadt.html>;

20. The following projects for the promotion of equal treatment are currently being carried out in Austria under the EU's PROGRESS programme:

(a) Equal opportunities – awareness raising and support in applying the Equal Treatment Acts (“*Chancengleichheit – Awareness raising und Unterstützung bei der Anwendung der Gleichbehandlungsgesetze*”): This project carried out by the Litigation Association Against Discrimination (*Klagsverband<sup>3</sup> zur Durchsetzung der Rechte von Diskriminierungsopfern*) and funded by the European Commission and the Federal Ministry of Labour, Social Affairs and Consumer Protection seeks to spread information about equal-treatment and anti-discrimination legislation in selected municipalities. Under this project, equal-opportunities days are organized with the support of the municipalities, on the occasion of which various work-related (e.g. tenders, application procedures, promotion within a company) and non-work-related subjects (e.g. apartment rental, access to restaurants and clubs, car rental, etc.) are discussed with a view to equal and non-discriminatory treatment. In this context, the discussions with political decision-makers and various population groups deal not only with statutory provisions and their practical impacts, but also with measures beyond the statutory framework and benefits available at the municipal level and/or possible cooperation with various equal treatment institutions (e.g. preparing industry-related rules of conduct);

(b) “Equality in Housing”: This project, which is carried out by the relief organization Volkshilfe<sup>4</sup> and funded by the European Commission and the Federal Ministry of Labour, Social Affairs and Consumer Protection, is composed of three interconnected implementation modules: survey, networked training as well as policy advice and public relations work. More information is available at <http://www.volkshilfe.at/1351,,2.html>;

21. Financial support is also given, inter alia, to the following non-governmental organizations or other institutions combating racial discrimination and/or striving to strengthen mutual understanding.

<sup>3</sup> This non-governmental organization was founded in 2004 and is currently composed of 24 member associations. It does not offer one-to-one counselling but provides support to victims of discrimination, including representation in court. Pursuant to Sect. 62 of the Equal Treatment Act, the Litigation Association against Discrimination is entitled, at the request of a person concerned, to join an action for the assertion of claims pursuant to the Equal Treatment Acts as intervener. The Litigation Association against Discrimination receives subsidies from the federal state as well as from the province of Salzburg.

<sup>4</sup> This relief organization was founded in 1947 as a non-profit association. It continues the tradition of the labour movement and provides humanitarian aid in Austria and abroad.

(a) Since 2004, the Foreign Ministry has been supporting the ZARA – Civil Courage and Anti-Racism Work (ZARA – Zivilcourage und Rassismus-Arbeit) association with annual contributions of EUR 1,500 to EUR 2,000 for printing costs for publishing their annual report on racism;

(b) The Federal Ministry for Education, Arts and Culture provides financial support to events organized by organizations of ethnic groups – including those of the Roma – to foster mutual understanding among the different ethnic groups and between the majority and the minorities, for example theatre performances, festivals, concerts, exhibitions or film productions on issues specifically related to ethnic groups. Regarding the Roma, workshops with a Holocaust survivor that have been carried out for many years in schools deserve special mention;

22. Between 2009 and 2011, the Federal Ministry of Labour, Social Affairs and Consumer Protection supported, inter alia, the following projects:

(a) Project of a symposium on the occasion of the 20th jubilee of the minorities platform “Initiative Minderheiten” (“Symposium 20 Jahre Initiative Minderheiten”, 2011);

(b) Projects of the association “FAIR and SENSIBLE – Police and Africans” (“FAIR und SENSIBEL – Polizei und AfrikanerInnen”), subsidized with funds of the European Union and the Federal Ministry of the Interior (2010/2011): Project “What are they doing here?!” (“Was machen denn die da?!”, 2011) with the objective of providing comprehensive information to and raising the awareness of the local population regarding the topics of asylum, refugees and asylum-seekers; project “The Stranger Next Door – Transcultural Similarities and Overcoming Conflicts” (“Die Fremde nebenan – transkulturelle Gemeinsamkeiten und Überwindung von Konflikten”, 2010).

23. In addition, the provinces also attach great importance to offering multi-lingual cultural events, which they also support. The City of Vienna, for instance, subsidizes festivals that help raise awareness of cultural diversity.

### **C. Information on whether a national human rights institution, created in accordance with the Paris Principles or other appropriate bodies, have been mandated with combating racial discrimination**

24. Besides the courts, which have primary responsibility for the protection of human rights, the Ombudsman Board, whose independence is guaranteed by constitutional law (art. 148a, para. 5 of the Federal Constitutional Law), contributes considerably to the implementation and safeguarding of human rights. In the course of the implementation of the Optional Protocol to the Convention against Torture (OPCAT) the Ombudsman Board’s scope of responsibilities is being expanded to include the general investigation of alleged human rights violations. The Ombudsman Board will thus assume essential responsibilities of a national human rights institution (ministerial draft bill: 286/ME 24. GP). The three members of the Ombudsman Board are elected by the National Council for terms of offices lasting six years each. The election is based on a joint recommendation, for which each of the three parties with the largest number of votes in the National Council is entitled to nominate one member (art. 148g of the Federal Constitutional Law). In future, the Ombudsman Board will receive substantial support from independent commissions composed of independent experts elected for six-year terms of office. When appointing the members of these commissions, special attention is to be paid to achieving a balanced representation of the sexes and an adequate representation of ethnic groups and minorities in the commissions as well as to achieving an independent, inter-disciplinary and pluralistic composition thereof (see also the comments on section 12 of the Act on the Implementation of the OPCAT [OPCAT-Durchführungsgesetz] in the ministerial draft bill: 286/ME 24. GP).

25. In addition, three university-based human rights institutes should be mentioned which perform many tasks required under the Paris principles (e.g. raising awareness through information and (further) education; assessments, research assignments): The Ludwig Boltzmann Institute of Human Rights (Ludwig-Boltzmann-Institut für Menschenrechte) in Vienna, the European Training and Research Center for Human Rights and Democracy in Graz and the Austrian Institute for Human Rights (Österreichisches Institut für Menschenrechte) in Salzburg. This also reflects the pluralism inherent in a democratic society as well as Austria's federal structure. These human rights institutions receive financial support and are included in federal projects, e.g. the implementation of the structured human rights dialogue in the course of the 2010/2011 Universal Periodic Review.

#### **D. Information on groups and individuals benefiting from special and concrete measures taken in the social, economic, cultural and other fields**

26. Differentiated school systems, focusing on special linguistic education regardless of the pupils' countries of origin, are available for national minority groups resident in Austria (Croatian, Slovenian, Hungarian, Czech, Slovak and Roma ethnic groups). In addition, lessons in the pupils' respective mother tongues are available for numerous other languages, such as Turkish. For details, see the comments on article 5, I.E, paragraphs 76-87 below.

27. Austrian labour market policy also strives to avoid all forms of discrimination based on ethnicity and race. Equal treatment among all foreign nationals starts upon admission to the Austrian labour market, meaning that, as a rule, they are admitted exclusively on the basis of labour-market policy criteria, irrespective of their country of origin or affiliation with a certain ethnic group. Labour migration is not controlled by bilateral agreements that would result in the preference of certain countries of origin.

28. With the objective of achieving quick (re)integration into the labour market, the Public Employment Service has considerably reinforced qualification and training measures for migrants in recent years. The Public Employment Service uses diversity management as a labour-market policy tool to promote respectful treatment within a diverse societal fabric (sex, special needs, ethnicity, sexual orientation, religion, etc.). This includes, inter alia, the hiring of personnel with migration backgrounds and special training courses for employees. The funds used for these projects have been nearly doubled since 2005, not least in order to reduce the unemployment rate among migrants, which is twice as high as among Austrians.

## **IV. Article 3**

### **Information on the legislative, judicial, administrative or other measures which give effect to the provisions of article 3 of the Convention**

#### **Questions 1-3 of the Committee's reporting guidelines**

29. Article 3 is not relevant for the Republic of Austria as there is *no* form of segregation or apartheid in this country. However, due to linguistic differentiation resulting in multi-lingual education, as in the area of schooling for ethnic groups, a formation of groups based on the pupils' descent might take place to some extent. This is counteracted with measures promoting a community atmosphere in a class, in a school or, if applicable, also between schools.

30. Austria assumes that a completed course of education is an important key to successful integration. Similarly, ethnic associations of the Roma recognized early that extracurricular tutoring contributes considerably to pupils' completing their education and, as a consequence, also to achieving economic and social integration. Therefore, tutoring programmes for Roma, funded under the ethnic groups support scheme, have been offered in Austria by some Roma associations for approximately 15 years now. As a consequence, today there are no longer any children from the autochthonous settlement area of the Roma in the province of Burgenland at schools for children with special educational needs. For details, see article 5, I.E, paragraphs 76-87 below.

31. The guidelines for awarding subsidized housing of the City of Vienna place Austrian citizens, EU citizens, EEA citizens, Swiss and Norwegian citizens, nationals of third countries with long-term residence status and Convention refugees on an equal footing. All of them have to meet the criterion of two years of principal residence in Vienna in order to be entitled to a place on the waiting list (for an apartment). Therefore, no segregation-like situation is likely to occur in the field of subsidized housing.

## **V. Article 4**

### **A. Information on the legislative, judicial, administrative or other measures which give effect to the provisions of article 4 of the Convention**

#### **Questions 1-7 of the Committee's reporting guidelines**

32. Austria regards combating anti-Semitism as a particularly important concern. Major instruments of national policy include strict legislation (Prohibition Act, Criminal Code) and educational work, in particular at schools. At the international level, Austria is committed to investigating the causes of anti-Semitism and to combating anti-Semitism, primarily in the contexts of the Holocaust Task Force/ITF, the Council of Europe and the OSCE.

33. Re-engagement in National Socialist activities (see Sects. 3a to h) is a punishable offence under the Prohibition Act of 1947 (Verbotsgesetz 1947, State Law Gazette No. 13/1945, as amended by Federal Law Gazette No. 148/1992). According to the well established case law of the Constitutional Court, the prohibition of re-engagement in National Socialist activities, which is enshrined in constitutional law, is a directly effective prohibition to be complied with by all government bodies within their respective spheres of action. On an annual average, approximately 30 charges are brought under the Prohibition Act and approximately the same number of convictions are obtained.

34. Austrian criminal law makes the incitement to hatred an offence pursuant to section 283 of the Criminal Code (Strafgesetzbuch, Federal Law Gazette No. 60/1974 as amended by Federal Law Gazette Vol. I No. 111/2010) in order to protect churches, religious communities and ethnic groups. According to this provision, not only incitement or goading to hostile acts, but also incitement of hatred against these groups or insulting or disparagement of them in a manner violating human dignity are punishable offences. On an annual average there are approximately 15 charges on grounds of incitement to hatred, most of which concern anti-Islamic activities.

35. According to an expansion of section 283 of the Criminal Code (Federal Law Gazette Vol. I No. 103/2011; legislative materials: 674 BlgNR 24. GP) a possible threat to public safety is no longer be a mandatory requirement for bringing charges of this kind, but perceptibility by a broad public is sufficient. Moreover, the group of persons protected

under such provision was expanded considerably. The wording of section 283, paragraph 1 of the Criminal Code reads as follows:

“Whoever publicly incites or goads others to violence or other hostile acts against a church or religious society or against another group defined by race, colour, language, religion or belief, nationality, descent or national or ethnic origin, sex, disability, age or sexual orientation, or against members of such groups expressly due to their affiliation with such group, in a manner capable of endangering public safety or perceivable to a broad public shall be liable to imprisonment for a term up to two years.”

36. The criminal-law provisions on racism and re-engagement in National Socialist activities under the Prohibition Act of 1947 also apply to acts committed on the Internet. Austria has been a contracting party to the Additional Protocol to the Council of Europe’s Convention on Cybercrime for the Prevention of Racist Statements on the Internet since 2006. The E-Commerce-Act (*E-Commerce-Gesetz*, Federal Law Gazette Vol. I No. 152/2001) establishes the responsibility of Internet providers to remove websites with racist content as soon as they obtain knowledge of such sites. Offices where relevant complaints may be submitted have been set up by the federal state and by private Internet providers.

37. Pursuant to the general principles of the Austrian Criminal Code (sect. 12 of the Criminal Code) not only the direct perpetrator commits a punishable offence but also whoever designates another person to perform the offence or otherwise contributes to its performance. Assisting racist activities, including financing them, is deemed a contribution to incitement to hatred or to another racially-motivated criminal offence, which makes such assistance as punishable as the direct commission of the offence.

38. Pursuant to the Associations Act and the Assemblies Act of 1953 (*Versammlungsgesetz 1953*, Federal Law Gazette No. 98/1953 as amended by Federal Law Gazette Vol. I No. 113/2006) it is possible to dissolve unlawful associations and assemblies, for instance if they violate the prohibition of incitement to hatred pursuant to section 283 of the Criminal Code, the prohibition of re-engagement in National Socialist activities pursuant to sections 3a et seq. of the Prohibition Act of 1947 or the anti-discrimination provision of article III, paragraph 1 (3) or (4) of the Introductory Act to the Administrative Procedure Acts of 2008 (*Einführungsgesetz zu den Verwaltungsverfahrensgesetzen 2008*, Federal Law Gazette Vol. I No. 87/2008 as amended by Federal Law Gazette Vol. I No. 20/2009). Under certain circumstances, organized propaganda activities, which do not yet constitute a gathering that may be considered as an association, are to be classified as assemblies. Pursuant to section 6 of the Assemblies Act of 1953, assemblies may be prohibited in advance if they run counter to criminal law provisions (e.g. sect. 283 of the Criminal Code or sect. 3a of the Prohibition Act of 1947). Such prohibition or dissolution may also be pronounced while an assembly is taking place. Pursuant to section 13 of the Assemblies Act of 1953, for instance, the authorities are entitled to dissolve an assembly if unlawful acts take place during such assembly.

39. In future, it will be possible to revoke subsidies under the Journalism Subsidy Act of 1984 (*Publizistikförderungsgesetz 1984*), Federal Law Gazette No. 369/1984 as amended by Federal Law Gazette Vol. I No. 130/1997,<sup>5</sup> if the bodies of a subsidized legal entity (e.g. political parties) or individuals within their sphere of influence commit an offence of defamation or incitement to hatred against certain parts of the population (e.g. disparagement of religious doctrines) or pursuant to the Prohibition Act of 1947 (legislative materials: 889 BlgNR 24. GP). With the re-establishment of the Austrian Press Council

<sup>5</sup> The Journalism Subsidy Act of 1984 provides for the promotion of civic education by the political parties.

