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**REPORT BY**

**THE COMMISSIONER FOR HUMAN RIGHTS**  
**MR. THOMAS HAMMARBERG**

**ON HIS VISIT TO AUSTRIA**  
**21 – 25 May 2007**

For the attention of the Committee of Ministers  
and the Parliamentary Assembly

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# 1. Introduction

1. The Council of Europe Commissioner for Human Rights Mr. Thomas Hammarberg conducted an official visit to the Republic of Austria from 21 – 25 May 2007 upon invitation by the Federal Minister for European and International Affairs Ms. Ursula Plassnik. The visit was part of a continuous process of regular country missions by the Commissioner to all Council of Europe member states to assess their effective respect for human rights.<sup>1</sup> The Commissioner was accompanied by Mr. Lauri Sivonen and Mr. Andrew Forde, members of his Office.

2. In the course of his visit the Commissioner met with Federal Chancellor Alfred Gusenbauer, Federal Minister for European and International Affairs Ursula Plassnik, Federal Minister of Interior Günther Platter, Federal Minister of Justice Maria Berger and Federal Minister for Women, Media and Civil Service Doris Bures. He also met with the Mayor and Governor of Vienna Michael Häupl and the Governor of Styria Franz Voves. Mr. Hammarberg visited Vienna and Graz and held discussions with representatives of federal, provincial and local authorities, members of the judiciary, ombudspersons, parliamentarians as well as civil society representatives. Furthermore, the Commissioner addressed the Austrian Judges' Week in Bad St. Leonhard and gave public lectures in Graz and Vienna. He also made several institutional visits to facilities and sites with human rights relevance.<sup>2</sup>

3. The Commissioner expresses his great appreciation for the generous co-operation of the Austrian authorities at all levels in facilitating the visit and wishes to thank the Federal Minister for European and International Affairs and her Ministry for their shared commitment to the objectives of the mission. Moreover, he extends his gratitude to all people met during the visit for their open attitude and frank exchange of views. The Commissioner is particularly pleased to have had the opportunity to meet with many civil society representatives who shared their expertise and valuable insights regarding the human rights situation in Austria.

4. The purpose of this report is to identify opportunities for improving the protection and promotion of human rights in Austria. The Commissioner considers that following on from an open dialogue with the relevant authorities during his visit, this report should serve as a tool for progression, future co-operation and follow-up. He calls upon the authorities and institutions concerned to contribute their collective expertise for further strengthening of human rights protection in Austria. The Commissioner is of the firm opinion that continuous efforts are required in every member state to uphold human rights to a high standard. Such work can only be efficient and constructive when it is carried out through permanent dialogue with all stakeholders.

5. This report begins with a brief assessment of the national system for human rights protection in Austria and is followed by chapters dealing with specific human rights concerns the Commissioner wishes to highlight. The Commissioner is aware that due to the federal structure of Austria, competences in different policy areas are often shared

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<sup>1</sup> See the Commissioner's mandate – especially Article 3 (e), Resolution (99) 50 on the Council of Europe Commissioner for Human Rights.

<sup>2</sup> Full list of people, institutions and facilities visited can be found in the appendix to this report.

by the Federal Government, the governments of the nine federal provinces (*Länder*) and the local authorities. All levels of government bear a responsibility for upholding and promoting human rights within their area of competence.

6. This report is based on information acquired during the visit along with statements, reports and statistics provided for by authorities and civil society organisations in Austria. Naturally, relevant reports prepared by human rights monitoring mechanisms of the Council of Europe and other international organisations are also referred to. This first assessment report of the Commissioner in relation to Austria does not provide an exhaustive analysis of the human rights situation in Austria but rather reflects what the Commissioner considers to be the priorities for improving the protection of human rights in the country.

## **2. National system for protecting human rights**

### **2.1 Status of international human rights standards**

7. The European Convention on Human Rights (ECHR) was ratified by Austria in 1958 and it was conferred with a constitutional status in 1964. The Convention is directly enforceable by domestic courts, and so constitutes a national legal framework for the realisation of the rights and freedoms therein. The Commissioner considers that the constitutional status of the convention is of particular value to Austria in upholding and promoting human rights and sets an example to other countries as well.

8. Austria has ratified most of the Council of Europe and other international key human rights treaties. Recently, Austria was among the first countries to ratify the Council of Europe Convention on Action against Trafficking in Human Beings in 2006. However, the Commissioner notes that Austria has not yet ratified the Revised European Social Charter and its Additional Protocol Providing for a System of Collective Complaints. Protocol No. 12 on the general prohibition of discrimination to the ECHR likewise remains unratified. During his visit, the Austrian authorities informed the Commissioner that governmental consultations had already been initiated for the future ratification of the Revised Social Charter. The Commissioner welcomes this development while he also calls on Austria to ratify Protocol No. 12 to the ECHR as this would improve the enforcement of the right not to be discriminated against in Austria

9. Moreover, the Commissioner encourages Austria to ratify the Council of Europe Convention on the Prevention of Terrorism, the Convention on Cybercrime and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems. Among UN treaties, Austria has not yet ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT). The Austrian authorities have informed the Commissioner that preparations for the ratification of these conventions are already under way.

10. Austria has neither signed nor ratified the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level, the Convention on the Legal Status of Migrant Workers or the International Convention on the Protection of the Rights

of All Migrant Workers and Members of their Families. The Commissioner invites the Austrian authorities to consider adhering to these treaties as they would contribute to the protection of the rights of migrants and foreigners in Austria.

## **2.2 Constitutional reform and the codification of fundamental rights**

11. The Austrian Constitution is currently being reformed. Based on the previous work by the *Österreich Konvent* (the Austrian Constitutional Assembly) a Constitutional Reform Expert Group is in the process of preparing detailed proposals for the reform. The first set of proposals was published during the summer while another set will be published in the autumn after which the proposals will be debated in the two Chambers of the Parliament.

12. The current Austrian Constitution is an extensive collection of often scattered legal provisions which have attained constitutional status. It has been quite common that sections of ordinary acts have been conferred with constitutional status upon adoption by the Parliament to enhance their legal standing. The present core of the human rights provisions in the Constitution is the European Convention on Human Rights.

13. According to the Programme of the Austrian Government 2007-2010, the constitutional reform should bring about a new codification of fundamental rights with a particular emphasis on social rights and the rights of children, a restructured ombudsman institution and a two-tier administrative court system among other reforms. A proposal for the establishment of nine provincial administrative courts in addition to the present Administrative Court at the federal level was included in the first set of proposals for constitutional reform published over the summer. Most other human rights related proposals will be included in the second set of proposals.

14. The Commissioner discussed the reform process and the different options for its course with members of the Constitutional Reform Expert Group as well as other representatives of the authorities, judiciary and civil society. As regards social rights, there were plans to render them more enforceable by allowing individuals to request a review by the Constitutional Court to ascertain whether sufficient ordinary legislation had been passed to apply the constitutional provisions. In terms of national human rights institutions, the discussions in the past had centred around two major options: either to restructure the Ombudsman Board by merging the Human Rights Advisory Board with it or to set up a separate national human rights institution with a new complaints mechanism.

15. The Commissioner considers that the constitutional reform process constitutes a welcome opportunity to codify all fundamental rights in a coherent and clear manner. He encourages the Austrian authorities and parliamentarians to give due consideration to the proposals for strengthening the position of social rights and points out that the new codification could also include the rights of the child as a way of highlighting the obligations undertaken by Austria through its adherence to the UN Convention on the Rights of the Child. Furthermore, the Commissioner highlights the importance of retaining the constitutional status of the ECHR either by preserving its current status or

by formulating the corresponding fundamental rights of the codification with reference to the ECHR. The Commissioner will comment upon the situation regarding human rights institutions and the reform of the administrative court system in the following sections to this chapter.

## 2.3 Judiciary

16. There are two major branches in the Austrian judiciary: ordinary jurisdiction which deals with private and criminal law and administrative jurisdiction which reviews the actions of the administrative authorities. Depending on the nature of the case, the court of first instance in the ordinary jurisdiction is a District Court or a Regional Court while appeals can be lodged either with the Regional Court or the Provincial Court. The Supreme Court (*Oberster Gerichtshof*) is the highest court in civil and criminal cases. As regards complaints against the administrative authorities, the first instance is usually the Independent Administrative Tribunal (*Unabhängiger Verwaltungssenat – UVS*) in each province. The UVS is not strictly speaking a court of law although its proceedings are designed to fulfil the fair trial requirements of Article 6 of ECHR. The second instance in these cases is the Administrative Court (*Verwaltungsgerichtshof*) at the federal level. Moreover, the Independent Federal Asylum Review Board (*Unabhängiger Bundesasylsenat*) is a quasi-judicial authority for appeals regarding the authorities' decisions on applications for asylum.

17. The Constitutional Court of Austria (*Verfassungsgerichtshof*) is the ultimate court of appeal in the country for violations of personal rights guaranteed by the Constitution. It can also rule on the conformity of laws with the Constitution and adjudicate legal conflicts between the federation and the federal provinces. As the European Convention on Human Rights has constitutional status, its interpretation by the Constitutional Court provides pre-eminent guidance for the judiciary in Austria along with the jurisprudence of the European Court of Human Rights. The Commissioner was pleased to learn that the Austrian Human Rights Institute in Salzburg regularly publishes major judgments and decisions of the European Court of Human Rights in the German language. This is an important service for lawyers in the country.

18. Most cases in the European Court of Human Rights from Austria have been related to excessive length of civil, administrative and criminal proceedings (violations of Article 6 of the Convention). The Commissioner is aware that reforms of the relevant civil, administrative and criminal laws have already taken place or are under way to remedy the situation. The reform of administrative law mainly aims at modernising administration with the help of better use of information technology. Although the Administrative Court in 2004 once again managed to reduce the number of cases pending for more than three years, average time for reaching a decision remains around 20 months (in 2003 and 2004 about 22 months and in 2005 about 21 months).<sup>3</sup> The Commissioner considers that the proposed creation of fully independent first-level administrative courts as part of the constitutional reform provides a timely opportunity to review the procedures and organisational effectiveness of the administrative jurisdiction in view of reducing the number of pending cases.

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<sup>3</sup> Activity Report 2005 of the Administrative Court issued in June 2006.

19. During the Commissioner's visit, civil society representatives pointed out that judges were not always sufficiently trained to deal with vulnerable client groups such as children, women victims of violence and migrants. The Commissioner discussed these issues with judges during the Austrian Judges' Week in Bad St. Leonhard and supported the efforts being made to provide continuous training for judges to enable them to face such challenges in their work (see also section 2.6 – Human rights education). The Committee of Ministers of the Council of Europe has issued recommendations on the protection of women against violence which are also relevant to court proceedings.<sup>4</sup> The UN Convention on the Rights of the Child asks for separate, child-friendly, procedures for juveniles who are brought to court. The Commissioner is aware of the plans for the re-establishment of a juvenile court in Austria and he strongly encourages their realisation. The Commissioner also underlines that the effective access to courts by people who do not know enough German requires the availability of interpretation and translation services.

## **2.4 Complaints bodies and human rights structures**

20. The Austrian Ombudsman Board, which reports to the Parliament, is an independent institution with constitutional status. It is competent to examine malpractice of public authorities either based on individual complaints or on its own authority. The Ombudsman Board can mediate between individuals and public authorities and issue recommendations to the latter. It may also refer laws and ordinances to the Constitutional Court for a review. Public authorities are obliged by law to provide the Ombudsman Board with the information it requests. In seven of the nine federal provinces, the Ombudsman Board has direct competence with respect to provincial and local authorities while two provinces have set up their separate regional ombudsperson institutions. The Austrian Parliament elects the three members of the Ombudsman Board. Although each of the three largest political parties in the Parliament are entitled to nominate one candidate to the Board, the members of the Ombudsman Board are expected to act independently upon election according to the Constitution.

21. The Human Rights Advisory Board (HRAB) was set up in 1999, as a response to repeated recommendations by the CPT<sup>5</sup>, to visit places of detention under police authority and to monitor the administrative and coercive power exercised by the security authorities with reference to human rights. Although the HRAB is administratively attached to the Federal Ministry of the Interior and issues recommendations to the Minister of the Interior, its operational independence is guaranteed by a constitutional provision in the Security Police Act (Article 15a).

22. HRAB activities include visits to places of detention on a regular basis, observation of police action during major demonstrations and drafting of reports and recommendations on its concerns. The Board has eleven members who are appointed by the Federal Minister of the Interior for a period of three years. The chairperson and deputy chairperson are nominated by the President of the Constitutional Court, five members are nominated by NGOs, three members are nominated by the Federal

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<sup>4</sup> Recommendation Rec (2002)5 of the Committee of Ministers to member States on the protection of women against violence adopted on 30 April 2002.

<sup>5</sup> European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

Ministry of the Interior while one member each is nominated by the Federal Chancellor and the Federal Minister of Justice. All members are expected to act independently while they exercise their functions on a pro bono basis. Direct monitoring functions are delegated to six regional commissions with seven members each.

23. At the federal level, Austria has several specialised ombudsperson institutions concerning non-discrimination<sup>6</sup>, people with disabilities (see below the Chapter on the prevention of discrimination), data protection (Data Protection Commission) and the rights of patients. Moreover, many federal provinces and municipalities have established similar structures for questions related to non-discrimination, people with disabilities and the rights of children. In the academic field, there are several institutes attached to the Universities in Vienna, Graz and Salzburg which perform certain functions, notably human rights research and training, normally associated with the work of national human rights institutions.

24. The Commissioner met with members of most human rights structures at the federal level and was impressed by their dedicated work for the protection of human rights. He underlines that institutions which deal with complaints about public authorities or which monitor their activities from a human rights perspective should be as independent as possible in order to be effective and to gain the trust of the public. Clear information on the mandates and procedures of such institutions should be made readily available to the public in an easily understandable format.

25. The Commissioner is also aware of the discussions regarding future changes to the Austrian human rights structures in the context of the current constitutional reform and the ratification of the Optional Protocol to CAT. The Commissioner considers that the independence and effectiveness of such structures should be the guiding principles of the debate. While the Commissioner highly appreciates the current work of the Human Rights Advisory Board, he deems that its independence could be enhanced. It is also important that the members of the Ombudsman Board act in a clearly independent manner after their election to the board and refrain from manifesting their previous party-political affiliation.

