

Replies by the Government of the Republic of Austria to the List of Issues

Follow-up to the previous concluding observations of the Committee

Questions No. 1 and No. 2:

As the guarantees of the CCPR largely correlate with those of the ECHR, and as the ECHR has constitutional status in Austria and can be applied directly, ongoing monitoring of legislative as well as law-enforcement action has been secured. Article 26 of the CCPR is the only disposition that might have a special status, as compared to the merely accessory character of Article 14 of the ECHR. However, given the dynamic case law of the European Court of Human Rights it can be presumed that no lacunae will arise in this respect.

All courts and authorities in Austria must interpret and apply Austrian laws in conformity with the ECHR and/or international law (Constitutional Court decisions, file number 13.897/1994). Every person may claim this approach in court proceedings and – if in doubt about a law – may launch, at his/her initiative, or at least propose a review of a legislative act by the Constitutional Court.

Constitutional and legal framework within which the Covenant is implemented (art. 2)

Question No. 3:

I. National Equality Body (Institution composed of three contentiously independent Ombudspersons since March 2005)

A. Counsel of the Ombud for the equal treatment of women and men in employment (with the goal of full gender equality)

New counseling cases in 2006:

o Equal Treatment Act Part I	2930
o Multiple discrimination (Part I and Parts II of the Equal Treatment Act)	37
o Labor law	148
o Social security law	25
o Other equal treatment issues	271
Total	3411

New counseling cases in 2006 concerning the Equal Treatment Act according to findings of facts, Part I of the Equal Treatment Act:

Information about the Equal Treatment Act (findings of facts, legal consequences, possibilities to receive support)	1369
---	------

Establishing an employment relationship	204
Fixing the pay	175
Fringe benefits	5
Vocational training and advanced vocational training, retrainig	16
Job advancement, career development	57
Other working conditions	167
Termination of employment	71
Gender-neutral job advertisements / inequalities due to language	256
Gender-related harassment / sexual harassment	406
Voluntary Programms to reach full equality	14
Promoting women	57
Gender mainstreaming	100
Employees/employers organizations	3
Victimization	12
Training outside of an employment relationship	21
Conditions for access to self-employment	34
Total	2967

Example from the counseling activities on the topic of “career development”:

In a company of the media sector, three men were newly appointed for the editor-in-chief desk. There was neither a selection procedure, nor an internal or external job advertisement. The argument delivered by the business management before the Ombud for the Equal Treatment of Women and Men was that there were no women who could be considered for the positions. A woman, who would have had good qualifications for the job argues that for this type of top position, the business management should have given a signal in the direction of the potential candidates. Apparently, this signal was not directed at qualified women. Although the Equal Treatment Commission repeatedly stated that selection procedures lacking transparency may be an indication of a possible gender-based discrimination, the woman does not want to file a complaint. One reason for her attitude is, in particular, that the time limit for applications is almost over and that she thinks that the timing is inappropriate.

B. Counsel of the Ombud for equal treatment irrespective of ethnic origin, religion and belief, age and sexual orientation at work

New counseling cases in 2005/2006:

o new counseling cases in 2005	391
o new counseling cases in 2006	594
Total	985

New counseling cases in 2006 according to grounds for discrimination:

Age	126
Ethnic origin	174
Religion	32
Sexual orientation	45

Belief	11
Information about the Equal Treatment Act	201
Total	589

New counseling cases in 2006 according to findings of facts, Part II of the Equal Treatment Act:

Employees / employers organizations	2
Harassment	40
Occupational guidance, basic and continuing training	10
Conditions for access to self-employment	8
Job advertisements / language	37
Establishing an employment relationship	72
Remuneration	19
Basic and advanced training	1
Career development / especially advancement	3
Working conditions	16
Termination of an employment relationship	48
Information about the Equal Treatment Act	333
Total	589

Example from the counseling activities on the topic of “establishing an employment relationship”:

A 40-year-old woman applies for the job of team leader for organizing and carrying out an exhibition. Her qualifications correlate with the required job profile; she is therefore invited to a workshop dealing with the selection procedure for appointing persons to the management positions. On the day following the workshop, the woman receives a negative reply concerning the job of team leader; as an alternative she is being offered to join the exhibition stand staff. This involves primarily looking after visitors (giving simple information, monitoring queues, attending to order and proper procedures, etc.). Although the woman has actually the best qualifications for the team leader position, she decides nevertheless to accept the offered position as an exhibition stand staff member, as she is greatly interested in contributing to and participating in the exhibition. A few weeks later, she also receives a negative reply for this position. She is given as a reason that the employer defined a clear profile for selecting the staff for this position and set priorities in connection with the requirement profile. As a result, she cannot be taken into account, in spite of her interesting application. The woman in question is greatly disappointed and discovers that staff recruitment for these positions was primarily conducted at universities and schools. She therefore has the impression that the management was looking for younger staff members anyhow and that – being a woman of 40 years of age – she did not have any chance at all from the very beginning. She feels discriminated for reasons of her age and turns to the National Equality Body who takes the case to the Equal Treatment Commission. As a result of the launching of the proceedings, talks concerning a settlement begin between the Ombud for Equal Treatment at Work and the opposing party in the complaint which end with a voluntary payment of damages.

C. Counsel of the Ombud for Equal Treatment irrespective of ethnic origin in other areas

New counseling cases in 2005/2006:

o new counseling cases in 2005	226
o new counseling cases in 2006	375
Total	601

New counseling cases in 2006 according to areas, Part III of the Equal Treatment Act:

Access to and supply of goods and services which are available to the public including housing	82
Education	5
Social protection	6
Social advantages	2
Harassment	11
Information about the Equal Treatment Act	269
Total	375

Example from the counseling activities on the topic of “discriminating housing advertisement”:

An advertisement for an apartment in an online housing exchange comprises the comment “only Austrian nationals with proof of employment wanted”. An NGO draws the attention of the Ombud for equal treatment irrespective of ethnic origin in other areas to this advertisement, who then draws up a letter to the operator of the online housing exchange, drawing his attention to the requirement of equal treatment in connection with housing and requests him to inform her what measures he will take in the future in order to prevent discrimination on the basis of ethnic belonging. The result is ultimately that the web site of the housing exchange will refer to the ban on discrimination based on ethnic belonging in connection with renting or selling housing premises.

II. The Austrian Ombudsman’s Board:

The Austrian Ombudsman’s Board delivers an annual report to both the National Council and the Federal Council on its initiatives and activities (http://www.volksanw.gv.at/i_berichte.htm; summary in English available). This report contains pertinent reactions to all types of complaints and other issues that were raised by the Austrian Ombudsman’s Board, *inter alia* with special reference to fundamental rights and action to combat discrimination.

The following recent reactions by the Federal Ministry of Social Affairs and Consumer Protection are listed by way of example:

The financing of the supervised access program

The Austrian Ombudsman's Board proposes in his 30th report that the funding, made available for supervised access program, should be increased. Supervised access is intended to facilitate the preparation or normalization of contacts between children and their respective parents who may be entitled to access rights, but who do not live with their children in a common household.

The Federal Ministry of Social Affairs and Consumer Protection trebled the financial means, made available in its budget allocations for 2007 and 2008 (Federal Finance Acts 2007 and 2008), for the purpose of promoting and ensuring the financial security of the supervised access program, for the entire fiscal period in question, so that € 600.000 have been set aside for each of the fiscal years 2007 and 2008 for the promotion of the supervised access program, as laid down in § 111 of the Non-Litigious Proceedings Act. The financing of supervised access services during these years has thus been secured throughout Austria.

The Disability Employment Act

Within the purview of the Disability Employment Act, the Austrian Ombudsman's Board proposes to establish more up-to-date assessment criteria for the evaluation of the degree of impairment.

The Federal Ministry of Social Affairs and Consumer Protection intends to implement this proposal and, in fact, in 2005 it did establish a working group for a review of the Guiding Rates Ordinance (*Richtsatzverordnung*). This working group consists of representatives of the Austrian Association of War Victims and Disabled Persons (*Kriegsopfer- und Behindertenverband*) and of the Austrian Working Party for Rehabilitation (*Österreichischen Arbeitsgemeinschaft für Rehabilitation*), as well as of leading physicians and representatives of the administrative body of the Federal Social Office and the Federal Appeals Commission for Welfare and the Disabled. Expert staff members of the specialized sections are likewise represented.