(*Österreichischer Presserat*), a voluntary control mechanism for the media has been in place since 2010. On the basis of the Code of Ethics of the Austrian press, the Council restricts racist incitement and discriminatory news coverage (see also the comments on article 7, C, and annex, reply to the recommendations contained in paragraph 25 of the concluding observations,).

40. Under the relevant public service regulations, federal employees are obliged to perform their responsibilities in compliance with the applicable legal framework in an objective and unbiased manner. Moreover, they shall maintain the general public's trust in the objective performance of their activities (including those outside their service). These duties are not only designed to make federal employees refrain from (factual) racist conduct, they also prohibit any behaviour which might give the impression that their acts taken in an official capacity were influenced by unobjective or racial motives. Violations have disciplinary consequences.

41. As the Internet is a frequently used medium for the spreading of racial content, the federal state, in its capacity as the largest employer in Austria, has issued special rules for the private Internet use of its employees. Federal employees are expressly obligated to use the Internet at their workplace exclusively in such a manner that the reputation of the public service is not jeopardized. Therefore, the downloading or consuming of content prohibited under criminal law or otherwise unlawful content from the Internet is prohibited in any case. As a consequence, not only racist behaviour but also the consumption of racial content from the Internet at the workplace is classified as a violation of service duties which will have consequences, at least under disciplinary law.

42. In conclusion, it is emphasized that, in general, the federal government takes a firm stand against hate speech. The Federal Chancellor takes the clear view that it is a political responsibility, particularly in economically difficult times when many people are looking for someone to blame, to strengthen cohesion and tolerance.

## **B. Information on whether racial motives are considered an aggravating circumstance under domestic penal legislation**

43. Section 33 (5) of the Criminal Code lists, inter alia, racist and xenophobic motives as special aggravating circumstances when it comes to determining the degree of punishment. That means that in the case of generally punishable offences, a racist, xenophobic and/or anti-Semitic motivation may constitute an aggravating circumstance pursuant to section 33 (5) of the Criminal Code. The aggravating circumstances considered when determining the degree of punishment are not entered in the electronic procedural register of the judiciary and can only be identified from the reasoning given in the individual judgments. However, by decree of 23 January 2009 on new regulations relating to the reporting obligations of public prosecutors (*Berichtspflichtenerlass*), the public prosecutor's offices were explicitly put under the obligation to report to the Federal Ministry of Justice all cases in which an aggravating circumstance pursuant to section 33 (5) of the Criminal Code was taken into consideration. This has made it possible to analyse the development of the number of racially motivated criminal offences since then.

## **C. Obligations under article 4 of the Convention**

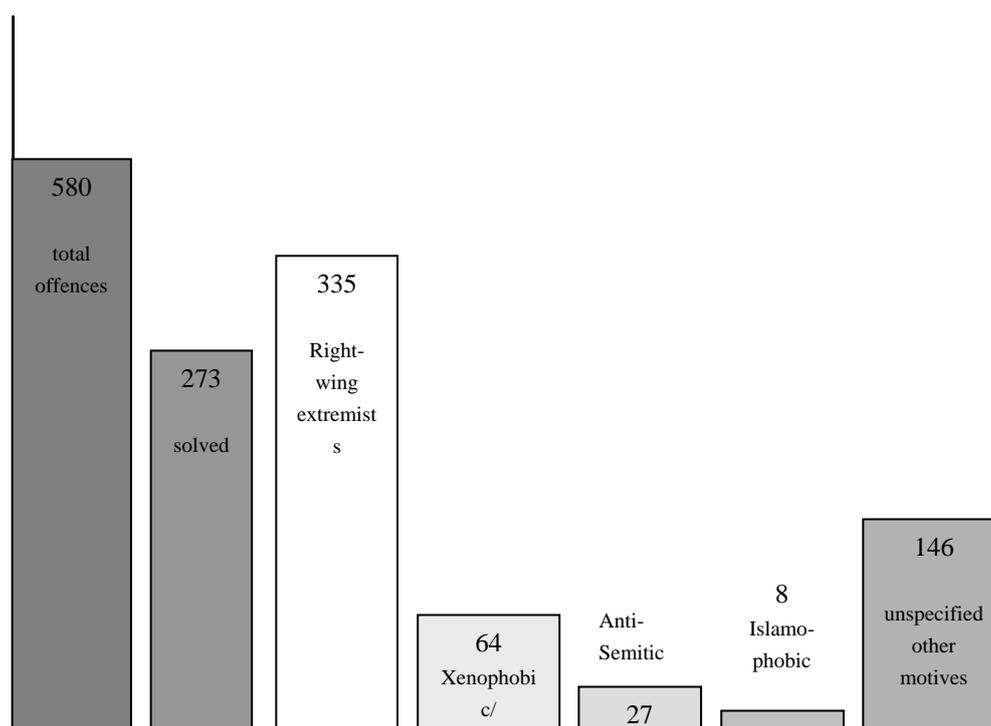
44. The following statistics provide information on the different types of offences under anti-discrimination legislation (all figures refer to criminal offences reported to the security authorities):

<i>Complaints</i>	2007	2008	2009
Prohibition Act	369	360	396
Incitement to hatred	52	73	33
Other offences / Crim. Code	251	304	253
Insignia Act*	14	21	40
Art. III Para. 1(4) EGVG**	66	77	69
<b>Total</b>	<b>752</b>	<b>835</b>	<b>791</b>

\* *Abzeichengesetz*

\*\* Introductory Act to the Administrative Procedure Acts of 2008

### Offences 2010



45. On the basis of reports by the public prosecutor's offices regarding section 283 of the Criminal Code (incitement to hatred) and regarding the Prohibition Act, the following case processing statistics have been drawn up:

<i>Sec. 283 Criminal Code</i>	<i>Complaints</i>	<i>Charges/motions for criminal prosecution</i>	<i>Convictions</i>	<i>Acquittals</i>
2008	73	14	3	3
2009	33	13	5	4
2010	79	7	9	1

<i>Prohibition Act</i>	<i>Complaints</i>	<i>Charges/motions for criminal prosecution</i>	<i>Convictions</i>	<i>Acquittals</i>
2008	360	25	32	5

<i>Prohibition Act</i>	<i>Complaints</i>	<i>Charges/motions for criminal prosecution</i>	<i>Convictions</i>	<i>Acquittals</i>
2009	396	46	36	7
2010	522	73	43	6

### Sentences passed according to the courts' criminal statistics

	2008		2009		2010	
	Sec. 283 Criminal Code	Pro-hibition Act	Sec. 283 Criminal Code	Pro-hibition Act	Sec. 283 Criminal Code	Pro-hibition Act
Imprisonment						
1 to 3 months	1	1	0	1	3	3
Imprisonment						
3 to 6 months	0	2	1	14	1	11
Imprisonment						
6 to 12 months	0	9	0	6	2	8
Imprisonment						
1 to 3 years	0	7	0	5	0	7
Imprisonment						
3 to 5 years	0	1	0	0	0	2
Imprisonment more than 5 years	0	0	0	1	-	-
Fine	1	0	2	1	2	0
Partially suspended prison sentence/fine	1	8	2	6	1	9

46. It is pointed out that these data cannot be put into direct relation to each other due to differences between the counting method used for the purpose of the police statistics on complaints and that used for the case processing statistics of the Federal Ministry of Justice. A female politician, for example, was convicted to pay a fine of EUR 25,000 for making racist comments about Muslims during the Graz election campaign in 2008 in violation of section 283 of the Criminal Code (see annex, reply to the recommendations contained in paragraph 16 of the concluding observations).

## VI. Article 5

### A. Information grouped under particular rights

#### 1. The right to equal treatment before tribunals and all other organs administering justice

##### Question 1-3 of the Committee's reporting guidelines

47. Provisions of criminal law and criminal procedure law to combat terrorism are completely neutral in their wording so that they leave no room for discrimination on

grounds of race, colour or origin. This refers both to provisions on the prosecution and penalization of the perpetrators and to provisions on the protection of the victims.

48. In principle, anti-terror measures are coordinated by the Federal Office for the Protection of the Constitution and the Control of Terrorism (*Bundesamt für Verfassungsschutz und Terrorismusbekämpfung*). The statutory basis is provided by the Security Police Act. In accordance with the Regulation of the Federal Minister of the Interior Issuing Rules for the Intervention of Agents of the Public Security Service (*Verordnung des Bundesministers für Inneres, mit der Richtlinien für das Einschreiten der Organe des öffentlichen Sicherheitsdienstes erlassen werden*, Federal Law Gazette No. 266/1993, hereinafter referred to as the Code of Conduct Regulation), public security agents are obliged in the performance of their responsibilities within the framework of the security administration, to refrain from taking any action that is capable of conveying the impression of bias or of being perceived as discrimination on grounds of sex, race, colour, national or ethnic origin, creed, political opinion or sexual orientation (sect. 5, para. 1 “Respecting Human Dignity”). See also the comments above on articles 1, A, and 2, B, in particular on the case law of the Constitutional Court regarding the Federal Constitutional Law on the Implementation of the International Convention on the Elimination of all Forms of Racial Discrimination of 1973.

49. The governing principle of Austrian criminal procedure is that of judicial investigation. Section 2 (“Ex officio principle”), section 3 (“Objectivity and establishment of the truth”) and section 4 (“Principle of formal criminal charge”) of the Austrian Code of Criminal Procedure of 1975 (*Strafprozessordnung 1975*, Federal Law Gazette No. 631/1975 as amended by Federal Law Gazette Vol. I No. 67/2011) ensure that the criminal investigation department and the public prosecutor’s offices perform the necessary investigations following the principle of ex officio proceedings and the principle of establishing the substantive truth, and prosecute criminal acts under the principle of legality. In line with these principles, the objective of all investigative measures is to establish the substantive truth, a precept which applies to the criminal investigation police, the public prosecutor’s office and the courts. All judges, public prosecutors and criminal investigation officers are bound to objectivity. They are obligated to apply the same diligence when determining the circumstances incriminating the defendant and when determining those serving his/her defence. The principle of objectivity is supported and implemented through the provisions on exclusion from proceedings and conflicts of interest laid down in the Code of Criminal Procedure. Section 47 of the Code of Criminal Procedure provides for a special regulation in the event of conflicts of interests involving the criminal investigation police and the public prosecutor’s office. In sum, it can thus be said that all Austrian law enforcement agencies carry out their investigations without any consideration of sex, race, ethnic origin or religious, political or sexual orientation. In addition, the independent Ombudsman Board (*Volksanwaltschaft*) is entitled to investigate, either ex officio or on the basis of a complaint, alleged cases of abuse in the field of federal administration if no legal remedy is available (or no longer available) and/or, upon complaint, investigate an alleged delay of a court in taking a procedural measure (art. 148a, paras. 1 to 3 of the Federal Constitutional Law). Moreover, respectful, non-discriminatory reciprocal treatment between civil servants is one of their official obligations. In particular, all “official tasks” are to be carried out “in compliance with the applicable laws and regulations in a loyal, diligent, committed and impartial manner”. This guarantees that any conduct of civil servants which is not subject to criminal prosecution may, if necessary, be investigated under disciplinary law (Sects. 43 and 43a of the Service Code for Civil Servants of 1979 [*Beamten-Dienstrechtsgesetz 1979*], Federal Law Gazette No. 333/1979 as amended by Federal Law Gazette Vol. I No. 111/2010). As an example from the provinces, the disciplinary penalties for violations of the prohibitions of discrimination included in the service regulations should be mentioned (see, inter alia, for Vienna

section 18a of the Service Regulations of 1994 [*Dienstordnung 1994*], Provincial Law Gazette for Vienna No. 56/1994 as amended by Provincial Law Gazette No. 10/2011, as well as section 4a of the Regulations for Contract Public Employees of 1995 [*Vertragsbedienstetenordnung 1995*], Provincial Law Gazette for Vienna No. 50 as amended by Provincial Law Gazette No. 10/2011). Complaints regarding ethnic discrimination, for instance by civil servants of the Municipality of the City of Vienna, are investigated independently and effectively. Pursuant to section 18a of the Service Regulations of 1994, civil servants are, for example, prohibited from discriminating any person on grounds of ethnicity. Pursuant to section 75, paragraph 1 of the Service Regulations of 1994, civil servants who culpably violate their official duties will be held responsible under the provisions of disciplinary law. Moreover, pursuant to section 67j, paragraph 3 of the Service Regulations of 1994, the Anti-Discrimination Board of the City of Vienna (*Stelle zur Bekämpfung von Diskriminierungen*) is entitled, whenever there is justified suspicion of discrimination pursuant to section 18a of the Service Regulations of 1994 by a civil servant, to directly file a complaint with the disciplinary authority provided that the person alleging to have suffered discrimination authorizes this in writing.

**2. The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual, group or institution**

**Questions 1-5 of the Committee's reporting guidelines**

50. The criminal investigation police and the public prosecutor's offices are obliged to investigate, ex officio, any suspicion of abuse and, when doing so, are obliged by law to be objective. Allegations of abuse are investigated regardless of which individuals are involved. The procedure for investigating potential cases of abuse by police officers are comprehensively governed by criminal laws and by internal decrees issued by the Federal Ministry of Justice and the Federal Ministry of the Interior. Regarding criminal prosecution, see also the comments on article 5, I.A, paragraphs 47-49 above.

51. The improper use of violence by law enforcement officials is punished as bodily harm. In this context, reference is made to section 313 of the Criminal Code, according to which the maximum term of imprisonment for an intentional act which under other circumstances also constitutes a punishable offense may be increased if such act is performed by a civil servant abusing circumstances resulting from the performance of his/her official duties. Moreover, police officials – like all civil servants – are subject to strict public service laws and/or disciplinary laws and, in the case of criminal offences committed by officials in the course of their duties or violations of such duties, have to face corresponding penalties. Executives and superiors are required, at all times, to raise their subordinates' awareness on the one hand and to permanently monitor their interventions on the other hand. In the event of racist or racially discriminatory behaviour that does not amount to an offence under criminal law, the competent administrative and disciplinary authorities are obliged to carry out a comprehensive investigation in order to ensure that relevant measures, if necessary, are initiated or taken (e.g. discussion with the employee, complaint with the disciplinary authority, suspension from service, etc.).