26. In the Commissioner's opinion, the independence of the HRAB from governmental authorities could be further guaranteed by placing it, as a distinct body, under a shared institutional framework with the parliamentary Ombudsman Board. A totally separate human rights institution with a clearly defined monitoring and complaints mechanism following the Paris Principles of 1991 would also be an option if its independence were clearly guaranteed by the Constitution. Such an institution should also build on some of the functions, e.g. research and training, currently carried out by academic human rights institutes in Austria. However, a closer relationship between the Ombudsman Board and the HRAB within a shared institutional framework would probably create more possibilities for synergies and optimise the efficiency of both institutions. Any changes to the status of the HRAB should also aim at preserving its pragmatic working methods in the field and the broadly representative nature of its composition. Moreover, the Commissioner considers that the mandate of the HRAB, when it would no longer be administratively attached to the Ministry of the Interior, could be extended to cover the

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<sup>6</sup> The following grounds of discrimination are covered: sex, ethnic origin, religion and belief, age and sexual orientation.

requirements for a visiting mechanism under the Optional Protocol to CAT. Such an extension of tasks would naturally have to be matched with corresponding additional resources so that the effectiveness of the institution is preserved.

## **2.5 Civil society**

27. The Commissioner was encouraged to see a highly active civil society sector within Austria. He met with representatives of numerous NGOs working in the human rights field and benefited from their informed insights and observations regarding the human rights situation in Austria. The Commissioner also held discussions with the directors of the Ludwig Boltzmann Institute of Human Rights (Vienna), the Austrian Human Rights Institute (Salzburg) and the European Training and Research Centre for Human Rights and Democracy (ETC, Graz). He delivered public lectures in Graz, organised by the ECT, and in Vienna, organised by the Boltzmann Institute.

28. The Austrian authorities assured the Commissioner that they endeavoured to consult civil society representatives prior to the adoption of new laws and during the preparation for major international human rights meetings and events. In the development of policy instruments civil society organisations are usually invited to participate in working groups and task forces. Furthermore, in preparation of the Austrian constitutional reform the Commissioner was pleased to be informed that representatives from all strata of society, including NGOs, had participated in the initial working groups. He also notes with satisfaction that 5 out of the 11 members of the Human Rights Advisory Board are nominated by civil society organisations. The Commissioner encourages the Austrian authorities to continue to facilitate this kind of interaction at all levels of governance to ensure that the experience and expertise of civil society representatives is channelled into policy formulation.

## **2.6 Human rights education**

29. Human rights education is a central part of national human rights policy as regards both education in schools and the training of professionals. Human rights related information should also be available to the public at large. In Austria, human rights or citizenship education, as a distinct subject, is not part of the curriculum for compulsory education for pupils from 6 to 15 years' old. However, the compulsory school curricula refer to awareness and understanding of human rights as a general educational goal and it is required that "human rights and the challenges relating to their effective protection" are discussed during compulsory classes in history and social sciences. Some aspects of human rights are included among "cross-cutting educational principles" which should be mainstreamed in all school subjects. The practical implementation of these principles, which may cover issues related to citizenship, cultural pluralism, gender, environment and health for example, is usually left at the discretion of each teacher and has not yet been evaluated.

30. In upper secondary schools, the curriculum for citizenship education (*Politische Bildung*) includes human rights education but there again considerable freedom has been given to each teacher for determining the exact contents of the course. At the secondary school visited by the Commissioner in Graz (*Oeverseegymnasium*) a

voluntary course in citizenship education was offered every week for two hours during a school year. The Federal Ministry of Education has supported the availability of teaching materials in human rights education and intends to distribute to secondary schools a new edition of the manual for human rights education in 2007-2008. The Boltzmann Institute of Human Rights in Vienna has been designated by the Ministry as the resource centre for political education in Austria.

31. In the initial training of teachers, either at teacher training colleges or at universities, there is no compulsory course on human rights. Optional courses on related topics are usually available and the ETC in Graz gives a lecture series on human rights education at the University of Graz which is open to students from all faculties. In-service training of teachers is carried out by teacher training colleges in each province. Academic human rights institutes and NGOs offer a wide range of seminars and workshops on human rights education for the purposes of such in-service training.

32. In 2003-2006, a working group set up by the Human Rights Advisory Board and the Federal Ministry of the Interior reviewed the available human rights education for the police. Currently, the police aim at using human rights training as a tool for realising the role of the police as a protector of human rights. Human rights training is now a compulsory part (a 56-hour training module) of the initial training (21 months) of police officers. For in-service training, the Ministry of the Interior has contracted the Anti-Defamation League to offer a 3-day anti-bias workshop to all law enforcement professionals. By the end of 2006, 3800 law enforcement officials had participated in such training. The Ministry of the Interior has also sponsored the participation of police officers in a one-year training programme on policing in a multicultural society organised by the International Centre for Cultures and Languages.

33. Training on human rights, non-discrimination legislation and special skills for treating members of vulnerable groups is available to members of the judiciary. The training, which is jointly organised by the appellate courts, the Federal Ministry of Justice and judicial training academies, is compulsory to candidate judges while it is voluntary for the judges in office. A new curriculum for human and fundamental rights for candidate judges is about to be adopted so that training can start in 2008. ETC in Graz, the Boltzmann Institute in Vienna and the Austrian Human Rights Institute in Salzburg have been active in the development and provision of human rights training for the law professionals. At universities, human rights are usually taught as part of curricula in international law.

34. It is evident to the Commissioner that there is a wide range of on-going initiatives in the field of human rights education in Austria. The academic human rights institutes appear to be particularly active in this area and offer a rich variety of professional resources. However, a further effort in coordinating the different activities could yield more coherent results. Human rights education in schools, in particular, would require further attention to ensure that human rights education is systematically integrated in compulsory education. It should also be kept in mind that ordinary school activities which foster democracy, multicultural understanding and non-violence contribute to the aims of human rights education. Moreover, the needs for human rights education of social and health professionals should be assessed and addressed.

35. The Commissioner encourages the Austrian authorities to take up the recommendations of the UN Decade for Human Rights Education and its follow-up programme in preparing a national action plan for human rights education. A coordination body, comprising a broad coalition of governmental and non-governmental partners, could be set up to take stock of the current situation as well as to prepare and ensure the implementation of such a plan through periodic assessments. The Austrian authorities have informed the Commissioner that a national action plan on human rights education is currently under preparation.

## **2.7 National coordination of human rights issues**

36. Both federal ministries and provincial governments in Austria have human rights coordinators who function as the authorities' network and resource persons in this field. This network is used, for example, when submissions to international human rights monitoring mechanisms are prepared. At the provincial level, human rights coordinators may also maintain contacts with the different specialised ombudsperson structures at the regional level. In the Austrian Parliament (*Nationalrat*) there is a Human Rights Committee which deals with human rights questions related to both international and national affairs. Furthermore, during his visit to Graz the Commissioner learned of a new initiative by the City of Graz to establish a human rights council at the local level. The Commissioner welcomes this initiative since local authorities have an important role in implementing human rights standards.

37. While the Commissioner acknowledges that the human rights coordinators provide a forum for cooperation and coordination he notes that at present there is no national human rights action plan in Austria. The purpose of such an action plan should be to improve the protection and promotion of human rights through a comprehensive and coherent approach to human rights policy and planning. The United Nations has provided guidance for the preparation of human rights action plans which should include a baseline study to analyse the current human rights situation and the structural framework for human rights protection.<sup>7</sup> A national action plan on human rights education and other human rights related action plans can be integrated with the general action plan.

38. The Commissioner underlines that the process of drawing up a national action plan for human rights should include meaningful consultations with all stakeholders concerned, including civil society representatives. The involvement of all the partners would also help clarify the respective responsibilities of different authorities and institutions at federal, provincial and local levels as well as identify appropriate coordination mechanisms for the implementation of the plan. Rather than viewing an action plan as a reporting tool, its preparation, implementation and evaluation should be understood as a coordinated and inclusive process for the continuous improvement of human rights protection in Austria.

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<sup>7</sup> UN Handbook on National Human Rights Plans of Action (2002).

### 3. Freedom of expression

39. In recent years, the European Court of Human Rights (ECtHR) has several times found Austria in violation of Article 10 – freedom of expression – of the ECHR. Since 1998, there have been about 20 such cases.<sup>8</sup> In most cases, the applicants had been fined for certain publications in their media while the ECtHR finally ruled that their convictions had been disproportionate and unnecessary in a democratic society. It would appear from these cases that when striking a balance between the protection of the individual and the freedom of the press, Austrian courts have taken a more restrictive approach towards the press than the European Court. The ECtHR normally lets the interest of the individual prevail only when no public information value can be discerned.<sup>9</sup>

40. Defamation is both a civil and a criminal offence in Austria. In the Penal Code (*Strafgesetzbuch*), provisions for defamation can be found in Article 111 which allows for a maximum penalty of up to one year's prison sentence. According to civil society representatives, both the media and NGOs have been subjected to defamation suits in recent years, often brought up through private prosecution on the initiative of politicians.

41. The Commissioner discussed the Austrian jurisprudence on freedom of expression with judges during the Austrian Judges' Week in Bad St. Leonhard as well as with the Federal Minister of Justice. The apparent discrepancy regarding the past interpretation of Article 10 of the ECHR was widely acknowledged while the judges also underlined the inherent complexity of balancing the interest of the individual and freedom of expression. However, it seems that Austrian case law is gradually changing as most recent case-law often demonstrates an approach which is in favour of freedom of expression. The Ministry of Justice has been active in organising seminars on the subject for judges and prosecutors and will continue to do so in the future. The Commissioner recommended to the judges that they should engage in an active dialogue with the ECtHR on the topic by inviting representatives of the European Court to participate in their seminars.

42. The Commissioner is concerned that the severe application of defamation provisions on the media and other representatives of civil society may serve to stifle political debate and willingness to speak-out. Although freedom of expression is by no means absolute in the ECHR, its importance for a democratic system of governance is paramount. This is why the European Court of Human Rights puts a particularly high threshold for allowing for exceptions to freedom of expression in cases involving public figures and political debate in particular. However, the Commissioner points out that more generally hate speech and incitement to violence would not normally fall under the protection of Article 10 of the ECHR.

43. The Commissioner applauds efforts made by the Federal Ministry of Justice to raise awareness among members of the judiciary and prosecutors on the relevant jurisprudence of the European Court of Human Rights. This is a sensible approach which respects the independence of the judiciary. Furthermore, the Commissioner

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<sup>8</sup> For example, Cases of *Wirtschafts-Trend no. 1 – 3* and *Scharsach and News Verlagsgesellschaft GmbH*. It should be noted that the cases brought before the ECtHR normally refer to facts which already took place several years before and therefore do not necessarily reflect the current situation in Austria.

<sup>9</sup> See the case of *Caroline von Hannover v. Germany*.

invites the Austrian authorities to review the current penal provisions on defamation to determine whether they should be repealed to ensure that they are not used to mete out disproportionate punishments in the interest of protecting the reputation of individuals. While the Commissioner acknowledges that protection against defamation between private individuals in particular requires a legal framework with appropriate and proportionate sanctions, he questions the appropriateness of penal provisions as a means to sanction defamation. In his opinion, provisions in civil law are the preferred option for such cases. As regards the media, the Commissioner recommends the re-establishment of self-regulatory frameworks in Austria which would act as watchdogs for codes of ethics in the media field.

#### **4. Measures against racism and xenophobia**

44. ECRI has identified black Africans, Muslims and Roma as the most vulnerable population groups to racism and racist discrimination in Austria while acknowledging that anti-Semitism also remains a problem. In addition, ECRI has pointed out that asylum-seekers, refugees and non-EU migrants have been targets of racist and xenophobic political discourse and media reporting.<sup>10</sup> Data collection on manifestations of racism, however, is uneven and scattered. The Office for the Protection of the Constitution and Counter-terrorism, which reports to the Ministry of the Interior, collects and publishes data on right-wing extremist, xenophobic and anti-Semitic incidents. In 2005, the total number of these incidents amounted to 209 while 406 complaints related to these incidents were reported to the police. In 2004, there had been 229 corresponding incidents with 322 complaints reported to the police. Yet, crime statistics do not currently provide specific data on racially motivated offences apart from hate speech, although the Penal Code (Section 33.5) has established racist and xenophobic motivation as an aggravating circumstance for all crimes. Several NGOs provide data reported by victims and witnesses of racist acts. The Vienna-based ZARA (Zivilcourage und Anti-Rassismus-Arbeit) publishes an annual report on Racism recording racist incidents which have been brought to its attention by its clients.<sup>11</sup>

45. In 2006, ZARA recorded 1504 racist incidents. 76 per cent of them had taken place in the public space (793 of these had been racist graffiti), 5 per cent at work, 5 per cent was related to the police, 4 per cent to other authorities, 4 per cent to housing and 6 per cent were reactions against anti-racist work carried out by ZARA. Of racist and xenophobic graffiti, 70 per cent was classified as anti-African, 19 per cent as racist, 9 per cent as swastikas and anti-Semitic, 1 per cent as anti-Turkish and 1 per cent as anti-Muslim. In 2005, the total number of reported incidents had been 1105.

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<sup>10</sup> European Commission against Racism and Intolerance (ECRI), Third report on Austria, adopted on 25 June 2004. CRI (2005)1.

<sup>11</sup> Rassismus Report 2006 – Einzelfall-Bericht über rassistische Übergriffe und Strukturen in Österreich. ZARA. Other NGOs providing information in this field include Helping Hands Graz and Stopline. The Boltzmann Institute of Human Rights is the Austrian RAXEN Focal Point for the European Fundamental Rights Agency (FRA) for collecting data on racism and xenophobia. The Commissioner thanks the FRA for the provision of RAXEN information on Austria some of which can also be found in the FRA annual compilation, Report on Racism and Xenophobia in the Member States of the EU, FRA 2007. See also, National Analytical Study on Racist Violence and Crime; Raxen Focal Point for Austria, April 2005.

46. In the public media, racism can be manifested through ethnically biased reporting on crime when the ethnicity or nationality of a suspect is revealed even though it has no particular relevance to the case. In the political debate migrants, asylum-seekers and refugees have often been portrayed through negative stereotypes while their presumed inability to integrate in Austria has been denigrated. Such political discourse has attempted to deny Austria being a country of immigration.<sup>12</sup> The Commissioner discussed the presence of racism and xenophobia in the Austrian political discourse with several politicians and civil society representatives who confirmed that it continued to pose a problem especially during campaigning for national and local elections. He calls upon all decision-makers and politicians in Austria to adopt a measured political discourse on migration and asylum which avoids stereotypical stigmatisation of migrant and refugee communities. The Austrian authorities have informed the Commissioner that the Government has recently intensified its long-standing efforts to promote dialogue between cultures and religions through the organisation of conferences and the establishment of an integration platform drawing on representatives from different religions and ethnic communities.