An advisory working group of medical specialists then compiled a first draft of new criteria for assessing degrees of impairment. Their actual impact is currently the subject of a detailed evaluation.

III. Concerning the plans to establish a broad-based National Human Rights Institution Austria refers to its government program, in which the Federal Government has set itself the goal of reviewing the Austrian Fundamental Rights Catalogue. At the same time, a preventive agency, as defined by the Optional Protocol, is to be set up. The already existing Advisory Board for Human Rights is to be integrated into that agency, while maintaining its collegiate structure and autonomous working method.

Non-discrimination and equal rights of men and women (arts. 2 (1), 3, and 26)

Question No. 4:

According to the assessment of Austria's law-enforcement agencies there is a high level of awareness in their midst with regard to combating discrimination, racism and similar social phenomena.

As early as 2001 the Security Academy of the Federal Ministry of the Interior developed the "Structural Concept Concerning Human Rights Education", which facilitates a comprehensive and holistic approach to these subject areas. One central issue in the efforts of the Security Academy of the Federal Ministry of the Interior is, in particular, the seminar program of the Anti-Defamation League (ADL; a civil rights organization based in the USA) called "A World of Difference". It deals with a method for sensitizing persons to the topics falling under the concept of "discrimination". Since 2001, this training has been offered within the framework of continuous-training activities undertaken by the Federal Ministry of the Interior, together with the ADL. The seminar participants are officials of all organizational units. They are assigned to attend the seminars on the basis of a distribution key. This ensures that, to the extent possible, all officials can participate in the program. Since 2004 it has also been mandatory to offer the seminar as part of the basic training.

External experts, among others, are actively integrated into the seminars dealing with "A World of Difference" in order to facilitate, to the extent possible, a multi-layered approach to this subject matter. The training is intended to help participants to perceive their own cultural character and socialization, as well as to make it possible for them to experience contacts with their own and with foreign identities. On this basis, personal competences in dealing with different persons and with diverse forms of discrimination and racism are expanded. Another objective is to generate, as well as to reinforce understanding and tolerance within communities of cultural and social diversity. With this training, participants are guided to review their knowledge about different lifestyles, attitudes and cultures and to experience them anew in an authentic form. Facilitating an approach to this subject matter, which is of major significance in law enforcement, constitutes a considerable contribution towards sensitizing Austrian law-enforcement officials when performing official acts in such environments.

In connection with the basic and continuous training of law-enforcement officials, several other events and measures are being offered, which are intended to create more awareness among law-enforcement agents with a view to respecting human rights.

Already in the course of the basic training, which all officials must undergo, this topic is treated from various angles, while teaching them the purely legal aspects of human and fundamental rights as well as freedoms:

- applied psychology
- professional ethics
- rhetoric, communication and conflict management
- sociology

Moreover, these topics are also given ample room in other relevant areas such as, for example, in teaching law-enforcement officials to act and enforce security-police measures.

In addition, in the course of their continuous training, officials are offered seminars on the following subjects:

- police and African nationals
- police action in a multi-cultural society
- foreigners in this country
- inter-cultural guides

As a result, a large part of the officials at the Federal Ministry of the Interior is reached with the different training activities.

The Security Academy is the central monitoring institution for basic and continuous training and thus responsible for identifying temporary focal points, as well as for coordinating them with the overall strategic goals, and for integrating them into the line organization.

In recent years, the following topics were given priority:

The following topics were dealt with in 2002 and 2003:

- human rights, ethics and police work
- fitness and health promotion
- protecting the State, terrorism, extremism

The topics in 2005 and 2006:

- human rights, ethics and police activities
- corporate culture, personality and team development
- drugs – prevention and repression

At present, the following subjects are temporary priorities:

- human rights and professional ethics – elements of police work
- processes of change – challenges to cooperating, technical competence and corporate culture
- prevention (priority on offences involving property and violence) – tasks and responsibilities for the police as a whole

One should mention, in particular, the continuous training of staff members in the police detention centers. As part of this further, in-depth training accompanying occupational routines, the curriculum includes modules on dealing with aggression, on psychological factors in enforcing detention, dealing with problematic inmates, suicide prevention, and many others, which are taught by a newly recruited extramural psychologist.

In this context, the decree by the Directorate General for Public Security relating to “Language used by Law-Enforcement Officials”, which published the relevant legal provisions and at the same time referred to the function, importance and power of language, should also be pointed out. The goal is to avoid linguistic discrimination.

There are legal instruments in Austria that can be used to combat xenophobic and racist actions performed by officials. One should mention, in particular, the Austrian Criminal Law Code, the Equal Treatment Act and pertinent administrative texts (Article IX of the Introductory Act Concerning Administrative Proceedings Acts). In this context, officials are particularly sensitized and trained during their basic and continuous training. As a result, Austrian security agents fully utilize all preventive and repressive means that are available in the course of their statutory tasks, in order to counteract actions against minorities or foreigners that are racially motivated.

It can be said by way of summary that, based on the applicable laws, the organizational precautions and the training content, clear messages are being communicated to the effect that racially motivated and/or verbal discrimination, as well as the abuse of persons are not acceptable, will be reported to the police by law-enforcement officials and will be punished accordingly.

Question No. 5:

Equal representation of women in the Federal Parliament and in regional legislative bodies:

Please refer to the table “Men and Women as Political Representatives in the Federal Government, the National Council, the Regional Governments and the Regional Legislative Bodies” (as of March 2007):



Attachement
Question 5).pdf (.

The representation of women in the public service, including the judiciary:

Please find below data compiled in Austria on the number and proportion of women as civil servants in the two highest-ranking positions of the twelve ministries in Austria (below the rank of Federal Minister).

Civil servants at the highest level (data from June 2007):

- Total: 69 (heads of directorates general in the federal ministries)
- Women: 9
- Men: 60

Civil servants at the second-highest level (data from June 2007):

- Total: 605 (heads of departments in the federal ministries)
- Women: 167
- Men: 438

Statutory quotas or goals to achieve an equal representation of women in the public service:

The Federal Equal Treatment Act (Federal Law Gazette No. 100/1993 in its currently applicable version) aims at increasing the representation of women in all public-service positions in which they are under-represented. Women are considered as “under-represented” if the number of women employed in an organizational unit is below 40%.

The law regulates two main issues:

- Affirmative action (whenever the female and male candidate for a specific position have equal professional qualities, the female candidate must be appointed).
- It also requires the federal ministries to draw up plans for the promotion of women at regular intervals. Every two years, a forecast must be made for the following six years, with binding recommendations concerning the step-by-step increase of the quota of women in all public-service positions up to the target of 40%.

The current program for the promotion of women in the judiciary system for the period up to 1 January 2010 contains binding recommendations for the quota of women in the judiciary.

If the percentage of women employed in a unit has exceeded the figure of 40%, but is still below 50%, then every announcement of a new position in a unit has to indicate that applications from women are especially welcome.

The latest data available shows that the overall percentage of women within the judiciary was 48.4%, as of 1 January 2007. The quota of female judges was 46.76%, as of the same date, that of female prosecutors was 37.38%.

Question No. 6:

Information on complaints about gender discrimination, including sexual harassment (1997-2007):

l) Complaints concerning public service:

The Federal Equal Treatment Act (Federal Law Gazette No. 100/1993 in its currently applicable version) provides:

No person shall be subject to direct or indirect discrimination at the workplace on the ground of his/her gender, especially on account of his/her marital or family status, in particular not in connection with

1. entering into an employment relationship,
2. fixing the remuneration,
3. granting fringe benefits that do not constitute remuneration,
4. his/her access to vocational training and re-training,
5. his/her professional career, in particular job advancement,

6. working conditions,
7. the termination of an employment relationship.