52. On 6 November 2009, the Federal Ministry of Justice issued a decree regarding allegations of abuse by law enforcement officials and prison staff; this decree, addressed to all public prosecutor's offices and courts, aims at guaranteeing objective conduct of proceedings, excluding even the slightest impression of bias. It provides that, apart from official acts that must not be delayed, investigations may only be carried out by officials who are not deemed to be biased. If claims of abuse are made, the provincial criminal police (*Landeskriminalamt*) in charge or, in Vienna, the Bureau of Special Investigations (*Büro für besondere Ermittlungen*), or the Federal Bureau of Anti-Corruption (*Bundesamt*

zur *Korruptionsprävention und Korruptionsbekämpfung*) must report the suspicion to the public prosecutor's office without delay but at least within 24 hours, pursuant to section 100, paragraph 2 (1) of the Code of Criminal Procedure.

53. With the aim of speeding up the process, the decree obligates the above-mentioned law enforcement agencies to continue, in principle, with their investigations unless the competent public prosecutor's office instructs them differently or takes over the investigation entirely or in part. To avoid any appearance of bias, the decree goes on to emphasize the option to entrust a court (sect. 101, para. 2, second sentence of the Code of Criminal Procedure) to carry out investigations in cases where high-level or executive officers of the criminal investigation police (and/or public prosecutor's office) are affected by the allegations of abuse. The Code of Criminal Procedure lays down the same reasons for conflicts of interest for officers of the criminal investigation police and the public prosecutor's office (sect. 47 of the Code of Criminal Procedure).

54. The past decade, especially, has been characterized by successful endeavours of department heads and of the top management of public authorities to eliminate any tendency of abuse by the police force. These have ranged from comprehensive courses on tolerance as part of the officers' education and further training to intervention training. Human rights are not regarded as an isolated issue, but rather, the Academy for Security Forces (*Sicherheitsakademie*) pursues a holistic approach in education and training. For example, the trainer responsible for teaching federal police intervention courses is also a human rights trainer and also gives priority to human rights issues in the course of the periodic training courses. Regarding prevention, the "A World of Difference" seminar carried out in cooperation with ADL, which is part of the mandatory in-house training, should be mentioned.

55. Likewise, measures to avoid racist assaults in prisons by fellow inmates or staff have been taken successfully for years. This includes, first and foremost, well-grounded training of the staff which, for many years now, has included programmes in dealing with people from different cultural backgrounds as a standard feature. To promote a better understanding of foreign cultures, the Prison Staff Academy (*Strafvollzugsakademie*) offers seminars for prison staff in which lectures, participative work (individually, in pairs and in groups), discussions and film presentations are used to provide advice and information on the promotion of integration and on how to treat foreign inmates (see also article 7, A). The objective of these measures is to raise the attending staff's awareness of socially sensitive situations when dealing with ethnic groups. Moreover, staff members with migration backgrounds are called upon to help raise the awareness of other staff members and inmates. In addition, when allocating the cells, i.e. accommodating the prisoners within the prison, a high level of attention is paid to ensuring that multi-occupancy cells only contain inmates who are compatible with each other so that no ethnically or racially motivated conflicts may arise. See also the comments on article 5, I.A, paragraphs 47-49 above.

56. The police are often a point of contact for victims of racism and discrimination. Victim support is thus a topic of central concern in Austria. Special mention should be made of relevant training courses in empathy building, discussion techniques and coaching. The concept of victim support is being re-discussed under the Federal Ministry of the Interior's INNEN.SICHER strategy. After victims have filed their complaints, police officers provide them with special support. A few days after a complaint has been made, a police officer will personally contact the victim again. In April 2010, a Unit for Minority Contacts (*Referat für Minderheitenkontakte*), whose staff may be deployed within the entire federal territory, was established at the Federal Police Directorate Vienna. At the same time, the position of a Consultant for Interventions in Compliance with Human Rights (*Referent/In für menschenrechtskonformes Einschreiten*) was created at the Vienna Provincial Police Command (*Landespolizeikommando Wien*).

57. The activities of the association “*Fair und Sensibel – Polizei und AfrikanerInnen*”, which was founded in 2000, should be mentioned as well. It is a concern of the association’s staff to act as a point of contact for migrants, primarily Africans, and the Austrian population. The information centre is open to everyone involved in problems with the police due to their skin colour, but also to everyone who, based on his/her own prejudices, has an issue with Africans in their close vicinity (e.g. as a son-in-law/daughter-in-law or as a neighbour). In such cases, in particular, great success has been achieved through the example set by the police, who in general are present, together with Africans, during the consultation, towards increased acceptance of people with dark skin.

58. The government programme 2008 to 2013 provides for an increase in the percentage of migrants within the police force because the highest possible level of acceptance and efficiency of operations can be achieved if the composition of the police force reflects the actual fabric of our society. Information campaigns and events are organized to attract migrants and especially children of migrants who have Austrian citizenship, with the aim of increasing the percentage of police officers with migration backgrounds in the medium to long term. A career with the police is open to all applicants with Austrian citizenship – regardless of their ethnic origin – who pass a relevant selection procedure. An initiative launched by the Vienna Provincial Police Command titled “Vienna needs you” (“Wien braucht Dich”), with numerous information events, some of which are held at migrants associations, deserves special mention.

59. Pursuant to section 8, paragraphs 1 and 3 of the Asylum Act 2005 (Federal Law Gazette Vol. I No. 100/2005 as amended by Federal Law Gazette Vol. I No. 38/2011) and sections 50 et seq. of the Aliens’ Police Act, the prohibition of refoulement applies generally to all aliens whose stay in Austria is unlawful. It prohibits the expulsion, deportation or return of a refugee in cases of real danger of a violation of articles 2 or 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms or Protocols No. 6 or No. 13 to the European Convention or if the person concerned, as a civilian, would have to face serious threats to his/her life or bodily integrity due to arbitrary violence in the course of an international or national conflict.

**3. Political rights, in particular the right to participate in elections, to vote and to stand for election on the basis of universal and equal suffrage, to take part in government as well as in the conduct of public affairs at any level and to have equal access to public service**

**Questions 1-3 of the Committee’s reporting guidelines**

60. Article 66, paragraph 1 of the Treaty of Saint Germain (*Staatsvertrag von St. Germain*, State Law Gazette No. 1/1920 as amended by Federal Law Gazette Vol. I No. 179/2002), which has constitutional status, provides that “all Austrian nationals shall be equal before the law [...] without distinction as to race, language or religion” and “shall enjoy the same civil and political rights”. Pursuant to article 67 of said Treaty, “Austrian nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Austrian nationals” (cf. the similar provision of article 6 of the State Treaty for the Re-establishment of an Independent and Democratic Austria (*Staatsvertrag betreffend die Wiederherstellung eines unabhängigen und demokratischen Österreich*), Federal Law Gazette No. 152/1955 as amended by Federal Law Gazette Vol. I No. 2/2008; hereinafter referred to as the Vienna State Treaty). Moreover, article 7 (1) of the Vienna State Treaty provides that “Austrian nationals of the Slovene and Croat minorities in Carinthia, Burgenland and Styria shall enjoy the same rights on equal terms as all other Austrian nationals”.

61. As a rule, in Austria, the right to vote in elections to the general representative bodies of the territorial authorities (i.e. National Council, provincial parliaments

[*Landtage*], municipal councils [*Gemeinderäte*] and/or district councils [*Bezirksvertretungen*] in Vienna) and/or for federal president is, pursuant to articles 26, 60, 95 and 117 of the Federal Constitutional Law, granted exclusively to Austrian citizens. Moreover, due to the so-called “Local Elections Directive” of the European Union (Council Directive 93/109/EC of 6 December 1993 laying down detailed arrangements for the exercise of the right to vote and stand as a candidate in elections to the European Parliament for citizens of the Union residing in a Member State of which they are not nationals, OJ L 329/34 of 30 December 1993), EU citizens are entitled to vote and stand as a candidate in elections to the “local authorities of the basic level” (municipalities, in Vienna: districts). No (other) distinction, for instance based on a certain ethnic or national origin, is made. As an example from the provinces, it can be reported that in Vienna, prior to the most recent elections to the municipal council and the district councils on 10 October 2010, the following measures were taken in order to motivate newly naturalized citizens to participate in the elections to the municipal council and the district councils, on the one hand, and to encourage non-Austrian EU citizens to participate in the elections to the district councils: A Vienna Election Dictionary (*Wiener Wahlwörterbuch*) was published in 15 languages, election information was prepared in various languages, various media cooperation projects (e.g. with “Hello Austria, hello Vienna”) were launched, articles were published in relevant newspapers (e.g. “*Welt und Stadt*”, “*biber*”) and specifically prepared information for non-Austrian EU citizens was made available.

62. In Austria there are no guaranteed mandates and/or seats for autochthonous ethnic groups in federal parliament or in the provincial parliaments. Only one ethnic group has formed its own political party that actually considers itself a regional party. However, even in this ethnic group it is apparent that many members of ethnic groups want to be represented by other parties matching their ideological orientation whose political mandataries include members of their ethnic groups. At the moment, for instance, the positions of the Federal Minister of Defence and Sports and the Federal Minister for Agriculture and Forestry, Environment and Water Management are held by members of the Croatian ethnic group. The president of the Burgenland provincial parliament is also a Burgenland Croat who, at least in part, actively uses the language of this ethnic group. In Vienna, a member of the Roma ethnic group held a position as district councillor for a political party for many years. Moreover, numerous members of ethnic groups are represented in high positions in the federal, provincial, district and municipal administrations.

63. In order to coordinate and consult with all acting stakeholders with regard to the implementation of the National Action Plan (NAP) for Integration, an Integration Advisory Committee, composed of representatives of the federal state and the provinces as well as representatives of the social partners and non-governmental organizations (Caritas, Diakonie, Hilfswerk, Austrian Red Cross and Volkshilfe) was set up at the Federal Ministry of the Interior (sect. 18 of the Aliens’ Police Act). The participating non-governmental organizations represent, inter alia, the interests of potential victims of discrimination, such as migrants. The Committee meets twice a year. In addition, numerous advisory committees on integration are in place at a local level with various scopes of responsibilities ranging from political representation of the interests of migrants and advisory service to the municipal council and administrative bodies to special information services for migrants (overview available at: [www.staedtebund.gv.at](http://www.staedtebund.gv.at)).

64. The Ethnic Groups Act provides for ethnic group advisory boards to be installed at the Federal Chancellery to provide advice to the federal government and the federal ministers regarding matters of relevance for ethnic groups. These boards may also submit proposals for improving the situation of the ethnic groups and their members.

65. With regard to the school system, it can be reported that, by way of pupil co-determination in various school bodies, members of groups protected under the Convention are given the opportunity to submit anti-racist ideas and/or projects.

66. In Vienna, to give an example from the provinces, an Anti-Discrimination Board for the Maintenance and Promotion of the Dialogue with Private Organisations (*Stelle zur Bekämpfung von Diskriminierung, der Pflege und Förderung des Dialoges mit privaten Organisationen*) has been set up at the Office of the Provincial Government of Vienna (*Amt der Wiener Landesregierung*). Such dialogue and the findings from specific proceedings and consultation cases are incorporated into fundamental investigations, surveys, sensitization measures and awareness-raising and are also included in reports and recommendations on combating discrimination as well as in draft laws and regulations.

67. A broad Internet presence with comprehensive information and numerous sites in English is available not only for enfranchised citizens but for all groups interested in these matters for the purpose of transferring knowledge and raising awareness as to how to exercise one's right to vote in Austria ([www.help.gv.at](http://www.help.gv.at)).

68. As an example from the provinces, it can be reported that in Vienna the political participation of migrants was debated on the occasion of the conference "Mitmachen.Mitbestimmen.Wege zu politischer Partizipation von MigrantInnen" held at the Vienna City Hall in June 2010. The conference marked the beginning of a broad discussion process aimed at creating a new Viennese model for taking part in decision-making.

#### **4. Other civil rights**

##### **Questions 1-9 of the Committee's reporting guidelines**

69. Austria has ratified Protocol No. 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which in article 2, paragraph 1 guarantees the right to liberty of movement to everyone lawfully within the territory of Austria. This Protocol has been given constitutional status in Austria; it supplements article 4, paragraph 1 and article 6, paragraph 1 of the Basic Law of 21 December 1867 on the General Rights of Nationals in the Kingdoms and Länder represented in the Council of the Realm (*Staatsgrundgesetz vom 21. Dezember 1867, über die allgemeinen Rechte der Staatsbürger für die im Reichsrathe vertretenen Königreiche und Länder*, Reich Law Gazette No. 142/1867 as amended, hereinafter referred to as the Basic Law), which guarantees Austrian citizens liberty of movement and freedom of residence and/or domicile. Under certain circumstances (e.g. for reasons of public order and safety), territorial restrictions, i.e. the requirement to stay within a certain defined area, may be imposed on aliens. Section 15, paragraph 3a and 3b of the Asylum Act 2005 provides that such territorial restrictions may be imposed in the event of a stay of execution of an expulsion or a residence prohibition, in the case of a prohibition to return issued to asylum-seekers (sect. 54, para. 4 of the Aliens' Police Act) or during the time period granted for voluntary exit of an alien residing unlawfully on Austrian territory (Set. 56, para. 2 of the Aliens' Police Act) as well as in the event of a residence prohibition for third-country nationals with a residence permit (sect. 63 of the Aliens' Police Act). Restrictions may refer to the territory of a district administration authority or the territory of a province in which the alien and/or the asylum-seeker is staying. Moreover, the right to liberty and security within the meaning of article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Federal Constitutional Law on the Protection of Personal Liberty (*Bundesverfassungsgesetz über den Schutz der persönlichen Freiheit*, Federal Law Gazette No. 684/1988) protects everyone against arbitrary arrest and detention.

70. Austrian citizenship may be awarded to an alien – upon application – if the person in question has no criminal record, has been lawfully domiciled in Austria for at least ten consecutive years without interruption and his/her maintenance is secured (sect. 10 of the Citizenship Act [*Staatsbürgerschaftsgesetz 1985*, Federal Law Gazette No. 311/1985 as amended by Federal Law Gazette Vol. I No. 38/2011]). Pursuant to section 8 of the aforementioned Act, “foundlings”, i.e. children under the age of six months who are found in Austria, are deemed to be Austrian citizens until the contrary is proven. Pursuant to section 14 of the Citizenship Act, aliens have a legal right to the conferral of Austrian citizenship if they were born on the federal territory and have been stateless since their birth. Section 12 of the Citizenship Act provides for a legal right to the conferral of Austrian citizenship after 30 years of main residence in Austria if, at the same time, all general criteria are met. Austria is a contracting state of the Convention on the Reduction of Statelessness (Federal Law Gazette No. 538/1974). Spouses and registered partners of Austrian citizens receive preferential treatment when acquiring Austrian citizenship.