47. Due to the limitations in data collection on the manifestations of racism and xenophobia, it is difficult for the Commissioner to assess the real extent of the problem in Austria. The information obtained from the victims of racism and xenophobia and the prevalence of related graffiti in public spaces would nevertheless lead to the conclusion that the problem is not simply limited to fringe or extremist groups. Xenophobic discourse on migration, for example, appears to be fairly spread in society. Accordingly, the monitoring and investigations presently carried out by the Office for the Protection of the Constitution and Counter-terrorism against extremists and criminals will not be sufficient to stem racism and xenophobia. Policy measures with a broad outreach which address all parts of society should also be applied.

48. The authorities informed the Commissioner that they had already initiated preparations for drawing up a national action plan against racism and xenophobia as part of the follow-up process to the Durban Declaration and Programme of Action. The Commissioner strongly encourages the authorities to draw up and implement the action plan. As priority, it should address gaps in data collection and awareness raising. Human rights and democracy education in schools and adult education as well as in vocational training for civil servants, the police, social workers and health care professionals is an important tool for promoting tolerance and respect for a pluralistic society. Special attention should also be given to grass roots initiatives which identify and respond to racist and anti-democratic tendencies in local communities. The Commissioner regards NGOs as essential partners in carrying out such initiatives and developing targeted responses in local communities. Furthermore, the authorities should provide adequate resources for services supporting and counselling the victims of racism and xenophobia. Victims should be empowered to stand against prejudice and to seek effective remedies for the harm suffered. The recent transposition by Austria of the EU Racial Equality Directive, which will be referred to in the next chapter, has also brought about new avenues of redress against racial discrimination. The Commissioner furthermore

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<sup>12</sup> For a comparative perspective, see *Political Platforms which promote or incite racial discrimination*, updated study by the UN Special Rapporteur on Contemporary forms of racism, racial discrimination, xenophobia and related intolerance Doudou Diène. A/HRC/5/10 25 May 2007.

encourages the Austrian authorities to recruit more members of ethnic and minority groups into the public administration and welcomes the training seminars for civil servants on diversity management organised by the federal public service.

## 5. Prevention of discrimination

### 5.1 Legal Protection Framework

49. Austria has taken significant steps toward the harmonisation of non-discrimination laws with European standards in recent years. The Federation and all federal provinces have transposed both of the EU Anti-Discrimination directives from 2000.<sup>13</sup> The new legislation included the Equal Treatment Act 2004 (*Gleichbehandlungsgesetz*), Federal Equal Treatment Act 2004 (*Bundes-Gleichbehandlungsgesetz*), Act on the Equal Treatment Commission and the Specialised Equality Body 2004 (*Bundesgesetz über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft*) and the Equal Treatment for Persons with Disabilities Act 2006 (*Behindertengleichstellungsgesetz*).

50. However, non-discrimination legislation remains scattered as there are altogether about 30 different acts which deal with discrimination in working life and concerning access to goods and services at federal and provincial levels. The complexity of the legal framework is also matched by the different procedures and institutions associated with each of the discrimination related acts. Moreover, there are significant differences between the federal provinces as regards the extent of protection against discrimination in access to goods and services. In some provinces the protection is limited to the ground of ethnic origin alone while other provinces also offer protection on several other grounds as well albeit in a non-uniform manner.

51. The new equal treatment bodies have been set up by extending the composition and competences of existing institutions. The Equal Treatment Commission (ETC) consists of three Senates each of which can decide on individual cases or general questions regarding discrimination.<sup>14</sup> On individual cases, the Senates can only pronounce whether discrimination has taken place: they cannot decide on sanctions. Members of the Commission work on a pro bono basis. There are also three corresponding Ombudspersons for Equal Treatment who constitute the Specialised Equality Body. They offer independent information and legal assistance to plaintiffs and issue reports and recommendations on discrimination. While the Ombudsperson for the equal treatment of women and men also has regional representatives the two other Ombudspersons have not been provided with regional staff. Both the Equal Treatment Commission and the Specialised Equality Body are administratively attached to the Ministry for Women, Media and Civil Service. There is a constitutional provision

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<sup>13</sup> EU Council Directives on racial equality (2000/43/EC) and on employment equality (2000/78/EC).

<sup>14</sup> Senate I covers equal treatment of women and men; Senate II equal treatment irrespective of ethnic belonging, religion, belief, age and sexual orientation in employment; and Senate III equal treatment irrespective of ethnic belonging in other areas.

protecting the independence of the Chairperson of the ETC.<sup>15</sup> Individual complaints regarding alleged discrimination in employment relationships within the federal public service are examined by the Federal Equal Treatment Commission with reference to the Federal Equal Treatment Act.

52. By August 2007, Senate II of ETC had published nine decisions while Senate III had published eight decisions and one general opinion on the discrimination of Roma. By May 2006, the provincial equality bodies had reported about 550 contacts about one quarter of which had been related to the grounds of ethnic origin or religion. Most of the cases related to employment issues and had been resolved through mediation. Two cases have so far been judged by courts under the new legislation. In the first case, an appeal court awarded immaterial damages totaling EUR 800 to a woman plaintiff of Arab origin wearing a headscarf who had been thrown out of a clothes shop by a shop assistant shouting: 'we don't sell to foreigners'.<sup>16</sup>

53. The Commissioner acknowledges that the new non-discrimination legislation provides improved means of redress against discrimination including discrimination on the ground of ethnicity. However, due to the complexity of the legal framework and the complaints mechanisms associated with it, it may be difficult for the public or even those with legal training to access the procedures. The equal treatment bodies also appear to lack in resources, formal independence and ability to apply sanctions in order to be effective. Moreover, it is doubtful whether the courts can mete out sanctions with a truly dissuasive effect since rather low maximum limits have been set for penalties in certain cases.

54. The Commissioner is aware of the intention of the Austrian Government to review the effectiveness of the current non-discrimination legislation. The Commissioner urges the authorities to ensure the independence and effectiveness of the Specialised Equality Body by guaranteeing its independence through a constitutional provision and by improving its material and human resources especially at the provincial level. It is particularly important that the Equal Treatment Ombudspersons are able to carry out effective awareness raising work so that the public becomes aware of their rights under non-discrimination legislation. In terms of the legal framework, the Commissioner recommends its simplification and the provision of sanctions which are effective, proportionate and dissuasive in accordance with the EU Directives. It is also important that both federal and provincial authorities review the compliance of other laws, regulations and administrative provisions with the non-discrimination standards and abolish or amend those provisions which are contrary to the principle of equal treatment.

55. The Commissioner reiterates his recommendation for the ratification by Austria of Protocol No. 12 to the ECHR and the Revised European Social Charter as both instruments contain important provisions against discrimination. The particular advantage of Protocol No. 12 is that it protects against discrimination on any ground as regards the enjoyment of all rights set forth by law as well as the treatment by any public authority.

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<sup>15</sup> Article 10(1)(a) of the Federal Act establishing the Equal Treatment Commission and the Specialised Equal Treatment Body.

<sup>16</sup> Report on Racism and Xenophobia in the Member States of the EU, FRA 2007, pp. 28-29.

## 5.2 Gender discrimination and violence against women

56. In terms of employment it is clear that a gap continues to exist between the incomes of women and men. According to the Austrian Statistics Office, the difference in average gross income per year for full-time employees was 26.1 per cent between men and women in 2005. The corresponding difference in average gross income per work hour was 18 per cent as reported by the European Statistics Office (Eurostat). Women are also more likely than men to work in part-time jobs and lower-paid employment sectors and are under greater risk of poverty. The representation of women in positions of authority has not yet reached parity either. For example, in the Lower Chamber of the Parliament (*Nationalrat*), out of 183 members there are 53 women. Among the 20-member Federal Government there are 8 women. The Commissioner urges the authorities to address this persistent inequality through both structural and targeted policy measures. The Commissioner is in favour of positive measures for improving gender equality as long as they serve a legitimate objective. He also recalls the recent recommendation made to the Austrian Government by the UN Committee on the Elimination of Discrimination against Women to develop a national action plan on gender equality.<sup>17</sup>

57. Civil society representatives informed the Commissioner that transgender persons faced particular difficulties in Austria on the ground of their gender identity or sex after the statute which regulated the conditions of legal gender reassignment was repealed by the Constitutional Court in 2006. In the absence of statutory provisions, authorities have required genital surgery as the only option for legally changing one's gender. The Commissioner recommends that the authorities issue guidelines in this field which take due account of the ruling of the Constitutional Court, the relevant jurisprudence of the European Court of Human Rights (e.g. the case of *Christine Goodwin v United Kingdom*) and current scientific knowledge on gender reassignment.

58. Violence against women can be viewed as an extreme manifestation of discrimination which reflects unbalanced power structures and results in the suppression and humiliation of women by men in particular. Through its Protection against Violence Act 1997, Austria took a pioneering role in coordinated protection activities against violence affecting women. The Act brought about the possibility to issue eviction and restraining orders to perpetrators of violence to bar them from entering their homes and the establishment of intervention centres for providing assistance to victims of violence and coordinating the responses of the police, judicial, social and health authorities to acts of domestic violence. Austria also has a well-developed network of women's shelters and a national helpline for women victims of violence. Most recently, the Austrian authorities have increased the funding of the intervention centres by 60 per cent in 2007 while substantially improving the psycho-social and legal support for victims during criminal proceedings.

59. The Commissioner visited a women's shelter in Graz and discussed current challenges regarding work against violence affecting women with the authorities and civil society representatives. Although the authorities already provide substantial support for these activities, women's shelters continued to face restrictions both in terms of

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<sup>17</sup> Concluding comments of the Committee on the Elimination of Discrimination against Women: Austria, 2 February 2007, CEDAW/C/AUT/CO/6.

resources and administrative regulations. In some federal provinces there were strict limits for the allowed maximum stay in women's shelters while victims from other provinces were not always authorised to use a shelter in another province even if this would have been important on security grounds. Furthermore, possibilities for providing care for children who had witnessed domestic violence were quite limited. Finally, civil society representatives underlined that migrant women faced particular obstacles in seeking assistance and remedies to domestic violence as they were not always aware of the available services or because of the lack of training of authorities to provide an adequate service to them.

60. The Commissioner was impressed by the Austrian long-term efforts to stem violence against women. Both civil society and authorities have been actively involved in building the current protective framework. The Commissioner encourages further efforts to improve victim support services and the training of authorities so that all victims of violence, including migrant women, women and girls with disabilities and children who have witnessed violence in their homes, can receive the attention they deserve.

### **5.3 Inclusion of people with disabilities**

61. People with disabilities have a separate legal framework for protecting them against discrimination. The Equal Treatment Commission and the Specialised Equality Body do not cover discrimination related to disability. People with disabilities who are victims of discrimination have to first seek an out-of-court settlement before the Federal Social Services after which they can turn to a civil or labour court if necessary. There is also a specialised Ombudsman for people with disabilities who has a general advocacy role. At the level of federal provinces, there are differences concerning protection against discrimination in access to goods and services afforded on the ground of disability. As a recent positive development, the Commissioner welcomes the signing by Austria, on 30 March 2007, of the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol.

62. The physical accessibility of the built environment is one of the challenges faced by people with disabilities in Austria. The Commissioner visited Oeversee gymnasium in Graz, a school which had clearly placed significant emphasis on the integration of diversity, yet it had not been able to welcome pupils with disabilities as the school buildings had not yet been made accessible. The federal authorities informed the Commissioner that the state was providing support for making public buildings accessible within a ten-year period.<sup>18</sup> While welcoming this policy, the Commissioner encourages the Austrian authorities to offer schools further possibilities to increase access for individual pupils by making certain reasonable adjustments in-house immediately. This would also help the Government to meet its obligation to promote mainstreaming of pupils with disabilities into regular schools as far as possible.

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<sup>18</sup> The Federal Act for Equal Treatment of Persons with Disabilities stipulates that all public buildings, including public schools, shall be accessible to persons with disabilities and foresees the development and putting into practise of federal implementation strategies by 31 December 2015.

63. Persons with disabilities also face obstacles to integration in the Austrian labour market. Such obstacles include the lack of reasonable accommodation in work places, limited access to specialised professional qualifications and negative attitudes among employers for employing qualified people with disabilities. During his visit to a Lebenshilfe sheltered workshop in Vienna, the Commissioner was also informed by people with disabilities that older persons with disabilities encountered increasing difficulties in maintaining their jobs partly due to age limits in pensions and benefits regulations. According to the Ombudsman for people with disabilities current shortcomings in the assessment of mental impairments, and consequently working aptitudes, could also hinder the labour inclusion of people with mental disabilities. The Commissioner underlines that the labour integration of people with disabilities should, in the first place, be based on their ability to carry out work in a given context and qualifications rather than their impairments or activity limitations. The authorities should take up positive measures in promoting reasonable accommodation in work places to eliminate barriers to the labour integration of persons with disabilities.

## **6. Treatment of asylum seekers and migrants**

### **6.1 Recognition of refugees**

64. Austria has a long history of welcoming refugees. UNHCR estimates that, since 1945, more than two million refugees have come to Austria and that almost 700,000 of them have remained in the country. As the population of Austria currently stands at 8.3 million, the number of recognised refugees represents a significant part of the resident population. In recent years, however, the number of asylum applications has diminished considerably. From the recent peak of 39,354 in 2002, the number of asylum claims stood at 13,349 in 2006.<sup>19</sup>

65. The current Asylum Act of Austria dates from 2005 and it came into force on 1 January 2006. Asylum law in Austria has been subjected to several changes recently. The Asylum Act 1997 was substantially amended in 2003. However, since the Constitutional Court ruled some of these amendments unconstitutional the Act was further modified in 2004 before the adoption of the current Act in 2005. The Geneva Convention of 1951 is directly referred to in the Act as grounds for determining asylum status. In combination with the Aliens Police Act 2005, the Asylum Act 2005 also transposes the EU Qualification and Asylum Procedures Directives.<sup>20</sup>

66. In recent years, the number of recognised refugees in Austria has been high in comparison with the number of applications. In 2006, Austria recognised 4063 refugees.<sup>21</sup> The recognition rate was particularly high among refugees originating from the Russian Federation (especially the Chechen Republic), Afghanistan and Iraq. The increased number of recognised refugees has been a challenge to the services and NGOs working for the integration of refugees.

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<sup>19</sup> The number of asylum applications was 18,284 in 2000, 30,127 in 2001, 39,354 in 2002, 32,359 in 2003, 24,676 in 2004, 22,461 in 2005 and 13,349 in 2006.

<sup>20</sup> Council Directives 2004/83/EC of 29 April 2004 and 2005/85/EC of 1 December 2005.

<sup>21</sup> The corresponding number was 4650 in 2005, 5208 in 2004, 2084 in 2003, 1073 in 2002, 1152 in 2001 and 1002 in 2000.