One speaks of direct discrimination if a person is treated less favorably than another person is, has been or would be treated in a comparable situation, on the grounds of his/her gender. One speaks of indirect discrimination if an apparently neutral provision, requirement or practice puts persons of one gender at a particular disadvantage, as compared with persons of the other sex, unless such provision, requirement or practice is justified in objective terms by a legitimate goal and unless the means for achieving that goal are appropriate and necessary. Instructions to discriminate against a person also constitute discrimination.

It is also a case of gender discrimination if a person is sexually harassed in connection with his/her employment relationship. One speaks of a case of sexual harassment if a person is exposed to unwanted conduct relating to the sexual sphere which violates the dignity of that person or is undesirable, inappropriate or offensive and creates an intimidating, hostile or humiliating working environment. By the same token, a person's rejection of, or submission to, such conduct by an employer, a superior or a colleague shall not be expressly or tacitly used as a basis for a decision affecting this person's access to basic and further vocational training, employment, continuation of an employment relationship, advancement or remuneration, or as a basis for any other decision relating to his/her work. An instruction to engage in gender discrimination against a person shall also be considered to constitute a type of discrimination.

Complaints about gender discrimination, including sexual harassment at the Federal Equal Treatment Commission (1997–2007): 181 cases.

II) Complaints concerning the private sector:

A global consideration of the period 1997 to 2007 (relating to the "old" Equal Treatment Commission" up to 30 June 2004 and "Senate I" of the Equal Treatment Commission as instituted on 1 July 2004) shows a continuous rise of the petitions filed with the Equal Treatment Commission/Senate I:

1997 – 15 petitions
1998 – 23 petitions
1999 – 16 petitions
2000 – 21 petitions
2001 – 22 petitions
2002 – 29 petitions
2003 – 28 petitions
2004 – 28 petitions
2005 – 32 petitions
2006 – 31 petitions
2007 – 31 petitions (up to 1 September 2007)

Complaints about gender discrimination, including sexual harassment, processed by the Equal Treatment Commission (1997–2007): 276 cases

A global consideration of the above period also shows that in most of these years about one half of the petitions filed every year related either exclusively or also to the facts constituting “sexual harassment”. Moreover, the reasons given for discrimination most frequently referred to “professional advancement” or “termination of the employment relationship”. It should also be noted that petitions filed with the Equal Treatment Commission frequently call for an examination of several reasons for discrimination.

It is stated, as a general comment, that with regard to the “gender issue” the majority of petitions has always been filed by the competent Chambers of Labor, by the Equal Treatment Ombudsman and – less frequently – by the Austrian Trade Union Congress. It must be noted that the interest groups represented in the (“old” and “new”) Equal Treatment Commission, i.e. the Federal Chamber of Labor, the Austrian Federal Economic Chamber, the Austrian Trade Union Congress, the Federation of Austrian Industry, had and have the right to take the initiative in filing petitions.

Since the Equal Treatment Act and the Equal Treatment Commission/Equal Treatment Ombudsman Act went into force on 1 July 2004 – § 12 (2) of the latter explicitly stipulates the possibility of being represented by a person of confidence in proceedings before the Equal Treatment Commission – it has been observed that petitioners also ask to be represented in such proceedings by other NGOs – e.g. “ZARA – Zivilcourage und Antirassismuarbeit” (ZARA – Personal Courage and Working against Racism). At present, other NGOs than the interest groups represented in the respective senate of the Equal Treatment Commission do not have the right to take the initiative in filing petitions independently.

There is no obligation for the courts to inform the Equal Treatment Commission about cases in which compensation was awarded by the courts on the basis of the Commission’s findings. Nevertheless, the Federal Ministry of Justice has asked Bundesrechenzentrum GmbH (Federal Computer Data Center), which is responsible for analyzing the statistical data concerning judicial proceedings, if data are available that document the number of cases in which the courts have awarded compensation on the grounds of discrimination or sexual harassment. The Bundesrechenzentrum GmbH is looking into the possibility of analyzing/evaluating these data.

Right to life, prohibition of torture and cruel, inhuman or degrading treatment and treatment of prisoners (arts. 6, 7 and 10)

Question No. 7:

The average number of inmates in Austrian penitentiaries (pre-trial detainees as well as convicted persons) amounts to nearly 9,000. The Federal Ministry of Justice does not have any detailed statistics concerning reported incidents of torture and ill-treatment of inmates.

In the year 2006 there were approximately three such cases of violence between inmates which were prosecuted and taken to court.

The police detention centers do not compile any such statistics either. However, in this connection a current list can be provided which the Office for Internal Matters has

compiled. (Please note that the list covers the period 2006-2007. Out of the 30 cases so far resulted in a conviction, 10 cases are still under investigation and 19 have been closed due to different reasons without further proceedings.)



Attachment
(Question 7).xls

Question No. 8:

Concerning the initial and continuous training of judges and prosecutors, one should mention that only the initial training is mandatory (a four-year training period), whereas continuous training is voluntary.

In the course of the initial training period, every future judge and prosecutor participates in special seminars concerning the treatment of victims in court, as well as in training about anti-racism and anti-discrimination. Starting in January 2008, there will be an additional three-day course on human rights issues for all trainee judges and prosecutors.

Concerning continuous training, there is a wide range of seminars on the treatment of victims in courts, the consequences of judicial decisions on asylum-seekers and anti-discrimination, which also have a high level of attendance from members of the courts and prosecutors. In 2007, Judges' Week, which is the biggest and most important conference for the judiciary and lasts five days, was dedicated solely to human rights issues.

The bailiff system (*Gerichtsvollzieher*) was completely reorganized by an amendment of the Bailiffs Act in 2002, which entered into force on 1 January 2003. Every Higher Regional Court now has a special unit (*FEX-Planungs- und Leitungseinheit* = unit to plan and perform the forced realization of personal property), which is headed by a judge of the Higher Regional Court. Officials with special training, who are responsible for specific areas, are in charge of the actual operations. This clear structure guarantees that every complaint, especially those concerning allegations of torture or ill-treatment, is investigated swiftly and efficiently. Bailiff conduct is monitored by supervisors accompanying these officials on their tours, as well as by appraisal interviews, in order to ensure proper contacts with the parties.

A central aspect already during the basic training is proper contacts with the parties. The subject of "contacts with parties, conflict management and handling difficult situations" is one of the most comprehensive ones. In addition, there are special courses, as part of the continuous training. For example, every Higher Regional Court organizes training units which deal with the very sensitive topic of taking children away from a parent who does not have custodial rights and duties, as a result of a court decision on this issue. At the bailiffs' conference in 2006, which was attended by more than 100 bailiffs, a member of the Center for Crisis Intervention in Innsbruck gave a presentation about "crisis intervention by bailiffs". With this report bailiffs were confronted with the topic of crisis intervention from the perspective of an expert who deals with such situations on a daily basis.

Finally, it should be pointed out that there have been no complaints about bailiffs in connection with torture in recent times. A single case of allegations about ill-treatment was investigated expeditiously by the responsible unit planning and performing the forced realization of personal property and – as it included penal implications – by the public prosecutor’s office. Slander cases were only taken to court if an evidently wrong accusation concerning ill-treatment by a bailiff was made for the sole purpose of harming the accused officer. The efforts of the responsible authorities aim primarily at establishing the relevant facts and circumstances which give rise to a complaint, as well as at taking the necessary measures and at de-escalating conflict situations.

Whenever police officers use force, the rights of the persons concerned under constitutional law must be taken into account, especially the right guaranteed by Article 3 of the ECHR not to be subjected to torture or inhuman or degrading treatment.

In keeping with the approach pursued by the Federal Ministry of the Interior, these special topics are not only dealt with in the course of specific legal teaching modules but also more comprehensively in connection with personality and human rights training. According to the “Structural Plan for Human Rights Education” the training measures for law-enforcement officers aim at developing their knowledge, skills and attitudes. It is essential to emphasize in this connection the role of the police as an organization protecting human rights, and thus to develop a deep-reaching understanding of human rights aspects in the broadest sense. This approach is documented, amongst others, by the publication of a manual “Human Rights and the Police, 2005”, which the Security Academy prepared in cooperation with experts of the Human Rights Advisory Board.