71. As a matter of course in Austria every individual who is unmarried and legally capable of getting married is free to marry a person of the opposite sex (art. 12 of the European Convention for the Protection of Human Rights and Fundamental Freedoms; sect. 1 of the Matrimonial Act [*Ehegesetz*], German Reich Law Gazette Vol. I S 807/1938 as amended by Federal Law Gazette Vol. I No. 135/2009) or to enter into a registered partnership with a person of the same sex (Sects. 2 and 4 of the Act on Registered Partnerships [*Eingetragenes Partnerschaft-Gesetz*], Federal Law Gazette Vol. I No. 135/2009).

72. 2010 saw the launch of a project, initiated by the Federal Minister for Women and the Civil Service and carried out by the Orient Express association, offering training courses on the topics of forced marriage, FGM and generation conflicts. The project addresses teachers, social workers, employees of youth institutions, family judges and similar occupational groups and is being implemented in all provinces except for Vienna.

73. In Austria neither the law on obligations nor property law nor inheritance law contain any provisions referring to race, colour, descent, or national or ethnic origin. Every person has the right to acquire possessions (property) and to enjoy all rights related thereto (art. 5 of the Basic Law, art. 1 [1] of the Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms).

74. Freedom of thought, conscience and religion is a right guaranteed to individuals and groups of persons by constitutional law in Austria; it was initially introduced under the Basic Law of 1867 and expanded through the State Treaty of St. Germain in 1919 and the European Convention for the Protection of Human Rights and Fundamental Freedoms. Under certain statutory conditions (see, in this context, the Act on Legal Recognition [*Anerkennungsgesetz*], Reich Law Gazette No. 68/1874, and the Federal Act on the Legal Status of Registered Religious Communities [*Bundesgesetz über die Rechtspersönlichkeit von religiösen Bekenntnisgemeinschaften*], Federal Law Gazette Vol. I No. 19/1998 as amended by Federal Law Gazette Vol. I No. 78/2011), a religious group may obtain registration as a legally recognized religious community (*religiöse Bekenntnisgemeinschaft*) or obtain the status of a legally recognized church or religious society (*Religionsgesellschaft*). Legally recognized churches and religious societies enjoy a special status, e.g. in terms of the laws on taxation, schooling, pastoral care and regional planning. The (by far) largest “legally recognized churches or religious societies”, which include, in particular, most of the Christian denominations, Islam and Judaism, have had this legal status for decades, based on separate legal bases that evolved in the course of historical developments, most of which take the form of laws. Moreover, every religious group which is either not sufficiently anchored in any of the presented legal forms or which does not strive for registration as a religious community (and/or fails to meet the criteria) is free to

found an association within the meaning of the Associations Act, i.e. as an incorporated legal entity.

75. Freedom of expression and freedom of assembly and association are guaranteed to every individual under articles 10 and 11 of the European Convention for the Protection of Human Rights and Fundamental Freedoms as well as under article 11 of the Basic Law, and may only be restricted under the circumstances stipulated in the aforementioned provisions. Regarding possible restrictions, see above the comments on article 4, A.

## **5. Economic, social and cultural rights**

### **Questions 1-7 of the Committee's reporting guidelines**

76. Like the Act concerning Equal Treatment in the Public Service Sector, the Equal Treatment Act contains, inter alia, a prohibition of discrimination on grounds of ethnicity in the context of an employment relationship, in particular when establishing the employment relationship, when determining remuneration, when granting voluntary social benefits that are not part of the remuneration, in connection with training, further training and re-training measures, with career advancement, in particular promotions, and with other working conditions, and when terminating the employment relationship. In addition, the prohibition of discrimination applies to access to career counselling, to vocational training, further training and re-training outside of an employment relationship, to membership and participation in an employees' or employers' organization or an organization whose members are part of a certain occupational group, including the use of services of such organizations, and to the requirements for becoming self-employed. The Equal Treatment Act provides the following penalties for all discrimination offences, hence also for discrimination on grounds of ethnicity: compensation for financial loss, i.e. damage to property and lost profits, or the establishment of non-discriminatory conditions and – in both instances – additionally, compensation for non-pecuniary damage for the personal disadvantage suffered. As available statistics show, the unemployment rate among migrants is twice as high as among Austrians, which is why these groups are being intensively supported by the Public Employment Service. See also above the comments on article 2, B, and D. For details on the right to form and/or join trade unions, see above the comments on article 5, I.D, paragraphs 69-75. For details on the right to housing, see above the comments on article 1, A (Equal Treatment Act), article 2, B (PROGRESS projects), and article 3, (assignment of subsidized housing).

77. As regards the right to public health, medical care, social security and social services, it should be noted, first of all, that in Austria – regardless of citizenship or country of origin – access to the social security scheme (e.g. health insurance), including the related services, is available to everyone, provided that the statutory requirements are fulfilled. Hospitals provide information material and consultation services as well as various interpreting services for persons who do not speak German. Within the scope of awareness-raising measures in education and further training, the intercultural competence of medical personnel is being enhanced, for example, by means of courses and seminars offered in major hospitals (e.g. the Vienna General Hospital). Moreover, efforts are being made to improve health literacy<sup>6</sup> among migrants and expand psycho-social benefits and services for them.

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<sup>6</sup> The term "health literacy" means "health competence", which in this context means "the ability of the individual to make decisions in daily life that have a positive impact on health. [...] Health competence strengthens the freedom to arrange one's own affairs and make decisions about health issues and improves the ability to find, understand and put health information into practice." Cf. Ilona Kickbusch, *Gesundheitskompetenz*, in: Public Health News 3-2006, at: [www.public-health.ch](http://www.public-health.ch).

78. The following measures have already been successfully implemented:

(a) The Federal Ministry of Health has expressly pointed out that consideration is to be given to the issue of language barriers, especially in hospitals, and that in the various health disciplines an increasing number of experts who are native speakers of various ethnic groups should be employed;

(b) The Vienna pilot project for the promotion of breast screenings, which has been in progress since 2006 and is funded by the Federal Health Agency (*Bundesgesundheitsagentur*), particularly aims at reaching socially disadvantaged women and women migrants;

(c) The Federal Health Agency finances a seminar dealing with the subject of intercultural competence when working in intensive-care units;

(d) Training programmes for health professions other than that of medical doctors usually teach intercultural competence in dealing with people of different cultures. (See also, for example, the regulation of the Federal Ministry of Health, Family and Youth on bachelor degree programmes in general health care and nursing at universities of applied sciences [Fachhochschulen], Federal Law Gazette Vol. II, No. 200/2008 regarding “socio-communicative skills” of graduates. The programmes include, for instance, taking intercultural and religious features into account in terms of personal hygiene, excretion, dealing with the deceased, etc.);

(e) In order to reduce language barriers in the context of preventative health care, the Federal Ministry of Health has issued many brochures in several languages, i.e. one on breastfeeding (in Croatian and Turkish), a booklet of Turkish recipes titled “Gesund türkisch kochen – leicht gemacht” (in German and Turkish), and a brochure on healthy snacks titled “Gesunde Jause von Zuhause” (in German, Bosnian/Croatian/Serbian and Turkish), all of which are available at <http://www.bmg.gv.at/>.

79. At present, the following measures are being implemented:

(a) Alongside the German version of an information and consent form concerning vaccinations in schools, which is published on the website of the Federal Ministry of Health, the same will also be made available in various foreign languages (in Russian, Turkish and Bosnian/Croatian/Serbian, in any case);

(b) In the field of children’s health, working groups have been assigned the task of creating specific projects aimed at the promotion of good health in children. One of these working groups is focussing on the issue of equal opportunities in the health field;

(c) The following brochures will also be available shortly: a brochure about foods for infants titled “Baby’s erstes Löffelchen” (in Turkish and Bosnian/Croatian/Serbian), and a preventative health care booklet titled “Gesund bleiben und mit Krankheiten umgehen” (in English, Bosnian/Croatian/Serbian, Russian and Turkish);

(d) Furthermore, preparations are underway to offer medical care in several languages (including Turkish and Bosnian/Croatian/Serbian) at local level, both in hospitals and at doctors’ offices. In the case of Vienna, for example, a manual in 15 languages for non-German-speaking patients contains the addresses of physicians, psychologists and psychotherapists who can provide advice in the patients’ mother tongues.

80. In 2010/2011, the means-tested minimum income scheme was introduced, which replaces (and standardizes) the former open social welfare scheme. The means-tested income scheme has standardized the criteria regarding the group of people who are eligible for this benefit. Aliens have been placed on an equal footing with Austrian citizens to the extent that there is an obligation under international law to do so. This equal treatment

concerns, for example, recognized refugees, refugees under subsidiary protection, EU/EEA citizens including family members, and people who have lived in Austria for no less than five years. Recipients of the minimum income who were not covered by any health insurance have been included in the statutory health insurance system since the introduction of the means-tested minimum income scheme. For asylum-seekers, the basic care and maintenance scheme provides statutory health insurance. As an example from the provinces, it can be reported for Vienna that within the scope of diversity management in hospitals and care facilities a number of relevant initiatives have been carried out in the past few years. In 2009, for example, a poster campaign reminded all patients and visitors as well as the employees of these facilities of the fact that the staff of Vienna's hospitals and care facilities come from a total of 58 countries and care for patients from 163 nations. Furthermore education and training measures for employees were expanded, using the findings from the recent migrant-friendly hospital project at Kaiser-Franz-Josef hospital and the Geriatric Centre Favoriten in Vienna's tenth district. Native-language consultation services were ensured especially for Turkish-speaking residents. Such services are provided, in particular, in the gynaecology/obstetrics, paediatric and outpatient departments. The diverse linguistic demands in everyday hospital life are met by a few in-house trained interpreters as well as by many multilingual employees with migration backgrounds. An interfaith calendar assists professionals in the daily hospital and care business in considering the religious needs of patients, residents and visitors and in planning relevant support services. Interdenominational oratories are an integral part of many existing and planned hospitals.

81. In addition to German, the languages of the six recognized ethnic groups (autochthonous minorities), i.e. Croatian, Slovenian, Hungarian, Czech, Slovak and Romani, play a special role also in the school system. The basic principles of the school systems of these six ethnic groups in Austria, which are partly enshrined in international law and partly (also) in constitutional law, are essentially specified in two structurally comparable federal acts:

(a) The Minorities School Act for Burgenland governs the school system for the Croatian and Hungarian ethnic groups in that province and also contains provisions applicable to the ethnic group of the Roma. The Minorities School Act for Carinthia concerns the local Slovenian ethnic group. Both Acts cover compulsory schools and academic secondary schools and also, in some aspects, the various vocational secondary schools. In Vienna, a private child-care and school system for the Czech ethnic group is in place, which provides continuous education from nursery school all the way to senior high-school graduation (Matura); this school system also offers programmes for the Slovak ethnic groups throughout the entire course of education and provides for a Hungarian-German nursery group. The only difference between this school system and the regular Austrian school system is the additional languages offered; the same quality of teaching as in all other Austrian schools is guaranteed. Apart from these specific school system types for Austrian ethnic groups, the languages of ethnic groups are also taught as school subjects within the scope of the general public school system in various types of schools and in a large number of places;

(i) The Federal Ministry for Education, Arts and Culture as well as the Federal Chancellery, the municipal district offices of the City of Vienna and the Office of the Burgenland Provincial Government all subsidize a number of accompanying measures with a view to specifically supporting Roma children in their school careers. An example in Burgenland is the "RomBus", which is a sort of "moving classroom" offering learning assistance, intensive tutoring and advice in everyday school life in the immediate vicinity of the homes of the Roma (cf. <http://www.roma-service.at/projekte.shtml>). Furthermore, mention should be made of the extracurricular tutoring in the clubhouse of a Roma association which, to this

end, collects Roma children from school after class and takes them to the clubhouse. In Vienna, for instance, a Roma association organizes tutoring measures for Roma children directly in the families. Additional tutoring provided by an association after class in school buildings is supported within the scope of the City of Vienna's integration measures;

(ii) Another Romani project (<http://romani.uni-graz.at/romani/index.de.shtml>), managed by the University of Graz, had the aim of scientifically codifying and developing methods for teaching Burgenland Romani as well as documenting another five variants of Roma language. It is now being maintained and continued as an association-oriented spi:k project<sup>7</sup>, in the context of which teaching aids are being prepared, the regular production of two magazines is being supported, language games for computers are being developed and language training is being offered. In Vienna, a different type of school-related support is in place, with the Romano Centro association employing so-called "school assistants" in several Vienna schools, who act as mediators between teachers, Roma children and parents; their objective is to motivate and help Roma children in school, assist teachers in communicating with these children and facilitate parents' access to the schools.

(iii). Anyone who cannot easily follow in class due to a poor command of German as the language of instruction is to be admitted as an extraordinary pupil (see, section 4, paras. 1, 2 and 3 of the School Education Act [Schulunterrichtsgesetz]). For a maximum of two years, such persons can receive special training in German in the amount of eleven hours per week within the scope of so-called remedial language classes (see section 8e of the School Organisation Act), provided at least eight children attend. Such classes are held either concurrently with regular classes or are integrated into the regular curriculum; in the first case, children from several grades or schools may be combined in one group. As it cannot be assumed that pupils will have a native-level command of German after their extraordinary status has expired, instruction for German as a second language may also be offered for ordinary pupils.

(iv) In addition to the languages of the six autochthonous ethnic-groups, native-language classes in more than 20 languages are available for children from ethnic groups that are not autochthonous in Austria. In the 2009/2010 school year, for example, these native-language classes were taught by some 380 teachers at some 820 schools to approximately 30,750 pupils.

(v) In 2008, the Federal Ministry for Education, Arts and Culture issued guidelines which are designed to make it easier for the competent regional school authorities to draw the line when determining the need for special-needs education. In order to ensure that language skills are not used as a criterion for assigning pupils to certain types of schools, the Ministry pointed out in these guidelines that the mere lack of command of the language of instruction must never be used as a criterion when determining the need for special-needs education and, consequently, for assigning pupils to special-needs schools (cf. circular letter No. 19/2008 of the Federal Ministry for Education, Arts and Culture dated 5 August 2008).

(vi) The considerably lower percentage of migrants in upper secondary schools indicates that these young people often drop out of the education system after completing their compulsory schooling. An increasing number of pupils with

<sup>7</sup> The spi:k association deals with the language, identity and culture of regional minorities.

mother tongues other than German attend commercial schools. These pupils often have deficits as regards German as the language of instruction, which result in a negative certificate at the end of the ninth school level. In order to prevent this and to enable pupils to acquire better qualifications, commercial schools have, since 2008, offered linguistic support in German as the language of instruction for pupils with deficits in German (scheduled to run, for the time being, until 2013). The funding is provided through a project designed to reduce the drop-out rate by specifically supporting migrants in the ninth school level at commercial schools.