67. There is a considerable backlog in the processing of asylum applications, although the situation has begun to improve. The number of pending applications in the Federal Asylum Office decreased from 13,467 in January 2006 to 7074 in May 2007. However, during the time of the Commissioner's visit, there were around 27,000 appeal cases pending before the Independent Federal Asylum Review Board (IFARB). This is partly due to the fact that most asylum seekers whose application has been turned down by the Federal Asylum Office appeal to the Review Board. In 2006, this happened in about 80 per cent of the cases. First-level decisions were overturned in around 30 per cent of the cases on appeal. Further appeals are also possible to the Federal Administrative Court or the Federal Constitutional Court. The authorities have informed the Commissioner that in August 2007, there were 11,888 asylum seekers who had been waiting for longer than three years for a final decision while 86 asylum seekers had waited for a final decision for longer than ten years.

68. Both the Federal Asylum Office and the Review Board have taken measures to speed up the procedures. The Asylum Act 2005 aims to accelerate asylum procedures by reduced time limits for decisions and by new limits to the suspensive effect of appeals. The Federal Asylum Office is in the process of carrying out a programme to improve the quality of its procedures while the human resources of the Review Board have been doubled. During the first four months of 2007, the Review Board was able to cut down the backlog by 900 cases.

69. During his visit, the Commissioner met several asylum seekers who had waited for a final decision on their applications for several years. Their frustration at the slowness of the procedures was obvious as it kept their lives at a continuous suspense. The Commissioner was also informed of cases involving families applying for asylum who had already stayed in Austria for about a decade and had been well-integrated in the local communities. When some of these families had finally received negative decisions on appeal, the local communities where they lived had stood up to oppose efforts to deport them from Austria. Several *Länder* parliaments had also adopted resolutions which called for the granting of the right of stay for them. The authorities had occasionally granted residence permits on humanitarian grounds in such cases.

70. The Commissioner is concerned about the effects of delayed procedures on asylum-seekers in Austria. When families with children have been well-integrated in their local communities over the years, their deportation after a final negative decision would appear particularly hard and could potentially breach Article 8 (right to respect for privacy and family life) of the European Convention on Human Rights. The important principle of the best interests of children should also be considered in this context. The Commissioner recommends that the granting of residence permits on humanitarian grounds would be seriously considered by the authorities in such cases. However, due to the high number of the backlog of final asylum decisions further measures should also be contemplated. The Commissioner invites the authorities to consider granting a general right of stay, based on clearly defined criteria which avoid unnecessary discrimination, for those asylum seekers who have had to wait for the final decision over several years. He also commends and encourages the efforts made by the Federal Asylum Office and the Asylum Review Board to speed up the procedures so that decisions on new asylum applications would not normally be subjected to long delays.

## 6.2 Detention of asylum-seekers

71. The implementation of the Aliens Police Act 2005 has resulted in greatly increased practice of detaining asylum seekers. While in 2005, under the previous law, 662 asylum seekers were subjected to pre-deportation detention (*Schubhaft*), this number rose to 2700 in 2006, even though the number of asylum applications in fact declined during that year.<sup>22</sup> According to the Aliens Police Act, asylum-seekers may be held in pre-deportation detention on the decision of the police authorities 1) if an enforceable expulsion order has been issued, 2) an expulsion procedure has been initiated, 3) an enforceable expulsion order or an enforceable residence ban has been imposed prior to filing an application for international protection, or 4) it may be assumed, on the basis of the outcome of the interrogation, search and photographing and fingerprinting procedures, that the alien's application for international protection will be rejected owing to the absence of responsibility of Austria for examining the application.<sup>23</sup> About half (1330) of the pre-deportation detention orders in 2006 were issued with reference to the last ground which normally applies to asylum-seekers coming under the Dublin II regulation<sup>24</sup>.

72. The legal provision which allows police authorities to detain aliens on the reasoned assumption that their application for asylum will be rejected owing to the absence of responsibility of Austria for examining the application has been particularly controversial among legal professionals in Austria. In its independent advice before the adoption of the Alien Police Act 2005, the Constitutional Service of the Federal Chancellery expressed doubts as to the conformity of the provision with Article 5 of the ECHR. The Federal Administrative Court subsequently referred the issue to the Federal Constitutional Court. On 14 June 2007, the Constitutional Court confirmed the constitutionality of the provision.

73. The duration of pre-deportation detention has to be kept as short as possible. Usually, it should not exceed a period of two months. Exceptionally, detention can be upheld for a maximum period of ten months within two years when the non-execution of the deportation measure can be attributed to the alien's conduct. If an alien is detained for an uninterrupted period of more than six months, the proportionality of the custody is examined ex officio by the competent Independent Administrative Tribunal, which is also the quasi-judicial body to which complaints about pre-deportation detention can be addressed.<sup>25</sup>

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<sup>22</sup> The total number of pre-deportation detainees in 2006 was 8694. In addition to asylum-seekers, many pre-deportation detainees are failed asylum-seekers waiting deportation. 14 of the pre-deportation detainees were less than 16 years' old while 171 of them were between 16 to 18 years' old.

<sup>23</sup> Aliens Police Act, Article 76, Section (2).

<sup>24</sup> EU Council Regulation No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

<sup>25</sup> Aliens Police Act, Article 80.

74. In addition to pre-deportation detention, “more lenient measures” (gelindere Mittel) can be applied to ensure deportation.<sup>26</sup> Under such measures, aliens may be ordered to take up accommodation in premises specified by the authorities and to report at regular intervals to a police station. These measures are normally applied to children instead of detention. In 2006, “more lenient measures” were imposed on 474 asylum-seekers.<sup>27</sup> Civil society representatives have observed that the simultaneous application of pre-deportation detention and “more lenient measures” often results in the separation of families who are seeking asylum in Austria; while men are usually detained, children with their mothers are assigned to accommodation which may be situated far away from the detention facilities.

75. The Commissioner visited two facilities for pre-deportation detention (Polizeianhaltezentrum – PAZ): one in Graz, which was attached to the Graz City Police Headquarters (Stadtpolizeikommando), and another in Vienna (Hernalser Gürtel). These facilities are not used exclusively for pre-deportation detention but for administrative detention more generally under the authority of the police. At the time of the visit, there were 37 pre-deportation detainees in the Graz facility, two of them women. Two-person cells were used for most detainees. The cells were kept open during the day for access to the open area (i.e. the “open station” approach) with a minimum of one hour per day access to the outdoors. Visitors were allowed daily during week days. A public card-phone was available on a daily basis. The average period of detention was 2-3 months, although exceptionally detainees had been kept up to the legal maximum of 10 months, especially when travel documents necessary for deportation had been lacking. The staff of the facility confirmed that hunger strikes did take place among the pre-deportation detainees.

76. The Hernalser Gürtel facility in Vienna had a capacity of 304 places and detained only men in cells of 6-8 persons. Cells were kept closed and access to outdoors was granted for one hour in the morning and also in the afternoon. Visitors were authorised once in a week for half-an-hour while access to a card-phone was granted, at a minimum, on three days per week for five minutes per detainee. Personal radios and TV sets were allowed in the cells. The average period of detention was just below one month, although the period of detention had from time-to-time run to about 4-5 months and exceptionally to 7-8 months especially due to the difficulties in obtaining travel documents. Only one person had been detained the legal maximum of 10 months during the past year. Psycho-social counselling for pre-deportation detainees was provided by an organisation Menschenrechte Österreich. However, legal advice was not included in its mandate and the staff of the facility admitted that the detainees had little access to legal counsel apart from the limited legal advice included in the official asylum interview procedure. Although the detainees naturally had the right to contact and employ their private legal counsel, no free legal aid was usually available for the purpose.

77. According to the staff of the facility, including the police physician, hunger strikes among pre-deportation detainees were frequent as this could lead to a release from detention due to a deteriorated health condition. The condition of hunger strikers was carefully monitored and health care, including psychiatric care, was readily available. The prison staff underlined, however, that recourse to forced feeding was never made

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<sup>26</sup> Aliens Police Act, Article 77.

<sup>27</sup> The total number of people falling under “more lenient measures” in 2006 was 927. 375 of them were less than 16 years’ old while 61 were between 16 to 18 years’ old.

and it was confirmed by the authorities that in no case had a hunger striker in pre-deportation detention been subjected to forced feeding. The authorities informed the Commissioner that, in 2006, 2338 incidents of hunger strike had taken place among pre-deportation detainees and that 680 detainees had been released due to hunger strikes.<sup>28</sup>

78. The Commissioner is concerned over the increased use of pre-deportation detention in Austria. He is of the strong opinion that pre-deportation detention should only be applied when it is thoroughly justified and when it is clear that the deportation can in fact take place in the immediate future so as to keep the length of detention to the necessary minimum. Furthermore, the Commissioner points out that the extremely limited access to legal counsel in certain facilities for pre-deportation detention may seriously restrict the detainees' ability to challenge their detention effectively in courts. Accordingly, free legal aid should be made available to pre-deportation detainees. The Commissioner also considers that the increased use of pre-deportation detention in conjunction with "more lenient measures" may encroach on the right to respect for private and family life as far as it has led to the virtually total separation of families. The apparently differential application of detention and "more lenient measures" as regards men and women also raises questions of possible gender bias. Moreover, the Commissioner underlines that the use of pre-deportation detention for minors under 18 years' old should be kept to the absolute minimum in accordance with the provisions of the UN Convention on the Rights of the Child.

79. When pre-deportation detention is deemed necessary, the Commissioner recommends the use of the "open station" approach in the detention facilities and the provision of frequent access to means of communicating with the outside world including the telephone and receiving visitors. Special attention should also be given to facilitating visits by family members to whom "more lenient measures" may have been imposed. Moreover, the Commissioner notes that the running of "open station" facilities may require additional skills from the staff in comparison with closed-cell facilities and therefore calls for the provision of appropriate training for staff for such duties.

### **6.3 Family reunification**

80. In the new Aliens' law package of 2005, the legal provisions for family reunification were moved to the new Residence and Settlement Act (Niederlassungs- und Aufenthaltsgesetz – NAG). The Act transposes several EU directives in this field<sup>29</sup> and has brought about improvements to the family reunification of third-country nationals with EEA citizens resident in Austria who have exercised their right to free movement. However, the family reunification of third-country nationals<sup>30</sup> with third-country nationals who are long-term residents in Austria is still subjected to a quota system for the granting of settlement permits. The quota of available settlement permits for family-reunification is revised annually and the national quota is further divided among the federal provinces with Vienna having the far largest quota of them all. The current national quota for 2007

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<sup>28</sup> Several separate incidents of hunger strike per individual can be recorded in the total annual number.

<sup>29</sup> Including, inter alia, Directives 2004/48/EC, 2003/86/EC, 2003/109/EC, 2004/114/EC and 2004/81/EC.

<sup>30</sup> Citizens of other countries than those belonging to the European Economic Area (EEA) and Switzerland.

stands at 4540 while it was 4480 in 2006 and 5060 in 2005. If the application for family reunification is denied due to the quota having been exhausted the applicants will be entitled to family reunification after a delay of three years.

81. The right to family reunification under the quota system is limited to the nuclear family: spouses who are at least 18 years' old and unmarried minor children. Proof of available income, the required minimum amount of which is approximated to the minimum pension benefits payable in Austria, for maintaining the family members in Austria must also be provided. The police are, furthermore, authorised to carry out investigations as to the authenticity of the marriage which may involve detailed interviews with family members as well as their neighbours. Family members holding a settlement permit derive their right of residence in Austria from the sponsoring spouse for five years after which an independent settlement permit is granted. Under the previous Alien's legislation, the required period of time was 4 years. In principle, family members must apply for the settlement permit through the Austrian diplomatic or consular representations in their home country unless they are legally resident in Austria at the time of the application. It should be noted that asylum-seekers cannot normally apply for family reunification while in Austria even if they are married to an Austrian citizen.

82. It is clear to the Commissioner that the quota system applied in family reunification leads to delays in granting permits and may therefore lead to long periods of separation among family members. This naturally limits the migrants' right to respect for private and family life. The Commissioner also points out that there is an important gender aspect involved. As women are often less paid than men it may be more difficult for women sponsors to qualify in terms of income requirements to bring their family members to Austria. Civil society representatives have also argued that the long separation of families, especially when women with their children have had to wait for family reunification in their countries of origin, is likely to be a risk factor for domestic violence when the family has to learn to live together again upon reunification in Austria. The fact that the settlement permit of family members is dependent on the sponsor during the first five years of residence can also make it difficult for the spouse to leave the relationship when violence takes place. Although the current legislation does authorise the granting of independent settlement permits to spouses who are victims of violence perpetrated by their partners, NGOs estimate that this possibility is not yet well known while there may also be practical difficulties in proving that violence has in fact taken place.

83. The Commissioner recommends that the quota system in family reunification is discontinued so that family members who are entitled to family reunification in Austria are granted settlement permits without unnecessary delays. He also invites the Austrian authorities to review the income requirements for family reunification in order to ensure that they are not discriminatory towards women. Finally, he calls for the efficient implementation of the provision granting an independent settlement permit for migrant spouses who are victims of violence perpetrated by their partners. Further awareness raising measures regarding this provision would also be welcome.

## 7. Prevention of ill-treatment by the police

84. The criminal justice system and law enforcement play a major part in safeguarding the rule of law and protecting human rights. Human rights values should be reflected in the management and organisational structures of the police while policing in a democratic society requires that police authorities are willing to be monitored and held accountable for their actions. After a recent organisational reform which merged the civilian police with the *Gendarmerie* force, Austria now has a unified national police service, the Federal Police (*Bundespolizei*). The Federal Police operates at national, provincial and local level and reports to the Federal Minister of the Interior. As of 2006, there were approximately 20,000 serving police staff throughout the country.<sup>31</sup> The Commissioner met with several members of the Federal Police during his visit and was impressed by the high-level of professionalism they demonstrated.

85. The Commissioner is however aware of significant lapses in standards of the application of policing at times in Austria's recent past which have threatened to undermine the integrity and credibility of the force. In this light, he highlights concern in relation to occasions of ill-treatment and an apparent bias against persons of foreign descent in particular. This is particularly problematic since the police also plays a major role in the treatment of asylum-seekers in Austria.