In this connection, one should particularly mention the new law reforming criminal proceedings, which will enter into force on 1 January 2008. This new codification of the preliminary proceedings preceding criminal proceedings expressly stipulates that statements must not be used as evidence (§ 166 item 1 of the Criminal Proceedings Reform Act) for which there is proof that they were obtained under torture and/or unauthorized influence upon a free decision of the will or use of the will by way of inadmissible interrogation methods. With the entry into force of this law, the public prosecutor will direct the investigation process, which the criminal police will pursue. In case of an alleged abuse, this will be forwarded immediately and *ex officio* to the public prosecutor in the form of a so-called “incident report” according to § 100 (2) item 1 of the Criminal Proceedings Reform Act.

In addition, there are further guarantees under national procedural law:

Whenever bodies of the public security services have committed a violation against human dignity, as defined in § 5 of the Guidelines Ordinance, a complaint to a superior authority and/or a complaint under the guidelines ordinance may be filed with the Independent Administrative Senate. This is the first-instance body that must take decisions on complaints by persons who maintain that they were violated in their right by the exercise of immediate force through orders or the use of force by administrative authorities. The Constitutional Court is the final instance to decide such matters.

The fact that the currently applicable code of criminal procedure does not contain any express provisions obliging courts to examine a confession that was obtained by way of torture, can be justified by the fact that Austrian criminal procedural law is characterized by the principle of searching for the substantive truth. As all of pieces of evidence, a confession is subject to the judge's discretion in evaluating evidence. If an accused therefore maintains such a violation, or if there are other indications (for example traces of injuries) that a confession was made under torture, the court must take the initiative and record all relevant evidence, otherwise an appeal would lead to a rescission of the court decision on the grounds of using an inadmissible piece of evidence. Moreover, the court must report the case to the public prosecutor who will launch all necessary investigations because an allegation of torture or ill-treatment gives rise to an offence that must be prosecuted *ex officio* (especially § 312 of the Criminal Law Code, § 83 and following, in combination with § 313 of the Criminal Law Code).

As a matter of principle, complaints concerning ill-treatment by bodies of the public security services must not be investigated by the service units of the security law enforcement services (except urgent measures that cannot be postponed), but by preliminary court inquiries or preliminary court investigations, upon application by the public prosecutor. The competent public prosecutor must be informed within 24 hours, in order to avoid any semblance of delaying the examination or conducting a biased examination of allegations raised against the public security services.

Criminal law requires that investigations of allegations concerning ill-treatment and incidents of a suspected excessive use of violence by bodies of the security and law enforcement services are conducted swiftly and in a professional manner. In case of criminal offences committed in office, the security-police and criminal-police investigations are the responsibility of the Office for Internal Matters. This Office was set up in the year 2000 as an independent service unit of the Federal Ministry of the Interior, which is positioned outside of the "classical police structures", in order to process cases of serious complaints and criminal-law allegations against members of this government department. Offences committed in office (§ 302 to § 313 of the Criminal Law Code), in particular, are summarized under this heading. If the Office for Internal Matters itself does not follow up on a case, it may order that another service unit accepts this task, namely the Office for Special Investigations for the Federal Police Directorate of Vienna, and on a regional basis the superior police units in the federal provinces. Any report about ill-treatment must also be communicated to the independent Human Rights Advisory Board. It is therefore ensured that allegations are examined immediately and in an unbiased manner.

Question No. 9:

In connection with the criminal proceedings against law-enforcement official Martin ALMER, lodged by the public prosecutor in Vienna in connection with § 83 (1), § 92 (1) (§ 312 (1), § 107 (1)) of the Criminal Law Code, which are based on the charge that, on 25 February 2002, Martin ALMER forced Gezim CURRI at gun point to dig his own grave and injured him by beating him with his official weapon in the course of an official act during his assignment abroad in Kosovo with the UNMIC-CIVPOL, the letters rogatory addressed to the local court at Orahovac, Kosovo, have not been answered as yet. The request aims at clarifying the question whether the decision of the local court at Orahovac, Kosovo, of 7 October 2003 has become final and

enforceable, which convicted Martin Almer *in absentia* of criminal offences, i.e. minor physical injuries, coercion to confess, ill-treatment during service and abuse of official competences, and sentenced him to a prison term of three years.

Question No. 10:

In keeping with § 55 (2) of the Youth Courts Act, juvenile prisoners (i.e. persons between the ages of 14 and 18 years) must be kept separate from adult prisoners, who are not subject to the enforcement of sentences under juvenile law. However, this separation needs not be maintained if the circumstances do not give rise to concerns that the juvenile offender will be affected negatively or be disadvantaged in some other form. In line with these statutory requirements, it is a matter of principle that juvenile delinquents are accommodated separately from adult prisoners at night. During the day, there may be encounters in the corridors or workshops: However, these will always be monitored by the prison staff, in order to avoid risks or infringements. It is not possible to give a precise figure for the exact number of actual encounters. It needs to be mentioned, though, that – last but not least with a view to beginning re-socialization and especially to preparing for the time after the prison term has been served – encounters with older prisoners should not be ruled out, also for pedagogical reasons. In this connection, one should also not overlook that older inmates, in particular, often have a moderating effect upon younger delinquents. In the workshops, too, contacts between inmates of different generations may well be quite fruitful, especially in connection with training them for the work. Of course, such encounters must always be guided by the requirement that they will not put the juveniles at risk. It is not meaningful to completely separate the young offenders from the other inmates – provided that there are no risks involved.

Juveniles have many more daily hours of exercise and other activities (school, work, and leisure-time activities) than adult inmates. Juveniles spend around twelve hours per day outside of their cells, engaging in meaningful activities. For adult inmates, this time is about eight hours. The law requires one hour per day of exercising in fresh air.

Question No. 11:

The Federal Ministry of the Interior has undertaken a number of target-oriented measures, for the purpose of optimizing detention conditions, and in reaction to developments in recent years, in order to comply with obligations resulting from agreements under international law, as well as to continue to improve the accommodation facilities on an ongoing basis.

At present, detainees are kept in 17 police detention centers prior to their removal. In general, cells for (a maximum of) six persons are used for enforcing detention pending removal. Cells for one detainee only are used in cases of removal

- at the detainee's request,
- if the detainees has hurt himself or used violence against others,
- for disciplinary reasons,
- or on account of an instruction by the official physician, based on a contagious disease, for example.

At present, men and women are accommodated separately during detention pending removal. Family contacts may be maintained by extended visiting possibilities. There are so-called mother-child rooms, which may be used by mothers, who had to be sentenced to removal, together with their child (up to the age of 3 years) on a voluntary basis. The women must document their wish in writing. These facilities are furnished in line with children's needs and have separate showers.

§ 53c of the Administrative Punishments Act and/or § 4 item 3 of the Ordinance on the Detention of Persons by the Security Authorities and Bodies of the Public Security Services stipulate that male detainees must be kept separate from female detainees. In addition, § 79 item 3 of Aliens' Police Act also requires that minors are accommodated separately.

In preparation of removals by charter flights, the positive signal of a pilot project at the police detention center at Favoriten is that families may be accommodated on the same floor for short periods, if they so wish.

It has been possible to take further steps, with regard to building measures and material aspects, in order to maintain and to improve standards. One should mention here that construction work in the course of completely overhauling the police detention center at Vienna Roßauer Lände has been completed, and that the buildings of the second police detention center at Eisenstadt have been refurbished, setting up an "open station", as well as that building improvements have been made at the police detention center of Innsbruck.

In connection with a modern enforcement of detention measures, one should mention a project concerning a less rigid detention regime ("open stations" and/or "opening detention rooms", for example) that has been pursued very successfully for several years, as experience gained indicates. In the course of refurbishing works, structural improvements are carried out. In keeping with § 1 (4) of the Protection of Personal Freedoms Act, apprehended or detained persons must be treated and/or detained, respecting their human dignity and using as much care as possible. They must only be subjected to such restrictions that are commensurate with the purpose of the detention or necessary to safeguard security and order at the place of their detention. On the basis of the fact that detention prior to removal is not imprisonment for a criminal offence but only a security measure, "open stations" appear to be an effective enforcement measure.