(vii) A second project which has been in progress since 2010 is targeted towards averting the dropout of pupils – mainly young people who have a mother tongue other than German – through repetition, supplementation and consolidation of the basic skills (especially reading and writing in German as the language of instruction, arithmetic, etc.) required to successfully complete the first grade.

(viii) As classes are increasingly mixed in terms of language and culture, “intercultural learning” was enshrined as a teaching principle in the early 1990s. It is intended to contribute to better mutual understanding and respect, to identifying similarities and to overcoming prejudices. The Federal Ministry for Education, Arts and Culture launched the campaign “Interculturality and Multilingualism – An Opportunity” (“Interkulturalität und Mehrsprachigkeit – eine Chance!”) to assist children and teachers in dealing productively with linguistic and cultural diversity in their own environments. More detailed information is available on the website [www.projekte-interkulturell.at](http://www.projekte-interkulturell.at). For details on the role of schools in the context of “civic education” in preventing racial discrimination, see especially the comments on article 7, A.

(ix) At present, the dropout rate in Austria is 9.6 per cent (which is clearly below the EU average of 17 per cent) and refers to people aged 18 to 24 who have not completed any education programme beyond compulsory school and are no longer in training. However, among migrants the drop-out rate is 29.8 per cent, and among second and third generation immigrants it is approximately 15.6 per cent. While, on average, fewer young women drop out of the education system than young men, among migrants the percentage dropouts is higher. In this context, it is crucial to think about how the value of educating girls can be conveyed to poorly educated parents, as such parents are difficult to approach, if at all, by the schools – and this is not only due to language problems. The Roma projects of extracurricular tutoring programmes designed to prevent young people from dropping out of school or failing to complete an education programme, which are funded under the ethnic groups support scheme, have proven very effective.

(b) Pursuant to the Vocational Training Act (Berufsausbildungsgesetz), young people who cannot start a regular apprenticeship for various reasons have the following options:

(i) Young people who do not obtain an apprenticeship in the first (i.e. regular) apprenticeship market can obtain such training in a non-company-based apprenticeship training programme pursuant to section 30 of the Vocational Training Act (Federal Law Gazette No. 142/1969 as amended by Federal Law Gazette Vol. I No. 40/2010). There, they will be trained in a skilled trade for one or more years. As a rule, the apprenticeship positions in non-company-based training facilities are funded by the Public Employment Service and offer, in particular, apprenticeship programmes (or parts thereof) tailored to the skills in demand on the labour market.

(ii) Pursuant to section 8b of the Vocational Training Act, an extended apprenticeship period, i.e. longer than the set period for the specific skilled trade,

may be agreed upon in order to facilitate a better integration of disadvantaged persons whose personal issues make them difficult to place. Furthermore, a partial qualification may be defined in an apprenticeship agreement, limiting the training to certain areas of the profile of a skilled trade, and possibly including skills and know-how of other skilled trade profiles. An apprenticeship agreement concerning a partial qualification has to comprise skills and know-how that are useful in business.

82. In addition to apprenticeship counsellors appointed for each province within the scope of a support programme for companies where apprentices can be trained, who inform companies about the possibility of training apprentices and secure apprenticeship positions, additional counselling services were created in Vienna in co-operation with the Vienna Employee Support Fund (Wiener ArbeitnehmerInnen Förderungsfonds WAFF) and the Public Employment Service. The counselling project “Lehrstellenberater in ethnischen Ökonomien” is designed to increasingly inform entrepreneurs with migration backgrounds about the possibilities of offering apprenticeship training. The apprenticeship counsellors’ feedback suggests that companies have a great need of such information. In personal conversations, promises regarding the offer of apprenticeship positions are frequently made which subsequently lead to the actual conclusion of apprenticeship agreements. On the one hand, this initiative helps entrepreneurs with migration backgrounds to learn about the possibilities of training apprentices and, on the other hand, it may also lead to the creation of more apprenticeship training positions for young people with migration backgrounds. In 2007 and 2008, three additional apprenticeship counsellors (bilingual and/or with migration backgrounds) were appointed: one of them speaks Turkish; another, Polish and Russian; and the third, Serbian and Croatian. In 2010, the apprenticeship counsellors of the Vienna Chamber of Commerce (seven altogether) achieved the following results: visits to companies: 1,144, promised apprenticeships: 767, administrative decisions (Feststellungsbescheide) applied for pursuant to section 3a of the Vocational Training Act (first-time training of apprentices): 738 (source: Annual Report 2010 of Lehrlingsstelle Wien).

83. In 2010, a project regarding multiplier training in such fields as tradition-based violence was launched, had been initiated by the Federal Minister for Women and the Civil Service and is being implemented by the Orient Express association. Second or third generation young women with migration backgrounds can acquire additional qualifications by completing this training and thus improve their career opportunities. As an example for measures taken in the provinces, it can be reported that in Vienna child-care facilities offer special educational measures supporting children with linguistic deficits and, at the same time, target the educational situation of migrants’ children.

84. On the basis of an agreement between the federal state and the provinces pursuant to article 15a of the Federal Constitutional Law “on expanding the range of institutional child-care facilities and introducing mandatory early language education in such facilities, as well as on creating a country-wide preschool education plan”, the education model “Frühe Förderung 1+1” was introduced in 2008 for all children attending nursery schools. Children with poor German-language skills are supported in institutional child-care facilities in such a way that they will have mastered German as the language of instruction as well as possible, in accordance with uniform German-language standards as defined in language skills models, when they start the first level of primary school.

85. On the basis of the agreement under article 15a of the Federal Constitutional Law concerning free part-time, mandatory nursery school attendance, children in all provinces have been obligated since September 2010 to attend suitable institutional child-care facilities at least four days a week for a weekly total of at least 16 to 20 hours, in their last year before starting compulsory school. Part-time attendance is free of charge, which eases the burden on families. This measure is intended to give all children the best education

opportunities and the best start for their first year at school, regardless of their socio-economic origin.

86. In order to achieve this goal, nursery school teachers receive specific and continuing training in determining the level of children's command of the German language and in early language education. In some of Vienna's child-care facilities, children speaking a foreign language are also supported by nursery school teachers who speak their mother tongues, which allow them to maintain a connection with their cultural roots. It should also be mentioned that intercultural learning is enshrined as a teaching principle at educational institutions for nursery-school pedagogy and social pedagogy, and that special focus is placed on the promotion of language skills in German as the language of instruction and various foreign languages are offered as compulsory or optional subjects.

87. In Austria, all persons are entitled to non-discriminatory participation in cultural life, irrespective of their ethnic origins:

(a) Article 8, paragraph 2 of the Federal Constitutional Law defines the commitment of the Republic (federal state, provinces and municipalities) to its evolved linguistic and cultural diversity as embodied in the autochthonous ethnic groups, and to the preservation and security of and respect for these ethnic groups, as a national target. The Ethnic Groups Act stipulates that the federal state – notwithstanding general supportive measures – is to award financial support to measures and projects designed to preserve and secure the existence of ethnic groups, their customs and traditions as well as their characteristics and rights. To promote cohesion between the various groups of the population it is important, especially in the settlement areas of ethnic groups, for the federal state to subsidize intercultural projects aimed at supporting the ethnic groups' peaceful co-existence;

(b) To mark the occasion of the 90th anniversary of the referendum in Carinthia, for example, in the years 2011 to 2015 funding in the amount of EUR 4 million will be provided for, among other things, projects designed to promote peaceful co-existence and confidence-building measures (Federal Law Gazette Vol. I No. 48/2011);

(c) In the field of culture, the Republic of Austria supports numerous measures targeted to promote mutual understanding between ethnic groups and to reduce prejudice. This applies especially to the subsidisation of ethnic groups in Austria, for which, for example, the Federal Ministry for Education, Arts and Culture alone spent EUR 841,000 in 2009. With these funds, structures such as cultural associations, nursery schools or libraries of the ethnic groups, the production of books and films in ethnic group languages, language courses and exhibitions by artists of various ethnic origins as well as other events (e.g. theatre and dance performances, music festivals, etc.) were subsidized – in addition to the ethnic groups support scheme of the Federal Chancellery (EUR 3.868 million per year). From 2008 to 2011, an annual amount ranging from approximately EUR 120,000 to approximately EUR 138,000 was spent on cultural projects of Roma organizations (see also article 2, B). As an example from the provinces, it can be reported for Vienna that the City of Vienna awards subsidies in the field of arts and culture exclusively to such (natural or legal) persons who respect the prohibition of discrimination. In Vienna, the possibility of participating in cultural life is open to everyone. Fringe theatres especially are often meeting places for people of different origins or ethnicities. Vienna also makes a contribution to the "right to equal participation in cultural activities" by enabling low-income persons – regardless of their origin – to attend cultural events. The special campaign "Hunger auf Kunst und Kultur" should be mentioned as an example. Most institutions also have ticket quotas for students, senior citizens and low-income persons, irrespective of where they come from;

(d) In their guidelines, the Non-Commercial Broadcasting Fund pursuant to section 29 of the KommAustria Act (KommAustria-Gesetz, Federal Law Gazette Vol. I No. 32/2001 as amended by Federal Law Gazette Vol. I No. 111/2010) and the Private (Commercial) Broadcasting Fund pursuant to section 30 of the same Act both provide for programme subsidies. These subsidies are intended as incentives to produce and broadcast cultural programmes with typical Austrian and European features. In line with this, the distinctly Austrian, regional or local orientation and/or the preservation, reinforcement and advancement of the Austrian identity – in particular the regional and local identities – in the European context are specified as subsidization criteria. Especially the Non-Commercial Broadcasting Fund stipulates the criterion that subsidized programmes take into account the languages spoken by the ethnic groups recognized in Austria (<http://www.rtr.at>). In 2011, EUR 2 million are available for subsidising private non-commercial broadcasting in Austria's media landscape and for supporting non-commercial broadcasting in providing diverse and high-quality programmes that contribute to promoting Austrian culture, cultural diversity, Austrian and European consciousness, as well as to the participation, information and education of the population. Private commercial broadcasting within Austria's dual broadcasting system is being subsidized with EUR 10 million in 2011. The Austrian Broadcasting Corporation (ORF) airs programmes for all six recognized ethnic groups. In addition to daily news coverage in Croatian and Hungarian, the ORF's ethnic groups department in the Burgenland studio, for example, airs a total of 13 radio magazines per week (seven in Croatian, two in Hungarian, two in Czech, one in Slovak and one in Romani), covering politics, culture and sports. German-language radio and television programmes as well as special television programmes of the Burgenland studio also deal extensively with ethnic group issues. Moreover, since March 2004, for example, the ORF, in cooperation with AKO Lokalradio GmbH, has produced an information and entertainment programme in Slovenian comprising a total of eight hours daily, which has been broadcast on "Radio DVA-AGORA" (private radio licence). In the remaining time, AKO Lokalradio GmbH produced programmes and features in Slovenian. This means that Carinthia sees 24 hours of radio broadcasting for the Slovenian ethnic group. In 2011, the private radio licence was re-issued and granted to Radio Agora. See also the comments on article 7, C;

(e) In the field of sports, Austria has implemented all anti-racism recommendations of the Council of Europe. If sports activities in ethnic groups have traditional, bonding and social elements, or if sports training for children and teenagers promotes the consolidation of ethnic groups' language skills, such activities are also subsidized by funds of the ethnic groups support scheme. Sports associations and federations at provincial and national level carry out integration projects. Through federal-level sport subsidies, the federal government is able to provide incentives for taking the integration issue more into account in sports. For example, subsidies are granted to projects for women and girls in rural areas with migration backgrounds, as well as for integration measures based on language and sports for young people in big cities. Likewise, federal-level sport subsidies have been provided for the target group of asylum-seekers;

(f) Access to public places is protected under article III, paragraph 1 (3) of the Introductory Act to the Administrative Procedure Acts; anyone who "discriminates against persons solely on grounds of their race, their skin colour, their national or ethnic origin, their religious affiliation or a disability, or prevents them from entering places or taking advantage of services intended for general public use" commits at least an administrative offence (fine of up to EUR 1,090) and will be prosecuted ex officio. Furthermore, the Equal Treatment Act can be applied, in connection with work-related discrimination, for the access to goods and services, etc. See also the comments on articles 1, A, and 6, A.

## **B. Information by relevant groups of victims or potential victims of racial discrimination**

### **Questions 1-6 of the Committee's reporting guidelines**

88. In this context, general mention should be made of the Integration Report which has already been referred to at the outset, the Statistical Yearbook (see [http://www.statistik.at/web\\_de/services/stat\\_jahrbuch/index.html](http://www.statistik.at/web_de/services/stat_jahrbuch/index.html)) and the comments on article. 5, I, paragraphs 47-87 above.

### **Complex forms of disadvantage in which racial discrimination is mixed with other causes of discrimination; available social indicators of forms of disadvantage that may be linked with racial discrimination**

89. When determining the amount of compensation paid for a personal disadvantage suffered, multiple discrimination, if applicable, is to be considered under the Equal Treatment Act (see also the comments on article 2, A). To simplify the enforcement of claims of discrimination of persons with disabilities, section 11 (Competence in case of multiple discrimination) of the Federal Disability Equality Act (*Bundes-Behindertengleichstellungsgesetz*, Federal Law Gazette Vol. I No. 82/2005 as amended by Federal Law Gazette Vol. I No. 7/2011) provides for the option of enforcing multiple violations in the context of conciliation procedures under the Federal Disability Equality Act.

## **VII. Article 6**

### **A. Information on the legislative, judicial, administrative or other measures which give effect to the provisions of article 6 of the Convention**

#### **Questions 1-5 of the Committee's reporting guidelines**

90. See the detailed comments made above on articles 1, A, and 2, B, with regard to the Federal Constitutional Law on the Implementation of the International Convention on the Elimination of all Forms of Racial Discrimination of 1973.

91. Generally, it should be mentioned that all persons in Austria who feel that their substantive rights have been violated, enjoy the same opportunity to assert any claims arising from such a violation in civil proceedings in court. Persons whose livelihood would be put at risk by a lawsuit may resort to legal aid. To the extent that legal aid is granted, the litigating party concerned is (temporarily) exempt from having to pay his/her own legal costs (including attorney's fees). This also applies to victims of racial discrimination.