86. Government statistics for 2005 showed there were 1047 public complaints against federal police officials; of those 960 were dropped. 18 cases were tried by courts while two officers were finally convicted of using unjustified force.<sup>32</sup> The Council of Europe's Committee for the Prevention of Torture (CPT) has referred to allegations of physical ill-treatment of criminal suspects detained by the police as well as allegations of rude behaviour including xenophobic or racist remarks by police officers.<sup>33</sup> ECRI has reported that visible minorities and notably black Africans have been subjected to disproportionately high frequency of police controls and, occasionally, to verbal and physical abuse in this context.<sup>34</sup> The UN Committee against Torture (CAT) has expressed concerns about reported attitudes of racism and intolerance towards foreigners, especially Roma and people of African descent, by some law enforcement officials.<sup>35</sup> In a recent sample study carried out by the Human Rights Advisory Board based on police records in Vienna, 49% of the alleged victims of police ill-treatment within the sample of 152 persons were foreigners.<sup>36</sup>

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<sup>31</sup> OSCE Austria Policing Profile, Policing OnLine Information System <http://polis.osce.org/>

<sup>32</sup> Sicherheitsbericht 2005, p. 427.

<sup>33</sup> Report to the Austrian Government on the visit to Austria carried out by CPT from 14 to 23 April 2004, CPT/Inf (2005) 13.

<sup>34</sup> European Commission against Racism and Intolerance, Third report on Austria adopted on 25 June 2004. CRI (2005) 1.

<sup>35</sup> Conclusions and recommendations of the Committee against Torture, CAT/C/AUT/CO/3, 15 December 2005.

<sup>36</sup> Die Polizei als Täter? Eine Analyse des Umgangs staatlicher Institutionen mit Misshandlungsvorwürfen. Menschenrechtsbeirat im Bundesministerium für Inneres (Hg.). Wien – Graz, 2007.

87. Furthermore, in recent years there has been a number of high-profile cases of police ill-treatment or possible neglect in which the victims have been foreign nationals. In August 2006, four members of the Vienna *Alarmabteilung* police unit were found guilty of seriously injuring a Gambian asylum-seeker Bakary J. in circumstances which amounted to torture in the context of a failed deportation earlier in the year. Three police officers received suspended eight-month sentences while the fourth of them received a six-month suspended sentence. In 2003, a Mauritanian asylum-seeker Cheibani Wague died in Vienna during a police operation when he had been pressed down on the ground and been punched in the presence of an emergency physician and paramedics. The doctor and one police officer were convicted for negligent manslaughter and sentenced to seven months imprisonment more than two years after the incident. The Human Rights Advisory Board has also prepared a detailed report on the circumstances which led to the death of a Gambian asylum-seeker Yankuba Ceesay in the Police Detention Centre in Linz in 2005, which raises questions about the adequacy of available care for pre-deportation detainees who are undergoing a hunger strike.<sup>37</sup>

88. The Commissioner is deeply concerned by these incidents and the apparent leniency of the sanctions applied in the cases related to Bakary J. and Cheibani Wague. He also notes the criticism of CAT which has pointed out that the Austrian Penal Code does not yet include a clear definition of torture. The Commissioner considers that this may contribute towards a more lenient sentencing practice as judges will have to make a particular effort in finding applicable Penal Code provisions for criminal acts that amount to torture. In its recent judgment on the case of *Wieser v. Austria* the European Court of Human Rights found the Austrian interpretation of Article 3 of the ECHR with reference to degrading treatment by police officers too restrictive.<sup>38</sup> The authorities have informed the Commissioner that the Ministry of Justice has started preparing an amendment to the Criminal Code for the inclusion of a definition of torture in line with Article 1 of the UN Convention against Torture.

89. The Commissioner acknowledges the serious work carried out by the Human Rights Advisory Board in monitoring police actions and recommending structural solutions to police misconduct. He is also aware of the efforts of the Federal Ministry of the Interior to improve police training in human rights and tolerance. These measures are important steps towards the right direction. However, the Commissioner deems that the enhanced monitoring of police conduct and further training may not be a sufficient response to the problem at hand. He underlines that any instance of grave and obvious mistreatment by the police must be publicly condemned at the highest level, including by members of the Federal Government, to communicate the message that such acts are utterly unacceptable in a democratic policing system. Moreover, human rights values should be reflected in the daily activities, management and supervision of police officers to create practical and shared awareness of the police as protector of human rights. While the

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<sup>37</sup> Gesundheitsversorgung in Schubhaft – Bericht und Empfehlungen des Menschenrechtsbeirates anlässlich des Todes von Yankuba Ceesay im PAZ Linz, 2007. Civil society representatives also reported to the Commissioner of the case of a Nigerian national Geoffrey A. who was apparently released from a Vienna prison – he had been transferred there from a police pre-deportation detention facility – in an extremely weakened state as a result of a hunger strike in late 2006. Reportedly, no-one had been notified that he would be freed and he was not met upon release. On his way home Geoffrey A. collapsed on the street and was taken to an intensive care unit in a hospital.

<sup>38</sup> *Wieser v. Austria* (application no. 2293/03), Judgement 22 February 2007.

Commissioner recognises that police officers are required to make critical decisions without time for extensive reflection or consultation, this does not excuse ill-treatment or misconduct. The Commissioner recommends that the authorities develop suitable methods for routinely assessing the extent to which police practices adhere to and promote human rights standards.<sup>39</sup>

90. In the Commissioner's opinion, a police service should be largely representative of the society it serves. During the visit, the authorities informed the Commissioner that women and ethnic minorities were clearly underrepresented in the Federal Police despite efforts to take this into account in recruitment. However, the Commissioner learned that criteria on physical performance applied in the recruitment procedure might in fact be discriminatory towards women. The Commissioner encourages the intention of the Federal Government to enhance the recruitment of police officers from ethnic minorities and points out that positive measures are justified in this case. He also calls on the authorities to review the entrance tests to police training schools to ensure that they do not discriminate, directly or indirectly, against women candidates.

91. The Commissioner is aware that currently a number of procedures exist in Austria to handle complaints of malpractice by police officers. Complaints can be addressed to the police itself or lodged with the Independent Administrative Tribunal and the ordinary courts. With new legislation entering into force in 2008, most investigations of police ill-treatment are expected to be conducted by the criminal police under the supervision of the public prosecutor who can then refer cases to courts when required. Moreover, within the Ministry of the Interior, the Federal Bureau for Internal Affairs conducts security and criminal police investigations in cases of corruption or suspected malpractice by public officers. While the Human Rights Advisory Board monitors the activities of the police and collects information on incidents of ill-treatment it does not take up individual complaints.

92. The Commissioner is of the opinion that accountability and transparency are essential aspects of policing in a democratic society and considers a fully independent monitoring body as the preferred mechanism for investigating complaints about police actions. He recalls that ECRI has previously recommended to Austria the establishment of an independent body with powers to investigate individual complaints of human rights violations on the part of the police, including acts of racism and racial discrimination.<sup>40</sup> The independence of complaints bodies can only be fully guaranteed when they are placed outside police and ministry structures. The Commissioner observes that the mandate of the Human Rights Advisory Board could be extended to cover the investigation of individual complaints if its independence and available resources were adequately addressed in the context of the current constitutional reform. The Board could also act as the focal point for collecting information and statistics on misconduct by the police. Such a body would constitute a full-fledged and independent monitoring and complaints mechanism which should go far in ensuring police accountability before individuals and the public alike.

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<sup>39</sup> See, for example, the Council of Europe manual 'Policing in a democratic society – Is your police service a human rights champion'.

<sup>40</sup> ECRI, Third report on Austria, adopted on 25 June 2004. CRI (2005) 1.

## 8. Protection of national minorities

93. Austria is a state party to the Framework Convention for the Protection of National Minorities (FCNM) and the European Charter for Regional and Minority Languages. Under the Framework Convention and the Law on Ethnic Groups of 1976, Austria recognises the Croat minority in Burgenland, the Slovene minority, the Hungarian minority, the Czech minority, the Slovak minority and the Roma minority as ethnic groups. Under the Charter, Austria promotes the use of Burgenland Croatian/Croatian, Slovene, Hungarian, Czech, Slovak and Romany – the first three languages may also be used in communication with certain authorities. Furthermore, the Commissioner welcomes the ratification by Austria, in December 2006, of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

94. The Advisory Committee of FCNM carried out a visit to Austria in March 2007 and its opinion will be made public in the near future. Since the opinion of the Advisory Committee will provide a detailed assessment of the implementation of the FCNM in Austria, the Commissioner will only highlight one aspect of the protection of national minorities in the present report; namely the issue of bilingual topographical signs which affects the Slovene minority in Carinthia in particular.

95. Bilingual topographical signs have been a point of contention in Austria for a long time already. In the federal province of Carinthia the provincial and local authorities and the Slovene minority have so far failed to find a mutually satisfying solution for installing topographical signs both in German and Slovenian in municipalities where the Slovene minority is resident in substantial numbers. The debate has also been taken up during election campaigns. In the FCNM, this issue is generally covered in Article 11(3) while in Austria the Constitutional Court has clarified the applicable legislation through its jurisprudence. In its decision of 13 December 2001, confirmed by subsequent judgments, the Constitutional Court ruled that the minority would be entitled to display bilingual topographical signs in municipalities where it represented at least 10 per cent of the population over a long period. Already in its first-cycle Opinion on Austria, the Advisory Committee of FCNM considered it important that the decision of the Constitutional Court be respected and implemented at all levels.<sup>41</sup> However, to date the authorities have not executed the ruling of the Constitutional Court while the Governor of Carinthia has explicitly criticised the judgment.

96. The Commissioner is aware of the previous efforts undertaken by the federal authorities to resolve the question by means of a “consensus conference” which was convened in 2002-2003 and in 2005-2006 between the parties concerned. The federal authorities also proposed a new Topographical Ordinance for Carinthia in June 2006 as well as constitutional amendments which would have changed the legal provisions declared unconstitutional by the Constitutional Court in 2001. However, a sufficient majority was not reached in the Federal Parliament to pass the constitutional amendments. The programme of the current Government foresees a new regulation for implementing the decisions of the Constitutional Court. During the visit, the President of the Constitutional Court confirmed to the Commissioner that these decisions currently constituted the only major case of non-implementation of the Court’s judgments.

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<sup>41</sup> The first-cycle Opinion was adopted on 16 May 2002 and published on 17 October 2002 (ACFC/INF/OP/I(2002)009).

97. The protection of national minorities at the federal level falls under the competence of the Federal Chancellor. The Chancellor informed the Commissioner of the current situation regarding the bilingual topographical signs in Carinthia and explained its historical context. He reaffirmed that his Government was committed to finding a mutually acceptable solution to the long-standing problem and pointed out that he had already initiated new efforts to ensure a speedy resolution. The authorities have informed the Commissioner that a proposal for an amendment to the Act on National Minorities regarding this question was brought to the Parliament on 4 July 2007.

98. The Commissioner is particularly concerned by the non-implementation of the decisions of the Constitutional Court regarding bilingual topographical signs since the case reveals shortcomings in both the protection of national minorities and the respect for the rule of law in Austria. While appreciating the current efforts by the Federal Chancellor to resolve the issue, the Commissioner urges the Austrian authorities to do their utmost in finding and implementing a durable solution to the case within a short delay. The original decisions of the Constitutional Court must serve as the basis for the resolution of the problem.

## **9. Recommendations**

The Commissioner, in accordance with Article 3, paragraphs b, c and e and with Article 8 of Resolution (99) 50 of the Committee of Ministers, recommends that the Austrian authorities:

### **National system for protecting human rights**

1. Ratify Protocol No. 12 to the European Convention on Human Rights and the Revised European Social Charter with its Additional Protocol Providing for a System of Collective Complaints.
2. Retain the constitutional status of the European Convention on Human Rights in the constitutional reform process.
3. Include children's rights in the codification of fundamental rights in the reformed Constitution.
4. Set up administrative courts of the first instance in the federal provinces and re-establish a juvenile court.
5. Enhance the independence of the Human Rights Advisory Board either by placing it under a shared institutional framework with the Ombudsman Board or by creating a new human rights institution with a clearly defined monitoring and complaints mechanism following the Paris principles.
6. Ensure that human rights education is systematically integrated in compulsory education in schools and prepare a national action plan on human rights education.
7. Develop a national action plan on human rights through a coordinated and inclusive process for the continuous improvement of human rights protection in Austria.

### **Freedom of expression**

8. Repeal penal provisions on defamation and review civil provisions to ensure that they are appropriate for meting out proportionate sanctions.

### **Measures against racism and xenophobia**

9. Develop policy responses to racist and xenophobic attitudes which are targeted to reach all parts of society such as human rights training and the promotion of civil society activities against racism and intolerance at the grass root level.

10. Draw up and implement a national action plan against racism and xenophobia which addresses gaps in data collection and awareness raising as a priority.

11. Discourage actively tendencies of stigmatisation of migrants, asylum-seekers and refugees in the context of political discourse.

12. Strengthen support services for the victims of racism and xenophobia by, inter alia, supporting current civil society initiatives in this field.

### **Prevention of discrimination**

13. Guarantee the independence of the Specialised Equality Body through a constitutional provision and improve its material and human resources especially at the provincial level.

14. Streamline the legislative framework on non-discrimination and provide for effective, proportionate and dissuasive sanctions.

15. Screen relevant legal and administrative provisions at federal and provincial levels to verify that they are in conformity with non-discrimination legislation.

16. Develop further structural and targeted policy measures to address the persistent inequality of women in the labour market.

17. Enhance support services for the victims of domestic violence to ensure that all victims of violence, including migrant women, women and girls with disabilities and children who have experienced or witnessed violence in their homes, can access them effectively.

18. Apply positive measures to render the built environment and work places accessible to people with disabilities.

### **Treatment of asylum seekers and migrants**

19. Grant residence permits on humanitarian grounds or a general right of stay, based on clearly defined criteria which avoid unnecessary discrimination, to asylum-seekers who have had to wait for their final asylum decisions for several years.

20. Restrict the use of pre-deportation detention to asylum seekers and rejected asylum seekers to cases when it is thoroughly justified and when deportation can take place in the immediate future.

21. Review the practice of detaining asylum seekers on the basis of a reasoned assumption by the police authorities that their application for asylum will be rejected owing to the absence of responsibility of Austria for examining the application.

22. Provide free legal counselling to asylum seekers and rejected asylum seekers held in pre-deportation detention so that they can effectively challenge their detention in courts.

23. Apply an “open station” approach in pre-deportation detention.

24. Discontinue the quota system for family reunification and review the income requirements for family reunification to ensure that they are not discriminatory towards women.

25. Implement effectively the provision granting independent settlement permits to migrant spouses who are victims of violence perpetrated by their partners.

#### **Prevention of ill-treatment by the police**

26. Condemn publicly at the highest level instances of grave and obvious ill-treatment by the police.

27. Develop methods for routinely assessing the extent to which the daily activities, management and supervision of police officers adhere to and promote human rights standards.

28. Extend the representativeness of the police force through the recruitment of more women and members of minority communities.