By relaxing measures when enforcing detention measures, the persons who are kept detained pending their removal on the basis of aliens-law regulations, and who find themselves in a foreign country and – at least in subjective terms – face an uncertain future, will find themselves accommodated under overall conditions that comply with detention standards that are generally recognized today. The essential point is that by keeping the doors to the detention rooms in an "open station" open, detainees have much more leeway than was the case in conventionally operated stations. The equipment and furniture standards have reached a level that generally communicates a feeling of a humanitarian environment to the detainees, which offers many possibilities in the framework of the detention and allows them to spend the time during which they are accommodated at the police detention centers largely in keeping with their personal needs and inclinations (e.g. sports facilities, library, daily

newspapers from their countries of origin, cooking facilities, satellite television, taking along their personal belongings (unless dangerous), communication platforms, etc.).

As was mentioned before, detention prior to removal is currently enforced exclusively (for historical reasons) in police detention centers that are not suited optimally, neither in their building properties, nor in their infrastructure facilities, so as to ensure the detention of foreigners over longer periods of time (up to a maximum of 10 months) on a high level of humanitarian and social quality. The former police penitentiaries, now police detention centers, were not designed originally for longer periods of stay, but only for short-term stays, as ordered by the criminal justice bodies, as well as to enforce administrative penalties.

At present, the Federal Ministry of the Interior is planning the construction of a modern and new center for detainees prior to their removal for up to 250 detained persons, primarily on account of humanitarian reasons, as well as on the basis of international experience in this respect, which will offer comprehensive improvements of the detention environment for foreigners subject to removal. The preparations are under way, and construction work will begin in 2008; the aim is to take the center into operation at the end of 2009 or in early 2010. The decision to build this detention center for detainees waiting for their removal is the result of a long and intensive discussion process among experts. The requirements for such a detention center were defined on the basis of criteria for the service operations, as well as economic parameters, which were reviewed in detail by technical experts, and their practical implementation is considered to be feasible. In addition to economic, business administration and national economic aspects, general social-value expectations, in particular, were also taken into consideration, in order to ensure that the basic enforcement of detention pending removal is in compliance with the common welfare standards.

In this connection, special reference is made to the recommendations/reports of the CPT. The Committee referred the State party to the importance of accommodating detainees of different categories separately and recommended that persons detained on the basis of the aliens' laws should be accommodated strictly separated from persons suspected of punishable offences. Prisons were not regarded as suitable locations for detaining persons who are neither suspected of having committed a criminal offence, nor were convicted for having committed such acts. Although the Federal State and the regional aliens' police authorities of the federal provinces attach priority to a voluntary return, it is not possible to waive the use of enforcing detaining measures with moderation, or the forced accomplishment of the departure and/or return. The working routines of the authorities will also be optimized accordingly in the new detention center for persons waiting for their removal, achieving possible reductions in detention periods by concentrating activities in the new center with the help of an appropriate infrastructure in terms of staff and technical equipment.

As a matter of principle, the presumption continues to apply that a foreigner who does not have (who no longer has) a lawful permit to stay in Austria is obliged to depart from Austria's national territory without delay. If a foreigner does not comply with this obligation to leave Austria, a measure will usually be issued against him/her that terminates his/her stay. If one must expect, on account of certain facts, that

he/she will continue to not comply with his/her obligation, detention pending removal may be imposed upon him/her. According to § 76 of the 2005 Aliens' Police Act, foreigners may be apprehended and detained if this is necessary in order to ensure their deportation, refoulement or transit (detention pending removal). Pursuant to § 77 of the 2005 Aliens' Police Act, the authorities may refrain from imposing detention pending removal if there are grounds to presume that its purpose may be achieved by "less severe means". Such measures are, for example, accommodation in a care facility or requiring the person to report at regular intervals. In practice, the highest courts apply a very strict yardstick, when reviewing decrees imposing detention pending removal, so that authorities must list the reasons why "less severe means" are not applied. Of course, instructions to this effect have been issued. As detention pending removal is exclusively imposed in cases in which the strict criteria are satisfied that the case law of the highest courts has established, it is not envisaged to release foreigners from their detention prior to removal, unless there are cogent legal reasons. However, a strict examination is required – following a multi-tier structure – whether the actual purpose, i.e. departure from Austria, cannot be achieved by less severe measures.

It should be stated, by way of conclusion, that authorities are, of course, obliged to keep the detention prior to removal from Austria as short as possible, but that detainees can also contribute essentially to a reduction of their detention by cooperating with regard to their departure (e.g. by obtaining the certificates for their return journey). The voluntary return advice service has had a positive impact on the detention period prior to removal. In 2006 a total of 736 (of which 326 during the first six months) and 470 foreigners during the first six months of 2007 returned voluntarily to their home countries from their detention pending removal.

It should be said, by way of conclusion, that on the basis of international experience with special facilities for enforcing detention in order to secure proceedings under the aliens' police laws, as well as departure and removal, and when following recommendations on this subject by the Human Rights Advisory Board and the CPT, it seems necessary to optimize the below overall conditions, which is actually being done on an ongoing basis:

- to make it possible to live as an individual with more dignity during the detention period, especially with regard to family ties, linguistic, as well as cultural aspects (cultural leisure-time options – such as films, videos, etc.) and religious practice;
- to strive for an enhancement of the quality of life of detainees ("moving away from police arrest to an increasingly civil care during a special form of detention");
- structural deficits can be eliminated, especially by making available premises and locations on the basis of clear organizational plans; experience shows that the mix and constant fluctuation among detainees requires a high level of flexibility;
- there are ongoing adjustments and optimizations, depending on the clients and requirements. A measure involving deprivation of liberty must be guided by the principle of proportionality, as generally recognized by the judiciary and

academia. At the same time, though, it must guarantee the consistent implementation of security plan.

- to create detention facilities, commensurate with the detainees' age, for juveniles, as well as appropriate locations for families ("so-called "housing plans");
- to avoid so-called "detention damage" which may be caused when enforcing detention measures in a prison-like manner, which are obstacles to the return of the detainees (orderly daily structure);
- to secure a high level of acceptance through the care provided by physicians and social therapists during the arrival period and during stays at detention centers, on account of a wide range of services in many different fields. In addition to curative treatments, one should also mention here special medical check-ups (anemia types, check-ups prior deportation by air);
- to secure a sufficiently moderate autonomy in the course of the day, including adequate activities, as well as keeping detainees on separate premises and under separate regimes from detainees serving administrative penalties, as only persons waiting for their removal should be accommodated in such detention centers;
- optimum networking among all organizational units concerned by establishing an "authority island" in the new detention center (- aliens' police authority, asylum office and police, with attached care services for the detainees. This will optimize the administrative tasks and organizational measures such as obtaining documents, for example, coordinating deportation dates, booking flights, preparing the removal from Austria, interrogation management for direct committals, as performed, inter alia, by the support group of the border services of the federal police units [USG], asylum procedures. The authorities are taken to the foreigners and not vice versa, etc.);
- optimized preparation of the removal (fewer problematic cases are to be expected when easing the tension of the detainees by providing them with information) by coordinating the different nationals for deportations by charter flight;
- implementing protection against infections and hygiene requirements (to be achieved only with difficulty in buildings requiring refurbishing).

Elimination of slavery and servitude (art. 8)

Question No. 12:

The statistics maintained by the Federal Ministry of the Interior do not distinguish between human trafficking for sexual exploitation and for forced labor. There are only statistical data concerning female victims in connection with § 104a of the Criminal Law Code (human trafficking for the purpose of sexual exploitation or exploiting labor

resources and/or for trafficking in human organs). In this connection, the statistics indicate 8 victims.

However, it should also be mentioned in this connection that there is a major number of unreported cases which cannot be registered for obvious reasons. In addition, the aforementioned phenomenon required a change of approach in the strategy of the criminal police, as a result of which the Federal Ministry of the Interior now only engages in large-scale operations (investigations) taking up long periods of time. In consequence, the data will be supplied for statistical purposes only after the procedure has been completed and/or cases have been reported to the courts.

It should be pointed out that a “National Action Plan against Human Trafficking” was adopted by the National Council, which is coordinated on a national level by the TASKFORCE Trafficking in Human Beings of the Foreign Ministry.