92. In criminal proceedings, the protection of victims has always been at the heart of almost all amendments passed in the past few decades. The legal status of victims was ultimately upgraded during the comprehensive reform of preliminary investigation proceedings by means of the entry into force of the Criminal Procedure Reform Act (*Strafprozessreformgesetz*, Federal Law Gazette Vol. I No. 19/2004) on 1 January 2008. An important objective has been not only to establish and safeguard the procedural rights of victims and support them in their efforts to seek redress, but also to protect them against any severe psychological damage through the prosecution itself (secondary victimisation). In addition to various victim-based institutions of criminal law, such as the requirement of making restitution for damage caused under suspended sentences (*bedingte Strafnachsicht*) or a diversion programme, it should be emphasized in this connection that pursuant to

section 66 of the Code of Criminal Procedure, irrespective of enforcing a claim for monetary damages, victims enjoy comprehensive information and party rights that extend beyond the rights due to private parties joining the proceedings to claim damages. In addition, victims are entitled to request that proceedings that were suspended by the public prosecutor's office be continued (sect. 195 of the Code of Criminal Procedure). Victims asserting a claim for compensation join these proceedings as private parties (sect. 67 of the Code of Criminal Procedure), which grants them additional special rights to influence the legal relationship and participation rights (e.g. the right to request the taking of evidence). Moreover, the Federal Ministry of Justice has funded the Competence Centre for Victim Support (Kompetenzzentrum Opferhilfe), which also operates the victim helpline (see <http://www.opfer-notruf.at/>), since 1 September 2008. As regards information rights, section 70 of the Code of Criminal Procedure expressly provides that victims have the right to be fully informed of their rights. All criminal prosecution authorities must take victims' rights and interests into consideration. In addition, all authorities, institutions and persons involved in criminal proceedings have to treat victims with respect for their dignity and their interest in maintaining their strictly personal sphere of life. As protection against secondary victimization, victims may request a separate, considerate interrogation if this option has not already been mandatorily provided for (sect. 165, para. 3 and sect. 250, para. 3 of the Code of Criminal Procedure).

93. In labour-law proceedings, section 40, paragraph 2 (4) of the Labour and Social Court Act (Arbeits- und Sozialgerichtsgesetz, Federal Law Gazette No. 104/1985 as amended by Federal Law Gazette Vol. I No. 111/2010) provides that in first-instance proceedings a victim may be represented by a "suitable party". Such parties may also be representatives or employees of a non-governmental organization.

94. Pursuant to section 62 of the Equal Treatment Act, the Litigation Association Against Discrimination, set up under the law of associations, may, upon request by the person/s concerned, join the legal proceedings as an intervener. The Litigation Association also receives federal funding.

95. In response to the question regarding institutions authorized to hear and consider individual complaints of discrimination, reference is made primarily to the Equal Treatment Commission, which was set up under the supervision of the Federal Minister for Women and the Civil Service. The primary purpose of this independent body is to check, in each individual case, whether a person has been discriminated against. These proceedings are free of charge and not public. In addition, the Equal Treatment Commission also prepares general expert opinions on discrimination issues.

96. The Ombud for Equal Treatment is an institution of the federal government to implement the precept of equal treatment. It is set up within the purview of the Federal Minister for Women and the Civil Service. It advises and supports persons and any relatives of persons who feel that they have been discriminated against and assists them if their cases are heard by the Equal Treatment Commission. These advisory services are provided free of charge and are confidential.

97. Under substantive law, there are no special rules in the Austrian general law of damages as concerns discrimination on grounds of ethnicity. This is why, for example, the question of what claims based on discrimination are actionable as well as the question of the burden of proof in those proceedings have to be answered on the basis of the general damages provisions of the Civil Code (Allgemeines bürgerliches Gesetzbuch, No. 946/1811 in the collection of legal administration legislation [JGS] as amended by Federal Law Gazette Vol. I No. 58/2010). In case a person has suffered damage by a public body, the

Liability of Public Bodies' Act (Amtshaftungsgesetz, Federal Law Gazette No. 20/1949 as amended by Federal Law Gazette Vol. I No. 194/1999)<sup>8</sup> provides for compensation.

98. Special rules are found, as elaborated above on article 1, A, in the form of special labour law, special social law and special civil law in the Equal Treatment Act and in the Act concerning Equal Treatment in the Public Service Sector.

99. The Equal Treatment Act stipulates that a person claiming that he/she has been discriminated against has to furnish prima facie evidence for the existence of his/her claim. The defendant is obligated to prove that, after weighing all the circumstances, it is more probable that another motive, which the defendant has made credible, was the reason for unequal treatment or that there is a legally recognized ground of justification. If harassment is claimed, the defendant is obligated to prove that, after weighing all the circumstances, it is more probable that the facts for which the defendant has shown probable cause are the truth (see also annex, the reply to the recommendations contained in paragraph 24 of the concluding observations).

100. The equal treatment obligation under the Equal Treatment Act imposes penalties for all discrimination offences, hence also for discrimination on grounds of ethnicity (see under article 5, I.E, paragraphs 76-87 above, and annex, reply to the recommendations contained in paragraph 21 of the concluding observations.).

101. The following court decisions granting effective legal protection against actions in connection with racial discrimination are cited below as examples:

- (a) District court of St. Pölten, 4C 480/09x-12 dd. 29 October 2010;
- (b) The court found that the refusal of admission by bouncers at a bar in St. Pölten on grounds of the plaintiff's "foreign looks" was to be regarded as direct discrimination on grounds of ethnicity by the operator of the bar. Damages were awarded in the amount of EUR 1,440;
- (c) Provincial Court for Civil Matters of Vienna, 36R 198/10z dd. 30 August 2010;
- (d) The court found that the refusal of admission by bouncers at a bar in Vienna on grounds of the plaintiff's appearance was to be regarded as direct discrimination on grounds of ethnicity by the operator of the bar. Damages were awarded in the amount of EUR 720 (this amount constituted the minimum damages at that time).
- (e) Vienna Court of Appeals, 7 Ra 79/09b dd. 22 December 2009;
- (f) The court found that the elements of the offence of harassment were given because in the hair salon of the defendant employer, discriminating remarks were made towards foreign employees – not only in exceptional cases – and because the husband of the employer frequently told xenophobic jokes. In addition, the plaintiff, an employee of Serbian descent, was verbally harassed by being called a "Tschuschin". Damages were awarded in the amount of EUR 1,000;
- (g) Provincial Court for Civil Matters of Vienna, 35 R 104/07i dd. 30 March 2007;
- (h) The facts of this case were, first, that a salesperson stated that the business did not sell to foreigners and, second, that the plaintiff was physically attacked. The court found that the statement made by the salesperson to the effect that the business

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<sup>8</sup> This Federal Act provides for the liability of the federal state, the provinces, the municipalities and other corporations under public law for any damage culpably caused in executing the laws.

did not sell to foreigners and the physical attack on the plaintiff constituted behaviour that excluded the plaintiff from having access to goods. Therefore the plaintiff was awarded damages in the amount of EUR 800;

(i) As an example at provincial level, it can be stated for Vienna that – to the extent the Liability of Public Bodies’ Act is not applicable – the Vienna Anti-Discrimination Act (Wiener Antidiskriminierungsgesetz) provides for a mandatory conciliation procedure (sect. 4a) in which an attempt is made to achieve an extrajudicial settlement for the benefit of the parties concerned at no cost. If the prohibition of discrimination is violated, the party discriminated against is not only entitled to claim compensation for any financial loss but is also entitled to claim adequate damages as compensation for the personal disadvantage suffered. If no extrajudicial settlement can be reached, a claim may be filed with a civil court;

## **B. Indication by States parties whether they intend to make the optional declaration provided in article 14**

102. Austria has already issued a declaration under article 14, paragraph 1. The right to indicate body within the Austrian legal order in accordance with article 14, paragraph 2 was reserved.

## **VIII. Article 7**

### **A. Education and teaching**

103. As laid down at constitutional level, democracy, humanity, solidarity, peace and justice as well as open-mindedness and tolerance are the fundamental values to which Austrian schools are committed (art. 14, para. 5a of the Federal Constitutional Law). Schools must ensure the best possible level of education for all, regardless of the origin, social status or financial means of pupils or their parents. This requirement applies to all public primary and secondary schools.

104. In Austria, human rights education has been integrated into school curricula since 1978 via the educational principle “civic education”. According to this principle, civic and human rights education is a fundamental part of teaching in all subjects, at all school levels and in all school types. In addition, human rights are taught within the framework of civic education, a compulsory subject, and are incorporated into the science and social studies (*Sachunterricht*) curriculum of primary schools. In the curricula of vocational schools, economic, social and cultural rights are primarily taught in business administration, accounting, economics, civic education and law courses. In addition to technical know-how, the business knowledge taught also includes the social and ecological responsibility of those working in the business sector.

105. Human rights are dealt with in numerous ways at Austrian schools, ranging from education in history and political science (National Socialism and the Holocaust) to the treatment of human rights aspects of globalisation. In addition to regular human rights education, detailed information and teaching material explicitly treating economic, social and cultural human rights is available. These measures in the field of civic education have been compiled in special dossiers and have been made available online free of charge.

106. In accordance with the great significance attached to human rights issues in the Austrian system of education, this topic has also been placed on the curriculum of the

Universities of Teacher Education (*Pädagogische Hochschulen*). As regards the measures taken by the provinces, see also the comments on article 5, I.E, paragraphs 76-87 above.

107 In accordance with the relevant regulation (Federal Law Gazette Vol. No. 348/1994), teaching aids (in particular textbooks) may only be declared suitable teaching material on the basis of an expert opinion rendered by a commission. The purpose of this expert opinion is, inter alia, to ascertain whether the legal requirements are met, such as the civic education of pupils and the teaching of democratic attitudes and applicable legal provisions (sect. 9, para. 1 (f) of the aforementioned regulation). At the beginning of their new term of office in September 2010, the members of the commission of experts were advised to observe the standards envisaged in said regulation and to point in their opinions to possible cases of discrimination.

108. For some years now, the relevant textbooks have contained more and more information on the national minorities (ethnic groups) living in Austria. To give an example, in secondary schools for ethnic groups in Burgenland, a textbook is used that also treats the issue of ethnic groups in the context of Burgenland's history. In this connection, mention should also be made of the teaching aids for educators prepared by ethnic group organizations in Burgenland with funds from the ethnic groups support scheme operated by the Federal Chancellery.

109. Austria also supports the education programmes of the adult education centre of the Burgenland Roma to promote the language and culture of the Roma (<http://www.vhs-roma.eu/>); these programmes are open to Roma and non-Roma alike and receive annual funding in the amount of EUR 1,000. In 2011, funding is also being given to the project "ROMA KinderWelten" (ROMA children's world), in which childhood memories are presented and communicated using various techniques and forms. (Regarding the question of supporting the publication and distribution of books and other printed materials as well as the broadcasting of television and radio programmes; see also the comments on article 5, I.E, paragraphs 76-87 above).

110. In response to the disruption of the commemoration of the anniversary of the liberation of the former Ebensee concentration camp by juvenile offenders in March 2009, the Federal Ministry of Economy, Family and Youth now offers support and advice in family counselling centres to parents who fear that their children may become susceptible to extremism. For this purpose, since autumn 2009 the Mauthausen Committee Austria has operated special training programmes for counsellors on right-wing extremism among teenagers, in which 52 counsellors have participated to date. 53 counselling centres throughout Austria currently provide consultation on this issue, a service that is advertised at <http://www.familienberatung.gv.at/beratungsstellen> (menu item "extremism").

111. The training and further training of law enforcement officials at the Academy for Security Forces has increasingly included aspects of anti-discrimination. The Academy's cooperation with the Anti-Defamation League, which began in 2001, is still being continued in education and further training. At present, a catalogue of human rights principles is being set up for all areas of basic training of law enforcement officials, the implementation of which is scheduled for 2012. It should be emphasized that even during the recruitment process, attention is paid to the fact that the future police officers have a fundamentally positive attitude towards foreigners.

112. Every year, the Prison Staff Academy offers various seminars on the subjects of foreigners, foreign cultures and human rights. The seminar programme includes a course on "intercultural competence", with an annually alternating regional focus (in 2011, for example, it was the continent of Africa). Moreover, each seminar programme offers so-called "indoor modules" – one-day events that are primarily organized at the request of

individual prisons and cover issues such as “foreigners in the Austrian prison system”, “cultural background and globalisation” or “treatment of special groups of prisoners”.

113. In 2010, particular attention was paid to human rights when the Federal Ministry of Justice and the Federal Ministry of the Interior, working in cooperation, initiated a course called “train-the-trainer human rights education” for a total of 16 participants in August 2010. The findings of this course have had a significant influence on the design of basic training programmes. Furthermore, the subject “Training of law enforcement officials in reacting to specific situations” (“*Vollzugliches Handlungstraining*”), introduced more than a year ago, aims at sensitising participants for issues such as de-escalation, human rights, discrimination and anti-discrimination. The primary purpose of this course is to teach participants how to implement their theoretical knowledge in everyday practice.

114. If they are interested, labour inspectors may voluntarily attend training programmes offered by the Federal Ministry of Labour, Social Affairs and Consumer Protection, which also deal with human rights and anti-racism issues.

115. One of the qualifications required of persons successfully completing the military officers training programme is the capacity to cooperate with individuals of another cultural background in a manner that is satisfying to both parties. This skill (intercultural competence) is taught in line with the curriculum of the course of studies in military leadership at the University of Applied Science of the Theresian Military Academy in Wiener Neustadt. All soldiers selected for a foreign mission have to undergo in-depth training specifically tailored to the area of deployment in preparation of their mission. This training programme is not only a military preparation but gives great priority to the culture and the religion of the people living in the area of the mission. Moreover, the style of language used in all of the Army’s manuals and instruction sheets is generally chosen in compliance with the requirements of the Convention.

## **B. Culture**

116. An administrative department for bilateral friendship societies has been set up under the purview of the Federal Ministry of Science and Research. This department is also responsible for the Federation of Austrian-Foreign Societies – PaN (Partner of all Nations, cf. <http://www.dachverband-pan.org/english/about-us/>). Well over 100 bilateral friendship societies are represented in the umbrella organization, the aim of which is to promote international understanding and friendship and cultural exchange among nations.

117. In 2008, the Task Force “Dialogue of Cultures” of the Foreign Ministry organized socio-cultural seminars for Turkish religious representatives, which were carried out in cooperation with the Turkish Presidency of Religious Affairs (Diyanet), the University of Vienna and others. This project was continued in 2010 and 2011 with co-funding from the European Integration Fund (EIF). The training programme includes seminars and field trips for Turkish imams on priority issues, including the education system, the situation and rights of women, religious pluralism, inter-cultural dialogue and integration in Austria and Europe. In 2011, the project is being expanded to include training seminars for women’s representatives in Austrian mosque associations and a programme to train honorary dialogue representatives for intercultural and inter-religious cooperation.