29. Establish an independent mechanism for investigating complaints about police ill-treatment, for example, by extending the mandate of the Human Rights Advisory Board.

#### **Protection of national minorities**

30. Implement the judgments of the Constitutional Court regarding bilingual topographical signs in Carinthian municipalities where the Slovene minority is resident in substantial numbers without further delay.

## **Appendix 1:**

### **List of authorities, civil society organisations and institutions met or consulted**

#### **Federal Authorities**

##### **Members of the Federal Government**

Mr. Alfred Gusenbauer, Federal Chancellor  
Ms. Ursula Plassnik, Federal Minister for European and International Affairs  
Mr. Günther Platter, Federal Minister of the Interior  
Ms. Doris Bures, Federal Minister for Women, Media and Civil Service  
Ms. Maria Berger, Federal Minister of Justice  
Mr. Hans Winkler, Secretary of State in the Ministry for European and International Affairs

##### **Nationalrat**

Mr. Wolfgang Schüssel, Chairman of the Austrian People's Party (ÖVP) Parliamentary faction  
Ms. Terezija Stoisits, Chairperson of Parliamentary Human Rights Committee (Ombudsperson at the Volksanwaltschaft as of June 2007)  
Ms. Petra Bayr, Member of the Parliamentary Human Rights Committee

##### **Federal Chancellery**

Mr. Georg Lienbacher, Director, Constitutional Law Department and Chairperson, Constitutional Reform Expert Group  
Mr. Harald Dossi, Deputy Director, Constitutional Law Department (Director of the Government Coordination Division as of July 2007)  
Ms. Ingrid Siess-Scherz, Constitutional Law Department (Deputy Director as of July 2007)

##### **Federal Ministry for European and International Affairs**

Ambassador Ferdinand Trauttmansdorff, Director, Legal Department  
Mr. Bert Theuermann, Director, Human Rights Department  
Ms. Viktoria Wagner, Human Rights Department

##### **Federal Ministry of the Interior**

Mr. Berndt Körner, Director of Aliens Police Department  
Mr. Albert Grasel, Chief Inspector responsible for Pre-deportation centres

##### **Federal Ministry for Social Affairs and Consumer Protection**

Mr. Gerald Reiter, Head of the Office of the Federal Minister Mr. Erwin Buchinger  
Mr. Felix Müller, Office of the Federal Minister Mr. Erwin Buchinger, International Affairs and Consumer Protection

Ms. Bernadette Gisinger-Schindler, Deputy Director of Department: Gender Mainstreaming, Human Rights, Health Issues and CSR  
Mr. Hans Steiner, Director of Department: Basic Social Policy Affairs  
Mr. Hansjörg Hofer, Director of Department: Policy for People with Disabilities  
Mr. Erich Ostermeyer, Deputy Director of Department: Long-Term Care  
Mr. Josef Bauernberger, Department for pensions, evaluation and reform

#### **Constitutional Court**

Mr. Karl Korinek, President

#### **Independent Federal Asylum Review Board**

Mr. Harald Perl, Chairperson

#### **Ombudspersons**

Ms. Rosemarie Bauer  
Mr. Peter Kostelka  
Mr. Hilmar Kabas

#### **Specialised Equality Body**

Ms. Ingrid Nikolay-Leitner, Ombudsperson for Equal Treatment  
Ms. Ulrike Salinger, Ombudsperson for Equal Treatment  
Ms. Irmtraut Weinke, Ombudsperson for Equal Treatment

#### **Ombudsperson for People with Disabilities**

Mr. Herbert Haupt

#### **Data Protection Commission**

Ms. Waltraut Kotschy, Chairperson

#### **Human Rights Advisory Board**

Mr. Erwin Felzmann, Chairperson

#### **Office of the Public Prosecutor**

Ms. Irene Köck, Public Prosecutor

#### **Federal Asylum Office**

Mr. Wolfgang Taucher, Director

#### **Federal Police**

Mr. Peter Klöbl, Landespolizeikommandant, Styria  
Mr. Kurt Kemeter, Stadtpolizeikommandant, Graz

#### **Provincial (Länder) and Local Authorities**

##### **Federal Province and City of Vienna**

Mr. Michael Häupl, Governor and Mayor  
Ms. Sandra Frauenberger, City Councillor for Integration, Women's Issues, Consumer Protection and Human Resources

## **Federal Province of Styria**

Mr. Franz Voves, Governor

Ms. Bettina Vollath, Provincial Councillor responsible for youth, women's affairs, family, and education

## **City of Graz**

Mr. Siegfried Nagl, Mayor

Mr. Walter Ferk, Deputy Mayor

Mr. Wolfgang Benedek, Chairperson, Human Rights Council of Graz

## **Civil Society**

### **University institutes**

- Austrian Human Rights Institute (Salzburg)
- European Training and Research Centre for Human Rights and Democracy (ETC Graz)
- Ludwig Boltzmann Institute of Human Rights (Vienna)

### **Non-governmental organisations**

- Amnesty International – Austria
- Asylkoordination
- BIZEPS (Aktionsbündnis Österreich für Behindertenrechte)
- Caritas
- Children's Rights Alliance
- Homosexuellen Initiative Wien
- Islamische Glaubensgemeinschaft
- Klagsverband
- Lefö - Information, Education and Support for Migrant Women
- National Coalition - Netzwerk Kinderrechte Österreich
- Österreichische Arbeitsgemeinschaft für Rehabilitation - ÖAR-Dachorganisation der Behindertenverbände Österreichs
- Österreichisches Volksgruppenzentrum
- Romano Centro – Verein für Roma
- TransX (Austrian TransGender Association)
- Verein FIBEL (Fraueninitiative Bikulturelle Ehen und Lebensgemeinschaften)
- Verein Österreichischer Juristinnen
- Verein Projekt Integrationshaus
- Wiener Interventionsstelle gegen Gewalt in der Familie
- ZARA – Zivilcourage und Antirassismus-Arbeit

### **Institutions and sites**

- Initial Reception Centre for Asylum Seekers, Traiskirchen
- Oeverseegymnasium, Graz
- Caritas Accomodation Centre for Asylum Seekers, Graz

- Graz Police Headquarters and Police Detention Centre
- Frauenhaus, Graz
- „Lebenshilfe“ Sheltered Workshop for Persons with Disabilities, Vienna
- Police Detention Centre, Hernalser Gürtel, Vienna
- Josefstadt Prison, Vienna

### **Other**

The Commissioner addressed the Austrian Judges' Week in Bad St. Leonhard and met with several participants. He also delivered public lectures in Graz, organised by the ETC, and in Vienna, organised by the Boltzmann Institute.

## Appendix 2

### COMMENTS BY THE AUSTRIAN GOVERNEMENT

*[English only]*

The protection of human rights is a key priority for Austria, both at national and international level. In this context, Austria regards active dialogue and cooperation with international mechanisms on the implementation of international standards for the protection of human rights as crucial for the constant review and improvement of the domestic human rights protection system.

Since its accession to the Council of Europe in 1956 and the ratification of the European Convention of Human Rights in 1958, Austria has attached highest importance to the Council of Europe's invaluable human rights work, particularly in the fields of standard setting and monitoring. The European Convention of Human Rights has been given the status of a constitutional law in Austria, and presents the primary point of reference for domestic human rights protection.

The Commissioner for Human Rights plays an indispensable role in the Council of Europe's human rights structure. Austria thanks Mr. Thomas Hammarberg for his visit in May 2007 and welcomes his comprehensive report. The Commissioner for Human Rights' views and recommendations on the domestic human rights situation as expressed in his report are highly valued and are given careful consideration. Austria looks forward to continued cooperation with the Commissioner for Human Rights in the future.

Austria takes this opportunity to make the following comments and observations.

#### **Status of international human rights standards**

##### **Recommendation 1 (para. 8): Ratify Protocol No. 12 to the European Convention on Human Rights.**

Austria welcomes and fully supports the Council of Europe's efforts to constantly improve and develop the international body of law for the protection against discrimination, including Protocol No. 12 to the ECHR. It is Austria's intention in principle to ratify Protocol No. 12. However, we are of the opinion that ratification of Protocol No. 12 before a reform of the European Court of Human Rights will add further to the already overwhelming caseload of the Court and is therefore counterproductive. These concerns are shared by the European Court itself in its "Opinion on draft Protocol 12 to the European Convention on Human Rights adopted at the plenary administrative session of the Court on 6 December 1999".

We wish to emphasise that domestic law and policies do already provide adequate protection against discrimination in Austria.

**Recommendation 2: Retain the constitutional status of the European Convention on Human Rights in the constitutional reform process.**

The European Convention of Human Rights enjoys a privileged position within the Austrian legal system. The status of the Convention as part of the Austrian constitution has not only fostered the development of case law on human rights issues by the Constitutional Court which closely observes European Court of Human Rights jurisprudence, but also enhanced public discussion of human rights as protected by the European Convention. The positive impact of the Convention's status as constitutional law in Austria is recognized by all strata of society. As a result, the conclusions of the Austrian Constitutional Assembly upon which the Constitutional Reform Expert Group's work is based, do not recommend a change of the constitutional status of the Convention.

The second part of the Constitutional Reform Expert Group's proposals for constitutional amendment, dealing predominantly with the constitutional human rights protection system, is currently being developed and will be available by the end of 2007.

**Constitutional reform and the codification of fundamental rights**

**paras. 11-13**

Review, simplification and reinforcement of constitutional human rights protection is one of the core objectives of the ongoing Constitutional Reform Process. Based on the results of the Austrian Constitutional Assembly where stakeholders from all strata of society, including NGOs, identified reform needs, a Constitutional Reform Expert Group has been tasked to draft concrete proposals for constitutional amendments. The first set of proposals was published in July 2007 (available on the parliamentary website) and is now under consideration by the National Parliament. The second and final set of proposals should be available by the end of 2007. Once the public consultation procedures for the entire body of reform proposals will be concluded parliamentary work on constitutional reform will begin.

**Recommendation 3 (para. 15): Include children's rights in the codification of fundamental rights in the reformed Constitution.**

Pursuant to the Government Work Programme of January 2007, the Austrian federal constitution will be amended so as to protect the rights of the child as stipulated in the UN-Convention on the Rights of the Child. The Constitutional Reform Expert Group has been tasked to make a legislative proposal for such amendment, which should be available by the end of 2007.

## Judiciary

### **Recommendation 4 (para. 18): Set up administrative courts of first instance in the federal provinces and re-establish a juvenile court.**

#### Administrative Courts

An important objective of the current Constitutional Reform process is to further enhance the effectiveness of the Austrian judicial system. The first part of proposals published by the Constitutional Reform Expert Group in July 2007 foresees reduction of the length of administrative proceedings through the establishment of a new administrative court system. Thus, 10 administrative courts of first instance shall be created in the provinces and at federal level respectively. In addition, the creation of specialized administrative courts, such as a Federal Asylum Court, is envisaged.

In 2002, Austria amended the High Administrative Court Act in order to address the issues of lengthy proceedings and backlog of cases before this court. Case management was improved so as to identify and render inadmissible cases the substance of which had already previously been decided by the High Administrative Court (*res iudicata*).

As for criminal proceedings, the amended Code of Criminal Procedure will enter into force on 1 January 2008. Art. 9 stipulates that proceedings shall be conducted in the most expeditious manner possible, particularly where the accused is held in pre-trial detention. Art. 108 permits the accused to apply for discontinuance of preliminary proceedings after six months of their commencement. Preliminary proceedings shall be closed if evidence suggests that no punishable offence is likely to be identified.

#### Juvenile Courts

The Ministry of Justice will establish a juvenile justice competence center in Vienna-Baumgasse, completion is foreseen in 2009. The competence center will include a juvenile court, a specialized Prosecutor's Office and a juvenile correctional facility for 450 young offenders. 35 judges and prosecutors will be recruited for this purpose.

A concept paper on the project has already been finalized, a public architecture competition will be started shortly.

#### **para. 19**

Judges' and prosecutors' training includes compulsory courses on discrimination, racism and xenophobia, as well as interaction with victims in court proceedings. Starting in January 2008, curricula will be amended so as to include a 3-day seminar on human rights.

In addition to these basic compulsory training measures, the continuous training programme for judges and prosecutors offers a variety of courses on human rights issues, including seminars on European Court of Human Rights case law, the role of courts in asylum procedures, discrimination, and interaction with victims in court proceedings. Most recently, the 2007 Judges' Week, a week-long annual conference where judges from all over Austria meet, was dedicated to the discussion of human rights.

## **Complaints bodies and human rights structures**

**Recommendation 5 (paras. 25-26, 93): Enhance the independence of the Human Rights Advisory Board either by placing it under a shared institutional framework with the Ombudsman Board or by creating a new human rights institution with a clearly defined monitoring and complaints mechanism following the UN Paris principles.**

The Government Work Programme of January 2007 foresees the ratification of OP-CAT and the transformation, by constitutional amendment, of the Human Rights Advisory Board into an independent prevention/monitoring mechanism as required by the Protocol, which will be administratively attached to the Ombudsinstitution (Volksanwaltschaft). The Constitutional Reform Expert Group has been tasked to propose a constitutional amendment accordingly, which should be available by the end of 2007.

## **Human Rights Education**

### **paras. 32, 85**

Austria is strongly committed to ensure that human rights are respected and protected by law enforcement officers at all times. To this end, all Austrian police undergo compulsory human rights education programmes and are offered a wide range of continuous human rights training courses with a special focus on awareness about racism, xenophobia and discrimination. Specialized courses and curricula are matched to current human rights challenges in policing, and deal with issues such as police conduct towards visible minorities, policing in a multicultural society, conflict management, and understanding for different cultural backgrounds.

In addition to the Anti-Defamation League training programmes which is mandatory for all law enforcement officers, the Ministry of Interior has sponsored the participation of police in the one-year TANDEM training programme on policing in a multicultural society. This programme organized by the International Center for Cultures and Languages (ICCL) not only offers in-depth training but matches law enforcement officers with individual migrants to gain a different perspective on the lives and challenges faced by recent immigrants.

**Recommendation 6 (paras. 29-31, 34, 35): Ensure that human rights education is integrated in compulsory education in schools and prepare a national action plan on human rights education.**

### **para. 29**

The Austrian National Action Plan on the Rights of the Child foresees the implementation of awareness raising measures in relation to such rights targeted at the general population, particularly children and youth. The Federal Ministry for Health, Family, and Youth therefore initiated a variety of projects including drawing contests at schools, child- friendly information materials, projects in cooperation with children and youth magazines etc. The effectiveness of these projects was subsequently evaluated through a public survey on the level of familiarity with the CRC among children in

Austria. The survey shows that 8 out of 10 children at 14 years of age are familiar with the term “rights of the child” and its meaning. The Ministry’s website on children’s rights ([www.kinderrechte.gv.at](http://www.kinderrechte.gv.at)) is accessed about 3.500 times per month.