Austria thus adopted the following National Action Plan against Trafficking in Human Beings (currently only available in German):



Attachment
Question 12).xls (

Persuant to § 22 of the Aliens’ Police Act foreigners may be granted a travel visa *ex officio*, although specific reasons for denial prevail (absence of a valid passport, communication of a refoulement reason by a Contracting State, maximum possible stay already expired), under circumstances deserving special consideration such as, inter alia, humanitarian reasons. Such a visa is only valid on Austrian territory. If there are no reasons to deny the issuance of a visa, “normal” visa (Visa C and D for humanitarian reasons) may also be issued. As a rule, the persons concerned in such cases are already staying in Austria, and as the focus is here on facilitating a further stay on national territory, granting a visa, which is a permit to enter the country, hardly has any importance in this context.

The central provision in this context is § 72 of the Settlement and Residence Act which facilitates the *ex officio* granting of residence permits on humanitarian grounds in cases deserving special consideration, although there are obstacles to granting such a permit (except in cases where a ban on residence has been pronounced).

§ 72 (2) of the Settlement and Residence Act stipulates that witnesses and victims of trafficking in human beings may be granted a residence permit on humanitarian grounds for the required duration, as a minimum though for a period of six months. This residence permit will also be granted – if the personal situation of the victim so requires – if the persons concerned decide not to cooperate with the authorities. This regulation is an extended application of Article 8 of Council Directive 2004/81/EC of 29 April 2004 (“Protection of Victims Directive”), as the Directive requires the cooperation of the victim with the authorities when examining the possibility of granting a residence permit. According to §§ 72 – 74 the granting of a residence permit on humanitarian grounds requires the consent of the Federal Minister of the Interior.

There are no statistics about the number of victims of trafficking in human beings, who received a residence permit on humanitarian grounds.

Expulsion of aliens (art. 13)

Question No. 13:

Pursuant to § 27 (2) of the Asylum Act, the asylum authority may initiate expulsion proceedings by means of a file note if the investigations in hand justify the presumption that the application for asylum will either have to be denied or rejected and if there is public interest in an accelerated handling of the proceedings. The file note is regarded as a procedural provision and – in keeping with § 63 (2) of the General Administrative Proceedings Act – no separate legal remedy is available against it. As a result, it only relates to the launching of expulsion proceedings. Of course, a positive (granting asylum) or negative (rejecting an application for asylum) asylum decree, together with the expulsion decision pursuant to § 10 of the Asylum Act, which is eventually issued, may be challenged by lodging a legal remedy. A decree on detention pending removal, issued in this connection, must be evaluated according to the rules of the Aliens' Police Act.

Question No. 14:

Pursuant to § 36 (1) of the Asylum Act, an appeal against a negative decree (rejecting an application for asylum) does not have any suspensive effect. An appeal against an expulsion, connected to such a negative decree, only has suspensive effect if it is so granted by the Independent Federal Asylum Senate. § 37 stipulates in which cases the Independent Federal Asylum Senate must grant suspensive effect, i.e. if it can be presumed that a deportation, refoulement or expulsion of the foreigner to his/her own country would constitute a genuine risk of violating the rights granted by the ECHR, or that there is a serious danger for his/her integrity, due to arbitrary violence in an armed conflict.

At present, there are no statistical data on the number of cases in which the Independent Federal Asylum Senate granted such suspensive effect.

Question No. 15:

It must be stated, by way of introduction, that a residence ban is a measure ending a person's residence and by no means constitutes a penal prosecution. As a result, one cannot speak of a "double jeopardy" prosecuting an offender twice for one offence.

With regard to the concern that a violation of human rights may be possible, it should be pointed out that § 66 of the Aliens' Police Act applies to any form of issuing a residence ban, which means that compliance with Article 8 of the ECHR must be examined in the course of each and every individual case and that proportionality must be taken into account. This case-by-case examination is undertaken in accordance with the case-law of the ECHR and is subject to legal review by the Constitutional Court and/or Administrative Court.

Right to a fair trial (art. 14)

Question No. 16:

The Code of Criminal Procedure, which continues to apply until 31 December 2007, stipulates in its § 178 that every apprehended person must be informed upon his/her apprehension or immediately thereafter of the offence of which he/she is suspected or of the reason for his/her apprehension, and that he/she must also be informed that he/she has the right to contact a relative or another person of his/her confidence and a defense counsel, and that he/she has the right not to make any statement. In this connection, he/she must be informed, in particular, that his/her statement may serve in his/her defense, but also as evidence against him/her.

The Criminal Proceedings Reform Act (*Strafprozessreformgesetz*), reforming the 1975 Code of Criminal Procedure as a new codification of the pre-trial procedure in criminal-law cases, which is scheduled to enter into force on 1 January 2008, stipulates some important extensions of the rights of accused persons, of which should be mentioned the right of access to a lawyer.

According to § 59 (1) of the aforementioned law, an arrested and accused person can contact a legal counsel, can grant the legal counsel his/her power of attorney and can consult with his/her legal counsel before his/her interrogation. It is only in special cases that this contact, which takes place before the accused is committed to a prison, is restricted to issuing a power of attorney and providing general legal information. The contacts with the legal counsel after his/her commitment to prison may only be monitored if the accused is also detained for the danger of collusion or conspiracy, and if it must be feared, on account of specific and grave circumstances, that the contact with the legal counsel might prejudice evidence (§ 59 (2) of the Criminal Proceedings Reform Act). Before commencing the interrogation, the accused must be informed, inter alia, that he/she has the right to consult first with a legal counsel, in which case the interrogation – contrary to the present legal situation – may have to be postponed, if so necessary, for a reasonable period of time (§ 164 (1) of the Criminal Proceedings Reform Act). In addition, the accused has the right to call in a legal counsel when he/she is being interrogated. Such a legal counsel, however, must not take part in the interrogation, but is entitled to question the accused and to submit a motion to take evidence (§ 164 (2) of the Criminal Proceedings Reform Act).

The Federal Ministry of Justice and the Federal Bar Association entered into negotiations in order to establish a system of stand-by legal counsels. As of the beginning of 2008, it should be ensured that from the outset of police custody all persons deprived of their liberty can benefit from a nationwide 24-hour legal-counsel service. The system is to be based upon a toll-free telephone number, which can be used by any apprehended person and must be provided at any police station. In a first telephone consultation, the apprehended person has the possibility to discuss his/her situation with a defense counsel, who is – if desired – also obliged to attend the first interrogation of his/her client as swiftly as possible.

This service is to be financed by the Federal Ministry of Justice and to be provided to all apprehended persons, whether they are able to bear the costs of a defense counsel or not. Such a service is to be provided for a maximum of about seven days.

Then it should be clear, if a counsel of his/her own choice will intervene, at the apprehended person's own expense, or if a legal-aid counsel will be formally provided as a result of a court decision. This means that the accused – upon application – does not have to pay the costs for the legal counsel, who is assigned to him/her, if he/she (the defendant, the person in question) is not in a position to bear the full costs of a legal counsel, without affecting the support necessary for a plain lifestyle of that person, as well as of that person's family, for which the person is responsible, and to the extent that this is in the interest of the administration of justice, especially in the interest of an appropriate defense (legal-aid counsel).

The stand-by system will first be governed by a contract between the Federal Ministry of Justice and the Federal Bar Association and could be signed into law, once first experience has been obtained with the system.

Question No. 17:

Legal aid in proceedings before the Administrative Court:

Pursuant to section 61 Administrative Court Act (VwGG) legal aid in proceedings before the Administrative Court legal aid is granted according to the provisions of the Austrian Code of Civil Procedure (ZPO). Legal aid is contingent upon a poor financial status of the applicant; furthermore, the complaint must not be futile. If legal aid is granted, the complainant is exempted from all fees and is assigned a free lawyer for representation in written and oral proceedings.

Legal aid covers all expenses incurred by the judiciary and the assigned lawyer; however in case of dismissal the complainant has to reimburse expenses to the succeeding parties. It is hereby emphasized that the reimbursement takes the form of a lump-sum payment and is thus limited.