118. As regards the promotion of language skills, see also the comments on article 5, I.E, (language education) paragraphs 76-87 above. By way of example, mention should be made of the Austrian Centre for Language Competence (ÖSZ) and the Austrian Language Committee (ÖSKO). These institutions primarily promote multilingualism and language diversity, which is becoming ever more important due to increasing mobility and globalisation.

### C. Information

119. In compliance with its mandate, the Austrian Broadcasting Corporation (ORF) shall ensure an objective and unbiased nature of news coverage, due regard for the diversity of opinions and a balanced focus of channels, to protect the independence of persons and organs of the Austrian Broadcasting Corporation (see section 1, paragraph 3 of the Federal Act on the Austrian Broadcasting Corporation [Bundesgesetz über den Österreichischen Rundfunk, Federal Law Gazette No. 379/1984 as amended by Federal Law Gazette Vol. I No. 50/2010, hereinafter referred to as the ORF Act]). In line with its general programming principles, the Austrian Broadcasting Corporation must, with regard to presentation and content in all of its programmes, respect the human dignity and fundamental rights of others and is prohibited from inciting others to hatred on grounds of race, sex, age, disability, religion and nationality (see section 10, paragraphs 1 and 2 of the ORF Act). In addition, it is obligated to promote understanding for all questions of democratic society. The principles of advertising in the Austrian Broadcasting Corporation also specify that advertising shall not include any discrimination (section 13, paragraph 3 (2) of the ORF Act). Equivalent provisions are also found in section 30 and 31 of the Audiovisual Media Services Act (Audiovisuelles Mediendienste-Gesetz, Federal Law Gazette Vol. I No. 84/2001 as amended by Federal Law Gazette Vol. I No. 50/2010), so that in this area private television is subject to the same standards as the Austrian Broadcasting Corporation.

120. Under applicable law, the channels and services of the Austria Broadcasting Corporation shall include reasonable shares in the languages of ethnic groups that are represented by an ethnic group advisory board. The extent of shares on channels and in services shall be laid down in the annual programme schedule or the annual service schedule (see section 4, paragraph 5a of the ORF Act).

121. The Austrian Broadcasting Corporation (pursuant to section 4, paragraph 2 and section 10, paragraph 6 of the ORF Act) must provide services geared to the variety of all listeners' and viewers' interests and take a balanced approach in considering these interests. The diversity of opinions held in public life must be appropriately taken into account, and the human dignity, personal rights and privacy of the individual must be respected. See [http://zukunft.orf.at/show\\_content.php?sid=82](http://zukunft.orf.at/show_content.php?sid=82).

122. Given that the European Convention for the Protection of Human Rights and Fundamental Freedoms has constitutional level in Austria, the rights guaranteed therein are also directly relevant to all mass media.

123. Media services, with the exception of terrestrial and satellite broadcasting, do not require any licensing; the start of operations only has to be notified to the regulator (KommAustria). The most noteworthy standards to be met are the general prohibition against inciting others to hatred and the obligation to respect human dignity and fundamental rights.

124. In support of the media services in this field, funding of non-commercial and private broadcasting (see section 29 and/or section 30 of the KommAustria Act) is provided for by law. One of the criteria for funding is that consideration be paid to the languages spoken by the ethnic groups recognized in Austria in the broadcasts being funded (see also the comments on article 5, I.E, paragraphs 76-87 above).

125. The journalism training modules of individual domestic institutions (in particular the "Kuratorium für Journalistenausbildung") deal with the sensitive issues of discrimination. Once every six months, the Austrian Broadcasting Corporation also offers the seminar "Stereotypes and blind spots (Klischees und blinde Flecken) – Self Assessment – Diversity Reporting". The goal of this two-day diversity reporting workshop is, by means of the systematic use of appropriate input and tools, to enable participants to develop new,

additional perspectives on reality and use them for their own work in journalism. Reflecting on the appropriate way of dealing with diversity and cultural identities helps journalists to tap into their creative potential.

126. The Austrian Broadcasting Corporation offers diverse programmes for Austria's six autochthonous ethnic groups on its terrestrial and satellite radio and television channels as well as on the Internet, in its video platform ORF-TVthek and its teletext service.

127. For details on the individual programme priorities of the Austrian Broadcasting Corporation in 2010, please consult the Annual Report of the Austrian Broadcasting Corporation (Jahresbericht des ORF, also see article 5, I.E, paragraphs 76-87 above).

128. Humanitarian broadcasting has also become one of the service institutions of the Austrian Broadcasting Corporation, bundling and coordinating its numerous social activities and thus implementing and displaying "public value" in the media as a dynamic public-law value and a distinctive trait that sets the Austrian Broadcasting Corporation apart from the product values of its commercial competitors. In addition to humanitarian campaigns, the annual conferral of the "Greinecker Prize for Moral Courage" ("Greinecker Preis für Zivilcourage") for exemplary social commitment also falls under the domain of humanitarian broadcasting (for further details also see page 128 of the annual report mentioned above).

129. On 15 February 2010, the Austrian Press Council was re-established as an association called "Association for the Self-Monitoring of the Austrian Press – Austrian Press Council" ("Verein zur Selbstkontrolle der österreichischen Presse – Österreichischer Presserat"). Its primary purpose is to promote freedom of the press. To ensure the independence of such an institution, federal government support for the self-monitoring of the press was legally provided for in 2009. The Austrian Press Council defines itself as a modern institution of self-regulation of the press, based on the principle of voluntariness and aimed at ensuring editorial quality assurance and guaranteeing freedom of the press. Accordingly, journalism is of vital importance for democratic life, which in turn gives journalists a particular responsibility in dealing with and disseminating information. Therefore, the Austrian Press Council has set up a Code of Ethics ([http://www.presserat.at/show\\_content.php?hid=2](http://www.presserat.at/show_content.php?hid=2)) for the Austrian press, which is linked to the Media Act (Mediengesetz, Federal Law Gazette No. 314/1981 as amended by Federal Law Gazette Vol. I 49/2005) and is to be regarded as an ethical guideline for journalists. This Code is the foundation for the decisions taken by the Senates of the Austrian Press Council (these comments also relate to the reply to the recommendations contained in paragraph 25 of the concluding observations (see annex)).

130. Mention should also be made of the Austrian Advertising Council (Österreichischer Werberat) ([www.werberat.at](http://www.werberat.at)), which aims at protecting consumers against any misuse in advertising by imposing a code of self-regulation. For instance, advertising is prohibited from directly or indirectly discriminating against anyone as well as from promoting discrimination. Moreover, the Austrian Broadcasting Corporation is obligated to set up a code of conduct for journalistic activity in respect of designing programme content (see section 4, paragraph 8 of the ORF Act). This code was recently adopted and was made available on the website of the Austrian Broadcasting Corporation.

## Annex

### Replies to the recommendations contained in the Committee's concluding observations

#### Reply to the recommendations contained in paragraph 9 of the concluding observations (CERD/C/AUT/CO/17)

1. Pursuant to Section 1, paragraph 2 of the Ethnic Groups Act, the term ethnic groups refers to groups of Austrian citizens resident and domiciled in parts of the federal territory (i.e. groups with a continuity of approximately 100 years) and having a language other than German as their mother tongue and traditions of their own. According to this definition, the Ethnic Groups Act applies to Austria's autochthonous ethnic groups, namely the Burgenland-Croatian, the Slovenian, the Hungarian, the Czech and the Slovak ethnic groups as well as the ethnic group of the Roma. For historical reasons, the ethnicity of ethnic groups is not surveyed in Austria; as a consequence, in the censuses carried out in 2001 and before, the respondents were not asked for their "mother tongue" but for their "colloquial language".

**Table 1- Austria's population broken down by ordinary language and nationality according to the 2001 census**

Ordinary language	Total citizens				Born	
	absolute	in % *	in Austria	in % *	abroad	in % *
Burgenland-Croatian	19,374	5.9	18,943	11.3	431	0.3
Romani	4,348	1.3	1,732	1.0	2,616	1.6
Slovak	3,343	1.0	1,172	0.7	2,171	1.3
Slovenian	17,953	5.4	13,225	7.9	4,728	2.9
Czech	11,035	3.3	4,137	2.5	6,698	4.2
Hungarian	25,884	7.8	9,565	5.7	16,319	10.0
Windish **	567	0.2	547	0.9	20	0.0

\* Percentages (%) refer to the total number of mentions of colloquial languages other than German.

\*\* A variant of the Slovenian language influenced by German. *Source: Statistics Austria*

2. In the most recent census, carried out in the traditional form in 2001, "Romani" (which internationally is a commonly used term for variants of the Roma languages) was included for the first time. However, the result was not representative because part of the Roma did not tick the box for "Romani" while many of the Romanians who had just settled in Austria recently chose "Romani" because they confused it with "Romanian".

3. In the future, censuses will no longer be carried out by asking citizens to fill in forms but rather by using administrative and registry data, which already include all necessary information (automated data synchronisation). Should, however, additional data be absolutely necessary, the Register Census Act (Registerzählungsgesetz) authorizes the competent federal minister to order, by means of a regulation, an individual-related full or partial census on colloquial language. That way, an adequate balance between public interests on the one hand and privacy interests on the other will be achieved.

**Reply to the recommendations contained in paragraph 10 of the concluding observations**

4. Funds under the ethnic groups support scheme may also be used to support activities of associations of ethnic groups that are domiciled outside the autochthonous settlement areas. In such case, the support funds for ethnic groups are not granted in the form of general subsidies (Basisförderung) but only for individual projects.

**Reply to the recommendations contained in paragraph 11 of the concluding observations**

5. Austria's federal structure and the division of competences between the federal state and the provinces, which is enshrined in constitutional law, have resulted in a variety of acts of law in the field of anti-discrimination and equal treatment. What all these acts have in common, however, is that they must implement the prohibition of discrimination – which is also enshrined in constitutional law – and thus also the Convention on the Elimination of All Forms of Racial Discrimination.

6. The province of Vienna, for instance, recently issued an amendment to the Vienna Anti-Discrimination Act, Provincial Law Gazette for Vienna No. 44/2010, to implement the recommendations of the Committee. The Vienna Anti-Discrimination Act prohibits any direct and indirect discrimination and harassment of individuals on grounds of ethnicity, religion, belief, disability, age, sexual orientation, gender identity and sex, in particular also on grounds of pregnancy and parenthood, as well as the instigation of an individual to take such discriminatory action. Moreover, the scope of said Act includes any sexual harassment as well the instigation of an individual to sexual harassment. Moreover, in matters falling within the regulatory competence of the province of Vienna, the Vienna Anti-Discrimination Act also prohibits discrimination on grounds of ethnicity in the fields of social affairs, health, education, access to and supply of goods and services that are available to the public, including housing and access to self-employment.

7. In addition, the province and the municipality of Vienna have undertaken, within their sphere of action, to take adequate and necessary measures to enable non-discriminatory access to their services and programmes offered.

8. The province of Tyrol has implemented the prohibition of discrimination on grounds of ethnicity in all areas of provincial legislation for citizens by issuing the Tyrol Anti-Discrimination Act of 2005 (Tiroler Antidiskriminierungsgesetz 2005), Provincial Law Gazette for Tyrol No. 25/2005, and also in the field of civil servants with the Provincial Equal Treatment Act of 2005 (Landes-Gleichbehandlungsgesetz 2005), Provincial Law Gazette for Tyrol No. 1/2005.

9. The Vorarlberg Anti-Discrimination Act (Vorarlberger Antidiskriminierungsgesetz), Provincial Law Gazette for Vorarlberg No. 17/2005 as amended, lays down a comprehensive prohibition of discrimination on grounds of ethnicity, religion or belief, disability, age, sexual orientation and sex for the following areas: employment including membership and participation in professional representations, social protection including social security and healthcare services, social benefits, education and access to and supply of goods and services that are available to the public, including housing – provided that these matters fall within the regulatory competence of the province.

10. In 2010 and 2011 nine individuals have so far reported an incident of discrimination on grounds of their ethnicity to the Vorarlberg anti-discrimination bodies. In three cases, there was a lack of jurisdiction and in two cases the complaints were passed on to the competent Ombud for Equal Treatment in Vienna. Some of the other cases are still pending.

11. In addition, the Vorarlberg Mission Statement on Integration with the following guiding principles should also be mentioned:

- (j) Safeguarding of fundamental rights and values – cultivation of diversity;
- (k) meet the challenges – development of potential;
- (l) Promotion of and request for participation – strengthening of cohesion and solidarity.

### **Reply to the recommendations contained in paragraphs 12 and 21 of the concluding observations**

#### **Harmonization**

12. Anti-discrimination measures affect a series of issues which in terms of legislative and executive powers are distributed between the federal state and the provinces on the basis of the constitution. This makes it impossible to come up with a single uniform act. However, as far as possible, the federal legislator has summed up all provisions regarding equal treatment in the Equal Treatment Act and the Act concerning Equal Treatment in the Public Service Sector in order to make access to the law easier.

13. In spite of this basically uniform approach, it nevertheless seems to be objectively justified to govern individual aspects of equal treatment law in the respective specific laws (Materiengesetze) on the relevant content if that is where the relevant public, in areas which have been finally regulated by means of specific legislation, would look first to find regulations relevant to equal treatment. This concept of embodying legislation on equal treatment, as far as possible, in a single act – the Equal Treatment Act – with additional special regulations in the respective specific laws for certain areas, where such practice seems to be justified, takes practical needs into account.

14. At the federal level, regular inter-departmental talks are held on topical questions arising on equal treatment issues and contacts are maintained to ensure concerted action.

15. See also the comments on article 2, A, paragraphs 15-28, regarding the structured dialogue. In this context it should be highlighted that the Human Rights Coordinators in the federal ministries and in the offices of the provincial governments are, inter alia, also in charge of harmonising human rights standards.

#### **Evaluation**

16. The Equal Treatment Act and the Federal Act on the Equal Treatment Commission and the Ombud for Equal Treatment are subject to a permanent evaluation process. In the performance of its activities, the Equal Treatment Commission gains comprehensive experience with a view to the practical implementation of the equal treatment precept and possible measures for improvement. The same applies to the Ombud for Equal Treatment.

17. According to Section 24 of the Federal Act on the Equal Treatment Commission and the Ombud for Equal Treatment, the Federal Chancellery and the Federal Ministry of Labour, Social Affairs and Consumer Protection are obliged to submit a report on the execution of the Equal Treatment Act every two years. This report is to include, in particular, information on the work and observations of the Ombud for Equal Treatment, the proceedings before the Commission and other activities of the Commission.