A National Action Plan on Human Rights Education is currently in preparation. As a first step the Federal Ministry for Education, Culture and Art has tasked the independent human rights education institute „Zentrum Polis“ to draft an evaluation study, including analysis of the status quo and school surveys to identify students’ human rights knowledge and educational needs. Zentrum Polis is working closely with other institutions dedicated to human rights education. Cooperation between the Austrian Government and Zentrum Polis, which is also administratively attached to one of Austria’s leading human rights NGOs, Ludwig Boltzmann Institute for Human Rights, in preparation of the Action Plan will therefore ensure broad participation of all stakeholders.

### **National Coordination of human rights issues**

#### **Recommendation 7 (para. 37): Develop a national action plan on human rights through a coordinated and inclusive process for the continuous improvement of human rights protection in Austria**

During the past years, Austria has developed a number of National Action Plans on particular human rights issues (rights of the child; Security Council Resolution 1325 on Women, Peace and Security; Trafficking in Human Beings) and is currently drafting NAPs on racism and xenophobia, as well as human rights education. Taken together, these NAPs respond to a wide range of human rights issues. Moreover, concerted efforts are being made to comprehensively review all recommendations concerning Austria of the different human rights monitoring bodies of the Council of Europe and the UN on a regular basis. All these measures ensure a regular, comprehensive review of the human rights protection system in Austria.

However, Austria is constantly striving to further improve domestic human rights protection mechanisms. Austria has therefore been closely observing other European countries’ experiences and strategies regarding human rights protection mechanisms, including their approaches to National Action Plans.

### **Freedom of expression**

#### **Recommendation 8 (para. 43): Repeal penal provisions on defamation and review civil provisions to ensure that they are appropriate for meting out proportionate sanctions.**

European Court of Human Rights judgements against Austria for violation of Art. 10 ECHR have resulted from a rather conservative interpretation of Austrian law and Art. 10 ECHR by Austrian courts in the past, to the effect that the interest in privacy has been deemed to outweigh the interest in freedom of expression. Most recent judgments of the Austrian Supreme Court, however, indicate a revision of previous jurisprudence and the development of case law which is in line with the decisions of the European Court of Human Rights.

Austria welcomes the Commissioner's recommendation to the effect that a self-regulatory framework for the media should be re-established comparable to the Austrian Press Council which ceased activities in 2001.

Editors in Chief of the Austrian print media took the initiative in July 2007 and established the "Leseranwaltschaft" ([www.leseranwaltschaft.at](http://www.leseranwaltschaft.at)) to serve as a self-regulatory watchdog over the print media. It monitors adherence to the "Ethics Code of the Austrian Print Media" and mediates between complainants and the concerned print media.

Austria will make the Commissioner's recommendation known to representatives of all branches of the Austrian media to encourage the re-establishment of a universal self-regulatory media watchdog.

### **Measures against racism and xenophobia**

#### **Recommendations 9 and 10 (paras. 44-48) on policy responses to racist and xenophobic attitudes, and a national action plan against racism and xenophobia.**

Austria is currently preparing a National Action Plan on racism and xenophobia in cooperation with all stakeholders both at government and civil society level. During preliminary consultations held in June 2007, the inclusion of measures for improved data collection on racism and xenophobia in the NAP, as well as the enhancement of victim support services and public awareness raising measures have been prominently discussed. The Council of Ministers will adopt a formal decision in support of the elaboration of a NAP on racism and xenophobia before the end of November 2007.

Public awareness raising measures on racism and xenophobia include the project "Recht hat jedeR?!" in Austrian schools conducted by the Ministry of Education in cooperation with Zentrum Polis and WUK KinderKultur. Since 2001, each year a minimum of 30 workshops are offered each semester which promote tolerance, non-discrimination and respect for diversity. The workshops teach peaceful conflict resolution, mutual respect and empowerment.

Austrian crime statistics include data on hate speech and incitement pursuant to Art. 283 of the Criminal Code ("Verhetzung") and pursuant to the Austrian Act on the Prohibition of Nazi Activities ("Verbotsgesetz 1947"). It does not include data on the potentially racist motivations of other crimes such as assault, damage to property etc. Based upon the Governmental Work Programme of January 2007 and a request by the national parliament, the Ministry of Justice has in June 2007 established a working group on the improvement of data collection for crime statistics. The objective of the working group is, among others, to develop a data collection system that is more victim-oriented and thus include data on criminal phenomena not directly linked to specific offences in the Criminal Code, such as domestic violence, abuse, human trafficking, but also racist and xenophobic motivations for crimes. The working group intends to present first results in the summer of 2008.

**Recommendation 11 (para. 46): Discourage actively tendencies of stigmatisation of migrants, asylum seekers and refugees in the context of political discourse.**

The Austrian Government is strongly committed to promoting a societal atmosphere of tolerance and respect irrespective of ethnic origin or religious belief. Statements are regularly made by the Federal President and members of the Federal Government to that effect. To counteract stereotyping of Muslim citizens, Federal Chancellor Alfred Gusenbauer for example convened a conference of representatives of all religious communities (Catholic, Protestant, Syriac/Armenian/Coptic/Greek/Russian Orthodox, Jewish, Muslim, Mormon, Buddhist) subsequent to the arrest of three Austrian terrorism suspects of Muslim belief in September 2007. The intention was to send a strong message of peaceful and respectful cooperation among different ethnic and religious communities in Austria. In addition, Members of the Government traditionally participate in important festivities of the different religious communities, most importantly the Muslim and Jewish communities. Foreign Minister Ursula Plassnik has given added impetus to the long-standing Austrian policy of promoting dialogue between cultures and religions. In 2005, the Austrian Federal Ministry for European and International Affairs co-organized the international conference "Islam in a Pluralistic World" with the participation of a wide range of political and religious leaders. Strengthening the Dialogue with Muslim women and youth is a particular priority of Foreign Minister Plassnik. In 2007, the Austrian Diplomatic Academy organized a conference "Islam in Europe" and the Salzburg Seminar, with support from the Austrian Federal Ministry for European and International Affairs held a seminar on the theme: "Muslim Youth and Women in the West". The two first ever conferences of European Imams both took place in Austria: In Graz in 2003 and in Vienna in 2006 and were both attended also by a range of Austrian political leaders.

An integration platform has been launched in October 2007 where representatives from the different ethnic and religious communities develop strategies for better integration and serve as an advisory body on integration issues to the government. Finally, both at federal and provincial level Integration Funds, in addition to assisting new immigrants with starting their lives in Austria, provide information and raise awareness among the general population on refugee and migration issues, as well as foster dialogue and tolerance between native Austrians and immigrants.

**Recommendation 12 (para. 48): Strengthen and support services for the victims of racism and xenophobia by, inter alia, supporting current civil society initiatives in this field.**

The Federal Government and the City of Vienna financially support organisations such as the NGOs ZARA ([www.zara.or.at](http://www.zara.or.at)) and Helping Hands which collect data on racist and xenophobic incidents and provide support and legal advice to victims. The City of Vienna is currently preparing accession to the European Coalition of Cities Against Racism, the City of Graz has joined the Coalition already in 2006. By the end of 2007, Vienna will finalise a municipal action plan for the implementation of the ten point action plan the Coalition prescribes. The Coalition's action plan foresees among others active cooperation with civil society, monitoring of racist incidents, assessment/improvement of municipal policies including for ethnic diversity in the municipal service, victim support, awareness raising.

## **Prevention of discrimination – Legal Protection Framework**

### **paras. 49-55**

In addition to the Equal Treatment Act 2004 which is predominantly targeted at relationships between private persons, Austria's efforts to transpose the EU antidiscrimination directives include the enactment in 2004 of the Federal Equal Treatment Act applicable to employment relationships in the federal public service.

The Federal Equal Treatment Act stipulates the creation of a Federal Equal Treatment Commission to examine individual complaints relating to alleged discrimination in federal public service employment relationships. The Commission is administratively attached to the Ministry for Women, Media and Civil Service at the Federal Chancellery. It consists of two senates which decide on discrimination based on gender (Senate 1) and ethnicity/religious belief/age/sexual orientation (Senate 2) respectively. The Commission issues opinions ex officio or upon a complaint filed.

### **Recommendation 13 (paras. 51, 54): Guarantee the independence of the Specialized Equality Body through a constitutional provision and improve its material and human resources especially at the provincial level.**

The Specialised Equal Treatment Body has in practise always worked fully independently. Pursuant to Art. 3(5) of the above mentioned Act, it may, for example, conduct independent inquiries and issue independent reports ex officio.

The Government Work Programme of January 2007 stipulates that the independence of the Specialised Equal Treatment Body shall be further protected by law and its financial and human resource situation be improved.

### **Recommendation 14 (paras. 50, 53, 54): Streamline the legislative framework on non-discrimination and provide for effective, proportionate and dissuasive sanctions.**

The Equal Treatment Act aims at providing comprehensive and easily accessible protection against discrimination to the extent possible given the complex distribution of power between the federal, provincial and municipal levels in Austria.

As a result, the Act contains only few exceptions as far as federal power relating to protection against discrimination is concerned. Discrimination on the ground of disability is regulated in a separate law based on consensus reached by all parties represented in the national parliament. Discrimination in the public service is regulated in a separate law because public service labour law represents a wholly different body of law as compared to private sector labour law.

Pursuant to the EU Antidiscrimination directives, Member States shall provide for legislative measures to punish discrimination effectively, proportionately, and dissuasively. The directives do not oblige Member States to ensure compensation for victims. Austrian law nevertheless provides for restitution as well as compensation for any material and immaterial damage the victim has suffered. It foresees minimum compensation payments, while upper limits for compensation payments do not exist, with one exception which follows the case law of the European Court of Justice: if an employer proves that the victim has only suffered the damage of his/her application not

having been considered on a prohibited ground of discrimination, an upper limit of compensation due, applies. To improve protection against discrimination in Austria even further, the government has introduced a bill amending the Equal Treatment Act and the Act Establishing the Equal Treatment Commission and the Specialised Equality Body, at the end of October 2007, which is currently subject to public consultation and will subsequently be considered by the National Parliament. The bill foresees, among others, a considerable augmentation of minimum compensation payments<sup>42</sup> and expressly prohibits failure to prolong a time-limited employment relationship solely on discriminatory grounds. Moreover, all conclusions reached by the Equal Treatment Commission shall be published on the website of the Federal Ministry for Women, Media, and Civil Service. The identity of the persons cited therein shall however be rendered anonymous to protect their privacy rights.

The Government Work Programme of January 2007 foresees that the current legislative framework on non-discrimination shall be reviewed and protection against discrimination on grounds of sex, race, social status or ethnicity, disability, age, sexual orientation enhanced in the framework of constitutional reform.

**Recommendation 15 (para. 54): Screen relevant legal and administrative provisions at federal and provincial levels to verify that they are in conformity with non-discrimination legislation.**

Austrian legal and administrative provisions on non-discrimination are subject to review by Austrian Courts, including the Constitutional Court and the High Administrative Court, as well as the European Court of Human Rights. New laws are screened for conformity with equal treatment legislation by the legal department at the Federal Chancellery prior to adoption, and are also subject to a public consultation process where discriminatory provisions may be highlighted by interested parties.

**Gender discrimination and violence against women**

**Recommendation 16 (para. 56): Develop further structural and targeted policy measures to address the persistent inequality of women in the labour market.**

Austria has developed a variety of policies and measures to address the inequality between men and women in the labour market.

The federal employment office (Arbeitsmarktservice – AMS) has a legal obligation to provide its services in such a way as to counteract discrimination of women and gender-segregation in the labour market.

The Ministry of Labour Work Programme of 2006 foresees the implementation of specific measures to promote women's employment. To this end, at least 50% of employment policy allocations shall benefit women. Thus, in 2006, 51% of gender-identifiable allocations benefited active employment measures for women. 53% of funds spent for qualification, continuous training, and professional orientation programmes benefited women. These covered course fees/related expenses and subsistence.

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<sup>42</sup> Minimum compensation for a person not hired for prohibited grounds of discrimination: two monthly salaries (previously one monthly salary). Minimum compensation payment for harassment on prohibited grounds of discrimination (except for sexual harassment which is regulated separately): € 720,-- (previously € 400,--).

Particular efforts are made to counteract gender-segregation with regard to particular professions. Thus, qualification and professional orientation programmes relating to non-traditional professions are specifically promoted among women. In 2006 the AMS started the programme "Women in Crafts and Technical Vocations" (FIT) which offers professional orientation and training for women. In 2006 the budget was € 9,7 Mio. and benefited 4.200 participants.

The percentage of women benefiting from the Austrian system of wage subsidies to foster reintegration in the labour market constituted 50% of spent subsidies in 2006.

The Ministry of Labour Work Programme of 2006 foresees specific measures to promote reconciliation of career and family life. As a result, the AMS has made particular efforts to support reintegration of women into the labour market. Women wishing to re-enter the labour market are assisted by specially trained staff at the AMS, are offered targeted information sessions and materials. The Austrian system of wage subsidies for private employers is increasingly used as a tool to reintegrate women into the labour market. Job search assistance takes family obligations into account, also regarding highly-qualified women.

The child care subsidy system benefiting parents of children under 36 months of age, subject to a certain limitation in earnings of the recipient, has been modified to the effect that parents may choose between 18, 24, or 36 months-models for the receipt of child care benefits. This modification responds to many recipients' wish to quickly restart full-time work without losing the benefits. In addition, exploitation of the full amount of available child care benefits requires a certain period of child care leave to be used by the other parent and thus encourages particularly fathers to become more involved in child care.

Austria also subsidises child care institutions to promote the availability of adequate child care for all families. To this end, from 2008, the federal and provincial governments will each provide an annual amount of € 20 Mio. in additional funds for the creation of new child care institutions, especially for children under 3 years of age. Additional funding will moreover be provided for the training of so-called caregivers for very young children.

As for the public sector, the Federal Equal Treatment Act foresees affirmative action to promote women in public service positions at all levels. Thus, wherever women are underrepresented, i.e. less than 40% of the workforce is composed of women, female candidates will be preferred over male candidates given equal professional qualification. Moreover, Ministries shall develop 6-year-strategies to be reviewed every other year, for the systematic recruitment and promotion at regular intervals of women, with a view to gradually increasing the employment of women in the public service, particularly in senior positions.