Measures to reduce the length of proceedings before the Administrative Court:

In 2002 legislative measures were adopted to prevent the Administrative Court from being overburdened by clone cases. According to the new law on the Administrative Court (Federal Law Gazette I No. 124/2002) clone cases are now examined through a special accelerated procedure. The number of cases pending before the Administrative Court for more than three years was considerably diminished in 2003; the average time needed for reaching a decision on the merits at this Court in 2003 and 2004 was about 22 months, in 2005 about 21 months and in 2006 about 20 months (see Activity Report 2006, available via www.vwgh.gv.at).

In its government program, the Austrian Federal Government has set itself the goal of adopting a comprehensive Constitutional and Administrative Reform. An expert body was set up within the Federal Chancellery in order to submit reform proposals:

Within the reform, the well-developed Austrian legal protection system shall be improved yet further through an acceleration of proceedings, first and foremost by introducing a multi-stage system of administrative courts, by strengthening the citizen service, and reducing the burden placed on the Higher Administrative Court. To this end, administrative courts of first instance will be set up, which shall always consist of one Provincial administrative court for each Federal Province and additionally one

administrative court of first instance at a Federal level for purposes of direct Federal administration (indirect Federal administration is dealt with by the Provincial administrative courts). In addition to the “general” Provincial or Federal administrative court, the creation of additional special courts shall also be permissible. In particular, a separate Federal asylum court shall be set up to rule in the last instance, which shall take the form of a special court.

The proposal submitted by the expert body is currently under a public consultation process and has so far found broad consent.

Measures to reduce the length of proceedings before other courts:

The reformed Austrian Code of Criminal Procedure, which is to enter into force on 1 January 2008, will comprise the following provisions in order to reduce the length of time required for criminal proceedings:

Requirement to expedite proceedings (*Beschleunigungsgebot*)

§ 9 (1) Every accused person has the right to proceedings which are decided within a reasonable time. Proceedings shall always be conducted expeditiously and without any unnecessary delay.

(2) Proceedings, in which an accused person is held in custody, in particular, shall be conducted expeditiously. Every accused person who is held in custody has the right to obtain a court decision or release from custody as expeditiously as possible. All government authorities, institutions and persons involved in criminal proceedings are required to make efforts to keep the period of custody as short as possible.

Motion to discontinue proceedings (*Antrag auf Einstellung*)

§ 108 (1) The court shall discontinue preliminary proceedings in response to a motion by the accused person, if

1. it is certain, on the basis of the report or the currently available results of the investigation, that the offence leading to preliminary proceedings is not a punishable offence, or if further prosecution of the accused person is otherwise inadmissible for legal reasons, or

2. if the current suspicion, in terms of its urgency and weight, as well as with regard to the current duration and scope of the preliminary proceedings, does not justify the continuation of proceedings, and no substantiation of the suspicion can be expected from a further clarification of the facts.

(2) The motion shall be filed with the public prosecutor’s office. A motion to discontinue proceedings according to item 2 of paragraph 1 may be filed three months after commencement of the criminal proceedings at the earliest. However, a person accused of a crime may only file the motion six months after commencement of the proceedings. The prosecutor shall decide to discontinue the proceedings (§ 190, § 191) or forward the motion to the court, together with his/her possible statement. The last sentence of § 106 (5) shall apply in analogy.

(3) The court shall dismiss the motion as inadmissible if it was not filed by the accused person himself/herself, or if this remedy was taken before the time

limits indicated mentioned in paragraph 2. In all other cases, the court shall take a decision.

(4) An appeal by the prosecutor against a decision to discontinue proceedings shall have suspensive effect.

The new law will ensure, in particular, that preliminary proceedings are conducted expeditiously. § 108 (1) item 2, in particular, will provide an effective remedy for accused persons, giving them an instrument to either obtain a discontinuation of the proceedings (after 3 and/or 6 months) or a decision concerning the criminal proceedings within a reasonable time, as stipulated in Article 6 of the European Convention on Human Rights. In connection with proceedings examining the charges against a person (appeal against an indictment), the accused person will also have the right to claim that the urgency and weight of the suspicion does not suffice to make a conviction appear to be feasible, although the facts of the case have been sufficiently clarified, and that further investigations are not expected to produce a substantiation of the suspicion (§ 212 item 2 of the Code of Criminal Procedure, as amended by the Criminal Proceedings Reform Act).

The European Convention on Human Rights, and thus Article 6 of the Convention, has the status of a constitutional law in Austria. Every Austrian court is therefore required to interpret the provisions of the Austrian Code of Civil Procedure (ZPO) and the Austrian Code of Criminal Procedure (StPO), which are both part of ordinary law, on the basis of the European Convention on Human Rights and the basic principles laid down by the ECHR and the former European Commission on Human Rights, in order to ensure a fair trial. This means, in particular, that examining magistrates have to restrict the time required for preliminary proceedings to the absolutely necessary length. In the main hearing/trial it must ultimately be checked whether the length of proceedings is beyond the reasonable time limit according to the criteria set by the ECHR.

Freedom of religion (art. 18)

Question No. 18:

At the time when the 1998 law on religious denominations was prepared, Austria faced a situation that it had previously not known, namely a wealth of new religious movements, the instability of which was a problem that was frequently encountered. As a result, it became necessary to draw up criteria concerning the stability of their existence, which comprised a minimum time of their existence, as well as a minimum number of their members.

Please refer to page 104 and following of the German version of the comments in the 4th country report with regard to the experience gathered in connection with movements lacking stability.

Question No. 19:

With regard to acts of violence and verbal harassment, please refer to the repressive measures of the security authorities in connection with the relevant statutory provisions such as the law forbidding National Socialist activities, the Criminal Law

Code and Article IX (1) item 4 of the Introductory Act Concerning Administrative Proceedings Acts.

With regard to preventive action, the Federal Office for the Protection of the Constitution and the Fight against Terrorism participates in the basic and continuing training of police officers. For further information, please refer to the replies given to Question 4.

Furthermore, mention should be made of the activities of the authorities for the protection of the constitution in connection with sensitizing and informing the population (e.g. at schools or in the continuing training of teachers), but also to the cooperation with NGOs (e.g. ZARA) and the Internet reporting point for NS activities.

Freedom of opinion and expression; incitement to racial hatred (arts. 19 and 20)

Question No. 20:

Media plurality is an obligation derived from Art 10 of the European Convention of Human Rights (ECHR); its aim is to safeguard the freedom of expression. Freedom of expression, including freedom of the press and media plurality, is also protected under Article 13 of the Basic State Act (Staatsgrundgesetz). These constitutional rights are in line with Article 19 of the ratified ICCPR.

Merger control and ownership restrictions

First of all, the 2005 Antitrust Act regulates merger control in general, as well as control of media mergers in order to safeguard media plurality (§ 8, § 9 (3) as well as § 12 and § 13 of the 2005 Antitrust Act). The 2005 Antitrust Act was introduced first in 1988 and has since been amended several times, most recently in 2005. Control of media mergers was introduced in 1993, together with merger control in the interest of effective competition. Media merger control under the 2005 Antitrust Act covers media mergers according to the comprehensive legal definition in § 8 of the 2005 Antitrust Act. Media merger control covers the press, broadcasting, publishing, advertising, the production of electronic media, wholesale press distribution, film distribution, printing, etc. The concept of media plurality is defined in § 13 (2) of the 2005 Antitrust Act as being a plurality of independent media enterprises that are not connected to one another, due to share holdings in excess of 25%, or because of the exercise of control.

Decisions on media mergers are taken by the Antitrust Court, and appeals are heard by the Supreme Antitrust Court. By an amendment of the Fair Trade Practices Act in 2002, the Federal Fair Trade Practices Authority was set up as an investigating body and – like the Federal Antitrust Prosecutor, also set up in 2002 – as an official party in proceedings under the 2005 Antitrust Act. In this function, the Federal Fair Trade Practices Authority, as well as the Federal Antitrust Prosecutor receive notifications of all mergers, investigate and file applications for examination with the Antitrust Court, whenever they consider effective competition or media plurality to be impaired by the implementation of a merger.