18. Associations representing the interests of employers and employees also have considerable knowledge regarding the effectiveness of the provisions and necessary changes, if any, based on their activities in this legal sphere.

19. On these bases, it is possible to assess the effectiveness of the equal treatment legislation as well as the need for improvement.

**Reply to the recommendations contained in paragraph 13 of the concluding observations**

20. The primary goal of the amendment to the Equal Treatment Act and the Federal Act on the Equal Treatment Commission and the Ombud for Equal Treatment, Federal Law Gazette Vol. I No. 98/2008, which entered into force on 1 August 2008, was to transpose Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services. The amendment also introduced a prohibition of victimisation of witnesses. Furthermore, additional improvements were made that go beyond the scope of a mere transposition of the Directive, for example:

- (m) The minimum claim for damages in the case of discrimination when starting employment and in the case of harassment was raised;
- (n) It was made clear that multiple discrimination is to be taken into account, where applicable, when calculating the amount of the compensation payment for the personal disadvantage suffered;
- (o) The definitions of sexual harassment and harassment were adjusted to comply with the requirements of Community law;
- (p) The penalties to be imposed in the event of a violation of the prohibition of discrimination were clarified in all parts of the Equal Treatment Act;
- (q) It was made clear that in connection with discrimination on grounds of ethnicity, the “nationality” exemption clause is restricted to provisions under aliens law;
- (r) The period of limitation for asserting cases of harassment was generally extended from six months to one year;
- (s) It was made obligatory to publish all results of the Equal Treatment Commission at the website of the Federal Chancellery in an anonymous form.

21. The following list contains the central provisions of the most recent amendment to the Equal Treatment Act and the Federal Act on the Equal Treatment Commission and the Ombud for Equal Treatment (Federal Law Gazette Vol. I No. 7/2011), which entered into force on 1 March 2011:

- (t) It is now obligatory to prepare a biannual company-related report on income in companies, including the right to information;
- (u) It is now obligatory to indicate, in job advertisements, the minimum pay stipulated in the collective bargaining agreement and the willingness to offer higher pay than that stipulated in the collective bargaining agreement; the amendment includes the penalties for violation;
- (v) In individual cases of alleged discrimination regarding remuneration, income-related data of comparative persons is to be obtained from the competent social insurance company by the Ombud for Equal Treatment and the Senates of the Equal Treatment Commission;
- (w) The amendment provides for protection from discrimination in the case of discrimination by way of association;

- (x) The claim for damages in the case of (sexual) harassment has been raised from EUR 720 to EUR 1,000;
- (y) Provisions calling for non-discriminatory housing advertisements have been introduced;
- (z) The confidentiality of proceedings before the Equal Treatment Commission has been abolished.

22. The following information refers to the work performed by Senates II and III of the Equal Treatment Commission (which, apart from dealing with discrimination on other grounds, is also responsible for dealing with discrimination based on “ethnicity”, as mentioned in the Equal Treatment Act, in employment and/or in non-employment areas regarding access to and supply of goods and services) in the years 2006-2009:

23. In this time period, “ethnicity” was the most commonly claimed reason for discrimination in new applications brought before Senate II. Most of the proceedings that concluded with an “investigation result” during such period also involved discrimination on grounds of “ethnicity”.

“Ethnicity” was also the reason for discrimination most frequently mentioned in new applications brought before Senate III – which, since 1 August 2008, has also been competent for discrimination on grounds of “sex” regarding access to and supply of goods and services outside the workplace. Most of the proceedings dealt with discrimination regarding “access to and supply of goods and services” (frequently in the form of denial of access to entertainment facilities) and/or “harassment”.

24. Since 2006, at the invitation of the competent federal minister, the annual “NGO Dialogue” has been carried out with NGOs active in the fight against discrimination.

25. The Ombuds for Equal Treatment are not entitled to appear in court as third-party interveners, but they have a right of action in case-by-case reviews initiated by them if the party having caused the discrimination fails to comply with the Equal Treatment Commission’s instruction to apply equal treatment. The action may, however, only be brought with the consent of the persons affected. Non-governmental organizations are entitled to intervene as third parties in court proceedings.

#### **Reply to the recommendations contained in paragraph 14 of the concluding observations**

26. The amendment to the Ethnic Groups Act, Federal Law Gazette Vol. I No. 46/2011, provides for 164 bilingual place-name signs to be displayed in Carinthia. This concerns the names of all places listed in the applicable Topography Ordinance for Carinthia (*Kärntner Topographieverordnung*), as well as all places regarding which the Constitutional Court has issued a decision and all places where at least 17.5 per cent of the population is multilingual. Moreover, the admissibility of the use of Croatian, Slovenian and Hungarian as official languages has been regulated by means of a constitutional law. A solution acceptable to all relevant groups has thus been found to end the discussion regarding bilingual place-name signs in Carinthia, which had been going on for decades. This amendment was based on an agreement of the parties involved in the dialogue, namely the mayors of the communities concerned, the homeland associations (*Heimatverbände*), the political parties and the organizations of the Carinthian Slovenians (Central Association of Slovene Organisations [*Zentralverband Slowenischer Organisationen*], Council of Slovenes in Carinthia [*Rat der Kärntner Slowenen*] and Community of Carinthian Slovenes [*Gemeinschaft der Kärntner Slowenen und Sloweninnen*]) on a comprehensive package (cf. the “Memorandum” signed by the parties on 26 April 2011). The signs have already been put in place.

**Reply to the recommendations contained in paragraph 15 of the concluding observations**

27. See the comments on article 4, A, paragraphs 32-42, regarding Section 283 of the Criminal Code.

**Reply to the recommendations contained in paragraph 16 of the concluding observations**

28. See the comments on article 4, A, paragraphs 32-42 and 4, D, paragraphs 44-46.

**Reply to the recommendations contained in paragraph 17 of the concluding observations**

29. The authorities are under the obligation to work towards keeping the detention pending deportation as short as possible. Detention pending deportation serves the purpose of securing the proceedings ending a person's stay in Austria and his/her deportation and is applied exclusively as an *ultima ratio*. It is to be revoked without delay should such need for security no longer exist. A comparison of figures gathered over several years clearly shows that the instrument of detention pending deportation is treated with a high level of care, in a sensitive and reasonable manner, and that a clear reduction has taken place. In addition to the statutory prerequisites which have to be met, the authority has to weigh the interests in each individual case before ordering detention. The lawfulness of any case of detention pending deportation is subject to the supervision of the Independent Administrative Senates in the provinces and, subsequently, the public-law courts.

30. While in 2009 the average period of detention pending deportation was still 24 calendar days (a calendar day being every day or part thereof, even if the detainee was only detained for a few hours) or 550.3 hours, the average period of detention in 2010 was only 19.5 calendar days or 443.2 hours (source: detention file – prison administration [Anhaltedatei – Vollzugsverwaltung]). However, regarding these figures it has to be pointed out that only the total periods of detention are determined on the basis of the detention file – prison administration: That means that other periods of detention, such as periods of (temporary) detention imposed by administrative authorities (Verwaltungsverwahrungs- oder Verwaltungshaft) are also included in this file, which results in a distorted image.

31. Significant improvements of the conditions in detention pending deportation were achieved through the implementation of so-called “open-regime stations” (“Offene Stationen”)<sup>9</sup> and through comprehensive renovations and design adaptations of the buildings used for this purpose. In this context, the overall refurbishment of the Eisenstadt police detention centre, the design adaptation and renovation of the Innsbruck police detention centre as well as ongoing improvements in the sanitary installations and facilities at the police detention centres in Innsbruck, Vienna, St. Pölten and many others should be mentioned. The facility in 1100 Vienna, Zinnergasse 29a was adapted to accommodate families prior to their deportation from the country. This building is also to be used when a less intrusive measure pursuant to Section 77 of the Aliens' Police Act is applied (i.e. the persons accommodated there are entitled to move about freely and only have to meet their obligation to report to the authorities). The implementation of a project to create a new detention centre in Vordernberg/Styria is regarded as constituting a considerable improvement in the field of police detention. The primary objective is the further

<sup>9</sup> In so-called “open-regime stations”, detainees awaiting deportation are housed in a separate part of the building, where they are entitled to move around freely.

optimization of the current situation regarding the detention of aliens – in cases where detention pending deportation has been or has to be imposed – with respect to human rights standards.

**Reply to the recommendations contained in paragraph 18 of the concluding observations**

32. Police interventions are governed by a code of professional duties, statutory mandates and official instructions, and the police officers are obliged at all times to carry out such interventions in a completely unbiased manner. As a matter of course, this also includes the avoidance of discrimination of any kind. With regard to this aspect, it is imperative that, in order to ensure a professional performance of their responsibilities, all officers of the security police behave and speak in a way that excludes, from the outset, any impression of discriminatory, humiliating, degrading or biased action and/or any conclusion that officers' attitudes are based on such motives. Racist behaviour of police officers will not be tolerated under any circumstances and will be prosecuted under criminal and/or administrative law.

33. See also the comments on articles 4, A, paragraphs 32-42 and 5, I.A, paragraphs 47-49 and 5, I.B, paragraphs 50-59.

**Reply to the recommendations contained in paragraph 19 of the concluding observations**

34. The Independent Administrative Senates have been in place in the provinces since 1991. Their responsibilities include, inter alia, making decisions on complaints submitted by individuals claiming that their rights have been infringed through the exercise of direct powers of administrative authority and coercion by the administrative authorities. Since 1993, such individuals have been entitled to bring an appeal before the Supreme Court on grounds of a violation of fundamental rights by a criminal court's decision or order. See also the comments on article 5, I.A, paragraphs 47-49 and 5, I.B, paragraphs 50-59 as well as on article 6, A, paragraphs 90-101.

35. In September 1999, the Human Rights Advisory Board, which advises the Federal Minister of the Interior regarding the safeguarding of human rights, was set up as an instrument with a primarily preventative function. This body is responsible for observing and regularly reviewing, from a human rights point of view, the activities of the security authorities, other authorities subordinate to the Federal Minister of the Interior and bodies authorized to exercise direct powers of administrative authority and coercion. To this end, the Human Rights Advisory Board takes action on its own initiative or at the request of the Federal Minister of the Interior and makes suggestions to the latter regarding improvements. The Human Rights Advisory Board visits detention facilities, identifies shortcomings and proposes targeted solutions. The members of the Human Rights Advisory Board are not bound by any instructions in the performance of their tasks. See also the comments on article 2, B, paragraphs 18-23, and 2, C, paragraphs 24-25.

**Reply to the recommendations contained in paragraph 20 of the concluding observations**

36. See the comments on article 5 and also the periodic report on the International Covenant on Economic, Social and Cultural Rights submitted in 2010.

37. Current data regarding migration and integration in the fields of population development, language and education, work and employment, social affairs and health, safety, and housing can be found in the statistical part of the 2011 Integration Report.

**Reply to the recommendations contained in paragraph 22 of the concluding observations**

38. See the comments on article 5, I.E, paragraphs 76-87.
39. Within the limits of the Austrian legal system, the members of ethnic groups are free to found their own organizations (e.g. associations) and to elect representatives of such organizations.
40. However, the ethnic groups advisory boards are bodies advising the federal government and the federal ministers. A recent survey, carried out in the course of preparations for the reform of ethnic groups legislation, asked organizations of ethnic groups whether they saw the ethnic groups advisory boards as bodies representing the interests of the respective ethnic group. The survey showed that the predominant majority regards the ethnic groups associations as representatives of their interests whereas the ethnic groups advisory boards are actually regarded as advisory bodies.
41. In the course of the reform process regarding ethnic groups law, the composition and responsibilities of the ethnic groups advisory boards are also being dealt with and options to increase their inclusion on several levels are being explored. The working group on structural and legal issues (*Arbeitsgruppe "Struktur- und Rechtsfragen"*) is scheduled to complete its work before the end of 2011.

**Reply to the recommendations contained in paragraph 23 of the concluding observations**

42. See the comments on articles 1, A, paragraphs 6-13; 5, I.E, paragraphs 76-87 and 6, A, paragraphs 90-101.

**Reply to the recommendations contained in paragraph 24 of the concluding observations**

43. The Equal Treatment Commission, which is characterized by informal proceedings, offers an easily accessible option – apart from going to court, which is possible at any time – to assert claims based on discrimination. It plays an important role in dispute resolution. The most recent amendments to the Equal Treatment Act and the Federal Act on the Equal Treatment Commission and the Ombud for Equal Treatment (See replies to the recommendations contained in paragraphs 12, 13 and 21 of the concluding observations) referred, inter alia, to improvements of the procedural rules.
44. The Chambers of Labour and the Austrian Trade Union Federation also offer effective protection against discrimination; they not only give advice to their members but also represent them in labour-law and social-law proceedings in court and grant them legal protection.
45. As far as the burden of proof is concerned, Austrian law requires that the plaintiff provides prima facie evidence of the incident of discrimination. Defendants must also present their position by furnishing prima facie evidence, and only if a defendant succeeds in proving to the satisfaction of the judge that the facts and motives submitted by the defendant are more probable than those of the plaintiff will the action be dismissed. Otherwise, the action will be granted on the basis of the prima facie evidence furnished by the plaintiff. This provision means that the standard of evidence is lowered considerably for both parties, but primarily for the discriminated party (= plaintiff), as often the occurrence of discrimination can only be concluded from the surrounding circumstances and cannot be proven in its entirety. The burden of proof borne by the discriminating party is higher, since the discriminating party is required to invalidate the information provided by the discriminated party. The discriminated party is responsible for establishing the probability

of the discrimination, but the court will only dismiss the action if, after weighing all circumstances, the degree of probability of the facts presented by the discriminating party prevails, i.e. the defendant succeeds in furnishing evidence for the defence. Not only does this regulation lower the standard of evidence but it results in an actual shift in the burden of proof: Normally, in Austrian civil law proceedings, the plaintiff is required to furnish full evidence of the asserted claim and the defendant is under no obligation to furnish justification. Under the Equal Treatment Act, the situation is different: the defendant has to actively convince the court of the truth of his/her statements, i.e. successfully present the case that the discrimination alleged by the plaintiff did not occur, in order for the action to be dismissed.

**Reply to the recommendations contained in paragraph 25 of the concluding observations**

46. See the comments on articles 4, A, paragraphs 32-42 and 4, D, paragraphs 44-46; 5, I.A, paragraphs 47-49 and 5, I.B, paragraphs 50-59 and 6, A, paragraphs 90-101.

**Reply to the recommendations contained in paragraph 26 of the concluding observations**

47. See the comments on article 7, C, paragraphs 119-130.

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