**Recommendation 17 (paras. 58-60): Enhance support services for the victims of domestic violence to ensure that all victims of violence, including migrant women, women and girls with disabilities and children who have experienced or witnessed violence in their homes, can access them effectively.**

Austria is committed to constantly improving protection for victims of violence. As a result of increasing by 60% the financial support for Intervention Centres for victims of violence (including trafficking victims) in 2007, new regional Intervention Centres could be created

in the provinces of Tyrol and Lower Austria. A further Intervention Centre is foreseen to be created in Salzburg in 2008. In addition, the Austrian government has increased funding for psychosocial counselling services and legal aid for female victims of violence in 2007.

Moreover, two interministerial working groups have been set up to develop additional measures to prevent violence and protect victims, including legal reform. The purpose and goals of the Council of Europe Campaign „Stop domestic violence against women“ are duly taken into account by the working groups.

Pursuant to the Austrian Code of Criminal Procedure and the Crime Victims Act, law enforcement officers are under an obligation to inform victims of violence of their rights (legal recourse, compensation claims, financial support) as well as available legal/psycho-social support services and institutions. The Ministry of Interior has prepared a comprehensive information brochure to this effect, including contact details of services/institutions in the respective Austrian province.

In relation to sexual violence against minors, law enforcement officers routinely involve specialised legal/psycho-social support services and institutions. In Vienna, girls facing the threat of violence or forced marriage are immediately offered housing and support at the Crisis Centre Nussdorf, and guardianship is transferred to the municipality.

Victim support institutions in Austria are open to all women, irrespective of their nationality. Austria also supports victim support institutions targeted specifically at the needs of migrant women, such as “Miteinander lernen”, “Peregrina”, or “Orient Express”. These institutions offer information and advice, and psycho-social support to victims of violence and abuse in a variety of languages with due regard to clients’ social/cultural/religious background.

#### **para. 59**

Austria offers a wide range of programmes for treating perpetrators of violence. The Strafvollzugsgesetz ensures that offenders, including perpetrators of violence, receive psycho-social, psychotherapeutic, and medical care as well as religious counselling as required while serving their sentences (Art. 56-66, 75). Where offenders are released on probation, continuous psycho-social, psychotherapeutic or social work assistance may be imposed by court order (Art. 179a). The Ministry of Justice and Ministry for Health, Family and Youth support a variety of institutions providing assistance, treatment and support to perpetrators of violence (e.g. “Männerberatung Wien”, “LIMES” targeted at juvenile perpetrators, “Neustart” providing assistance to offenders upon release).

Upon an initiative by the Ministry of Health, Family and Youth a “Platform against domestic violence” was established in 1993 in which 37 organisations working on violence against children, women, the elderly, and among youth, as well as organisations working with perpetrators of violence, are represented. The objective of the platform is to develop strategies to combat and prevent violence, better identify and resolve incidents of violence, and improve intervention mechanisms. Assistance and treatment for perpetrators of violence forms an integral part of the platform’s activities.

## **Inclusion of people with disabilities**

### **Recommendation 18 (para. 62): Apply positive measures to render the built environment and work places accessible to people with disabilities.**

In addition to making all public buildings, including public schools, accessible to persons with disabilities by 31 December 2015, the Federal Act for Equal Treatment of Persons with Disabilities requires, pursuant to Art. 8(3), accessibility for persons with disabilities to be taken into account in the distribution of public subsidies.

The Federal Ministry for Education, Culture and Arts has developed an implementation strategy regarding building measures in cooperation with the provincial school councillors. With reference to accessibility of the Oeversee-gymnasium in Graz, an assessment of building requirements is foreseen to take place in early 2009, full accessibility shall be realised by 2012.

## **Treatment of asylum seekers and migrants**

### **Recommendation 19 (para. 67-70): Grant residence permits on humanitarian grounds or a general right of stay, based on clearly defined criteria which avoid unnecessary discrimination, to asylum seekers who have had to wait for their final asylum decisions for several years.**

At present, the Austrian government does not intend to grant a general amnesty to long-term asylum seekers. However, Austrian authorities are committed to carefully considering and deciding each case on its merits. In doing so, Article 8 of the ECHR on the right to privacy and family life, and the European Court of Human Rights case law are duly taken into account. The Ministry of Interior has recently issued a checklist of criteria to assist public authorities in assessing the situation of each long-term asylum seeker, thereby rendering decisions more predictable and objective. This checklist requires public authorities to take the period of residence and degree of integration in Austria, the family situation, age, difficulties to be expected in the home country, into account. Moreover, the federal and provincial governments have agreed in October 2007 that governors of provinces in which long-term asylum seekers are resident, shall be consulted by the Minister of Interior as to the degree of integration of the persons concerned, when deciding on the granting of a residence permit on humanitarian grounds. The Austrian government announced on 16 October that personnel at the Independent Federal Asylum Review Board will be further increased in order to completely eliminate the backlog of cases by the year 2010.

### **Recommendation 20 (paras. 71, 73-75, 78) and 21 (para. 72): Restrict the use of pre-deportation detention to asylum seekers and rejected asylum seekers to cases when it is thoroughly justified and when deportation can take place in the immediate future. Review the practice of detaining asylum seekers on the basis of a reasoned assumption by the police authorities that their application for asylum will be rejected owing to the absence of responsibility of Austria for examining the application.**

Art. 76(2)(4) of the Aliens' Police Act allows for pre-deportation detention of asylum seekers upon the reasoned assumption by police that Austria does not have jurisdiction over their asylum applications (pursuant to EU law, Dublin II regulation No. 343/2003).

The Austrian Constitutional Court in its decision G 14/07 of 14 June 2007 confirmed the constitutionality and hence conformity with the European Convention on Human Rights, of Art. 76 of the Aliens' Police Act.

Pursuant to Art. 80(2) of the Aliens' Police Act, pre-deportation detention shall normally not exceed the period of two months and shall pursuant to Art. 80(1) of the same Act be kept as short as possible in any event. As of 2007, the average period of pre-deportation detention in Vienna amounted to 28 days. Moreover, the number of pre-deportation detentions has been continuously decreasing, with 11.816 cases in 2002 as compared to 3.553 cases in the first half of 2007. During the same period, the number of lenient measures has been increasing with 363 cases in 2004 as compared to 471 cases in the first half of 2007. The Aliens' Police Act pursuant to Art. 77(1) prescribes the use of lenient measures whenever possible, particularly for minors and vulnerable persons; the Alien's Police has been instructed accordingly.

#### **para. 78**

Austria wishes to emphasize that the decision to impose pre-deportation detention or more lenient measures is always taken with a view to using the least intrusive measures possible. Pre-deportation detention is thus imposed on one member of a family but not the others only if deemed absolutely necessary by the authorities. The number of lenient measures has increased, with 363 cases in 2004 as compared to 471 case in the first half of 2007. Any pre-deportation detention decision may be reviewed by Independent Administrative Tribunals.

The number of minors in pre-deportation detention is kept to an absolute minimum. Between January and September 2007, only 120 minors were kept in pre-deportation detention of whom 98 persons were already 16-17 years old.

#### **Recommendation 22 (para. 76): Provide free legal counseling to asylum seekers and rejected asylum seekers held in pre-deportation detention so that they can effectively challenge their detention in courts.**

Pursuant to Art. 66 of the Federal Asylum Act, the Ministry of Interior is under an obligation to employ an appropriate number of "refugee advisers" who shall assist asylum seekers with matters relating to asylum law and the asylum procedure. Pursuant to Art. 66(2) of the same Act, their tasks include in particular the provision of information on Austrian asylum law, assistance with the submission of asylum applications, representation of asylum seekers in asylum proceedings, and translation. The Minister of Interior selects these refugee advisers upon recommendation by UNHCR, provinces and municipalities, Austrian refugee relief organizations and NGOs. Currently, refugee advisers of Caritas, Volkshilfe, SOS Menschenrechte, SOS Kinderdorf and Evangelischer Oberkirchenrat serve approx. 88 weekly hours all around Austria.

#### **Recommendation 23 (paras. 76, 79): Apply an „open station“ approach in pre-deportation detention**

Austria endeavours to introduce „open stations“ in all pre-deportation detention facilities, where these are not available at present, as soon as possible. In so doing, Austria will take the respective recommendations of the Human Rights Advisory Board and the Council of Europe Committee on the Prevention of Torture duly into account. In addition

Austria intends the construction of a new and modern pre-deportation detention facility for 250 persons, which will equally observe recommendations made by the CPT and the Human Rights Advisory Board as to open stations. Construction will begin in 2008 and should be completed in 2009 or 2010.

As for the PAZ Hernalser Gürtel which Commissioner Hammarberg inspected during his visit to Austria, an „open station“ for 50 persons is currently being established on the ground floor of the building. Planning and implementation took place in close consultation with the Human Rights Advisory Board. Access to telephones (prepaid cards), sports facilities, board games, and a library (books and DVDs) will be available.

The Ministry of Interior immediately took up the Commissioner for Human Rights' recommendation expressed during his visit to the PAZ Hernalser Gürtel, to the effect that the data collection system has been reformed and now contains data on the identity and medical condition of all hunger strikers in pre-deportation detention, as well as the number of days the hunger strike is carried out.

**Recommendation 24 (paras. 81-83): Discontinue the quota system for family reunification and review the income requirements for family reunification to ensure that they are not discriminatory towards women.**

The limitation of family reunification to third country nationals' nuclear families (spouse and children) follows Art. 4 of the EU Council Directive 2003/86/EC on the right to family reunification.

Minimum, regular income as a condition for family reunification follows Art. 7 of EU Council Directive 2003/86/EC, so as to ensure subsistence without reliance on social welfare benefits. If an individual's interest in privacy and family life pursuant to Art. 8 ECHR becomes overwhelming as compared to the legal requirement of minimum income, Austrian authorities grant family reunification even if the minimum income requirement is not met.

The quota system for family reunification has been judged as constitutional – and therefore in conformity with the ECHR – by the Austrian Constitutional Court. If an individual's interest in privacy and family life pursuant to Art. 8 ECHR becomes overwhelming, a residence permit on humanitarian grounds may be granted outside the quota.

**Recommendation 25 (para. 82)**

While family members' residence permits are normally dependent on the principal resident for the first five years, Articles 27 and 47 of the Settlement and Residence Act foresee the granting of independent resident permits to victims of domestic violence or divorcees (where the divorce results predominantly from the principal resident's fault). The granting of such residence permits depends on the application by the victim and does not happen ex officio. To enable victims to make use of this right effectively, police are under an obligation to inform victims of violence of the possibility to obtain an independent resident permit upon application (see also Austrian comment to Recommendation 17).

**para. 85:**

See comment under Chapter „Human Rights Education“.

## **Prevention of ill-treatment by the police**

### **Recommendation 26 (para. 89): Condemn publicly at the highest level instances of grave and obvious ill-treatment by the police.**

The Minister of Interior as well as Ministry and police representatives of the highest level have repeatedly condemned ill-treatment at the hands of police, including abuse of visible minorities.

### **Recommendation 27 (para. 89): Develop methods for routinely assessing the extent to which the daily activities, management and supervision of police officers adhere to and promote human rights standards.**

The Human Rights Advisory Board was created precisely for the purpose of assessing and making recommendations on the adherence to and promotion of human rights by law enforcement officers. In addition the Bureau for Internal Affairs (Büro für interne Angelegenheiten) looks into allegations of ill-treatment by the police, followed by submission of its findings to the Public Prosecutor's Office. The Bureau also holds continuous training courses, including on ill-treatment by police.

### **Recommendation 28 (paras. 48, 90): Extend the representativeness of the police force through the recruitment of more women and members of minority communities.**

Austria shares the opinion of the Commissioner for Human Rights that the police force should better reflect the gender and ethnic composition of the general population. Law enforcement officers from minority communities, through their language skills and cultural understanding, will contribute to confidence building between the police and minority communities, and serve as role models for their peers.

The Ministry of Interior endeavours to attract more persons from minority communities for the police service. For example, the Vienna Police Service in cooperation with the City government has started a regional recruiting initiative entitled "Wien braucht dich" ("Vienna needs you") in November 2007, which involves a variety of public information events, targeted at young migrants aged 18 to 30 of the second/third generation who already hold Austrian nationality.

The Ministry of Interior, upon recommendation by the Human Rights Advisory Board, has also started a continuous process of reviewing the police service admission tests to identify and remedy potential gender-biases which would render the tests unduly difficult for female applicants.

### **Recommendation 29 (paras. 91-92): establish an independent mechanism for investigating complaints about police ill-treatment, for example, by extending the mandate of the Human Rights Advisory Board.**

See also Austrian comments to Recommendation 5.

Austria has established a strict procedure on how to deal with allegations of ill-treatment at the hands of police. Thus, all law enforcement officers are under an obligation to immediately report any allegation of police ill-treatment to the public prosecutor for

investigation, along with a detailed statement on the circumstances of the case to be transmitted within 24 hours. In addition, the Bureau for Internal Affairs (Büro für interne Angelegenheiten) at the Ministry of Interior and the Human Rights Advisory Board shall be informed of the allegation in issue without delay.

The Human Rights Advisory Board has been established to identify and make recommendations on structural problems and deficits regarding human rights protection in law enforcement. While the mandate of Board does not, by law, cover the investigation of individual complaints, the Board does investigate individual cases brought to their attention in order to identify potential structural shortcomings regarding human rights protection in law enforcement.

### **Protection of national minorities**

#### **Recommendation 30 (paras. 93-98): Implement the judgments of the Constitutional Court regarding bilingual topographical signs in Carinthian municipalities where the Slovene minority is resident in substantial numbers without further delay.**

In response to the 2001 judgement of the Constitutional Court, deciding that additional bilingual topographical signs shall be erected in the province of Carinthia, Austria has tried to reach a sustainable consensual solution among all stakeholders. To this effect, the previous government convened several negotiation rounds between representatives of the federal and provincial governments, the Slovenian minority in Carinthia, and German-speaking Carinthians with a view to reaching agreement on the issue. The so-called "Karner Paper" of 2005 which had resulted from one of the negotiation rounds, received wide support, however final agreement could not be achieved. Chancellor Gusenbauer has therefore continued efforts and held talks with all stakeholders, particularly representatives of the Slovenian minority, German-speaking Carinthians, and the provincial government, as well as the mayors of the concerned municipalities, throughout the first half of 2007. As a result, an amendment to the Act on National Minorities was proposed to the National Parliament on 4 July 2007 (see 263/A XXIII. GP – Initiativantrag). The proposal foresees a constitutional provision through which an exhaustive list of those regions in Carinthia where bilingual topographical signs shall be erected is annexed to the law. The list contains 163 Carinthian villages in 24 municipalities. In identifying the eligible villages, due regard was given to topographic specificities of Carinthia as well as the goal of reaching agreement among all stakeholders. The proposed amendment is currently under consideration by the responsible Parliamentary Committee on Constitutional Questions.