In addition, in the audiovisual field, the laws for private broadcasting producers lay down criteria for shareholdings by media enterprises in the broadcasting sector (§ 9 of the Private Radio Broadcasting Act and § 11 of the Private Television Broadcasting Act). One entity may not hold more than one TV or radio license in any service area. Media conglomerates (companies who mutually hold shares of more than 25%) may not own more than one analog radio and one analog TV license and not more than two digital terrestrial licenses or two analog radio licenses in any service area. § 11 of the Private Television Broadcasting Act forbids that media enterprises with particular high penetration in the daily or weekly press, radio or wired broadcasting to produce or edit media for private television programs. Due to these restrictions on cross ownership, a TV license for national coverage is refused if the owner has more than 30% coverage via radio, daily or weekly press, or more than 30% of the cable infrastructure. The same applies on a regional level. § 9 of the Private Radio Broadcasting Act serves the similar purpose as § 11 of the Private Television Broadcasting Act.

Political parties and organizations are not allowed to hold a radio or TV license (§ 10 of the Private Television Broadcasting Act and § 8 of the Private Radio Broadcasting Act).

These conditions must be met as of the time of licensing. Broadcasters are obliged to notify changes in their corporate ownership (§ 22 (4) of the Private Radio Broadcasting Act; § 4 (6) of the Private Television Broadcasting Act). As soon as a broadcaster no longer meets the aforementioned conditions, the regulatory agency must withdraw the license (§ 28 of the Private Radio Broadcasting Act; § 63 of the Private Television Broadcasting Act).

For the broadcasting sector, the regulatory agency (KommAustria) was set up in 2001 by the KommAustria Act. KommAustria monitors the above-mentioned criteria regarding shareholdings by media enterprises in the process of issuing and withdrawing licenses. The Federal Communications Board, as the highest appellate authority, decides on appeals against KommAustria decisions.

In this context, it must be said that the principles for selecting an applicant for a license (§ 6 of the Private Radio Broadcasting Act and § 24 of the Private Television Broadcasting Act) play an important role for pluralism, due to the fact that they incorporate elements that safeguard pluralism.

According to the case law of the Constitutional Court, the principles of selection in § 6 of the Private Radio Broadcasting Act are appropriate in order to achieve one of the most important objectives of the legislation on private broadcasting, i.e. a maximum of plurality. In its decision, the Court pointed out that § 6 of the Private Radio Broadcasting Act is linked to other provisions of the Private Radio Broadcasting Act, especially to those of § 9 of the Private Radio Broadcasting Act. On the one hand, § 9 of the Private Radio Broadcasting Act allows media enterprises to also act in the broadcasting field; on the other hand, the plurality of opinion is a vital selection criteria during the licensing procedure. This can be verified by the decisions taken by the competent broadcasting authorities, i.e. KommAustria and the Federal Communications Board (Constitutional Court decisions, file number 16.625/2002).

In line with the case law of the Constitutional Court, the Administrative Court states in its ongoing legislative decisions that the Federal Communications Board is right in not disregarding the shareholdings of media enterprises but takes these into account when checking an application against the selection criteria for a plurality of opinion during the licensing procedure (Administrative Court, 15 September 2004, file number 2002/04/0142, and Administrative Court, 15 September 2006, file number 2005/04/0246).

Measures to promote pluralism and diversity

Moreover, in order to encourage media pluralism and diversity of the press, subsidies and grants to journalists under the Press Promotion Act and the Journalism Promotion Act are administrated by KommAustria. According to the Press Promotion Act, there are, amongst others, distribution subsidies for daily and weekly newspapers and special subsidies for the preservation of diversity in regional daily newspapers. Furthermore special measures serve to promote quality and to secure the future of the industry (subsidies for the costs of training new journalists, for employing foreign correspondents, for the reading of newspapers, especially at schools). Grant-award decisions are taken by KommAustria on the basis of the Press Promotion Commission's evaluation report on the compliance of every applicant with the grant requirements.

According to the Journalism Promotion Act, there are subsidies for periodicals published at least four times a year. Grant-award decisions are taken by KommAustria giving due consideration to the recommendations of the Journalism Promotion Board.

The Austrian Television Fund (*Fernsehfonds Austria*) and the Austrian Digitization Fund (*Digitalisierungsfonds*) were established within the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR) by an amendment to the KommAustria Act.

The Austrian Television Fund is intended to make a contribution to improving the quality of television production and the capacity of the Austrian film industry, as well as to reinforcing Austria as a media location and to ensuring the diversity of the cultural landscape. In addition, the grants are also intended to contribute to the strengthening of the audiovisual sector in Europe. RTR is responsible for investing the funds and awarding grants for the purpose of promoting television productions. Grants in the form of non-repayable subsidies can be awarded to cover a maximum of 20 per cent of reasonable overall production costs. Independent producers and production companies with the appropriate professional qualifications are eligible to apply for grants. Award decisions are made by the managing director of RTR, taking into account the objectives of the Fund and the comments of the review board (five members with several years of experience in the film industry).

The resources of the Austrian Digitization Fund are destined for promoting digital transmission technologies and digital applications, with the aim of accelerating the transition to digital television. The Fund supports projects which upgrade and reinforce all broadcasting transmission platforms as a special part of communications infrastructure, especially in the light of the central role of broadcasting in modern democratic societies. Grants from the Austrian Digitization Fund are awarded

according to technology-neutral criteria, with due attention to all transmission means and platforms for digital broadcasting.

Question No. 21:

During the 2006 calendar year, the public prosecutor's offices submitted eight demands for penalties in connection with incitement (§ 283 (2) of the Criminal Law Code). These relate to generally inciting comments against black Africans (three cases), against Turkish nationals, against nationals from the former Yugoslavia and against persons belonging to the Jewish religious community (one case each), as well as against one Slovenian person in Carinthia (one case with two accused persons). Altogether, there were nine convictions and two acquittals (one each concerning comments against black Africans and persons belonging to the Jewish religious community), which have all become final and enforceable.

During the 2007 calendar year, the public prosecutor's office has submitted four demands for penalties in incitement cases to date, of which three cases involved black Africans and one case members of the Roma group (the last-mentioned case is still pending). None of these cases had any specific anti-Semitic motif. To date, there have been four final and enforceable convictions, i.e. one each for incitement to the detriment of black Africans and of Turkish nationals. One case involved members of the Slovene minority in Carinthia. In 2007 there have been three final and enforceable acquittals to date, which all related to the charge of incitement to the detriment of black Africans.

Rights of persons belonging to minorities (art. 27)

Question No. 22:

I. Regarding the first part of the question concerning topographical names and signs

Decision of the Constitutional Court of 13 December 2001, file number G 213/01-18, V 62, 63/01-18 ("Topographical Signs Decision"):

In the reasoning of its decision, the Constitutional Court stated that in connection with topographical signs a place (Ortschaft) is also held to be an "administrative district with a mixed population", as defined by Article 7 item 3 of the State Treaty of Vienna. In the reasons explaining the decision, the Constitutional Court stated that this is the case whenever the place (Ortschaft) – as in the case at issue St. Kanzian am Klopeiner See in Carinthia - has a Slovene-speaking population share of more than 10%, compared to the total population, in censuses, when observed over a longer period of time.

This model is thus based on the share of the Slovene-speaking population in a place (Ortschaft), indicating in censuses over a longer period of time that the language of a national minority is the everyday language. However, this model is only one of models that can be used to find a solution for topographical issues in conformity with the State Treaty.

The Constitutional Court confirmed this jurisprudence in all material aspects in further decisions referring to the same reasoning.

The applicable legislation is as follows:

According to Article 7 (3) of the State Treaty of Vienna signs and indications of a topographical nature shall be affixed both in the language of the national minority and in German in the administrative and court districts with a mixed population of Carinthia, Burgenland and Styria. For the sake of implementing this constitutional provision, § 2 (1) of the National Minorities Act stipulates that those parts of the regions shall be designated by ordinance in which topographical indications shall be affixed in two languages.

So-called topographical ordinances therefore exist for the Croat, the Slovene and the Hungarian minorities. These ordinances list the sections of regions with municipalities for which signs and indications of a topographical nature shall be affixed, and they stipulate the names of those parts of the regions in the respective language of the national minority.

The Topographical Ordinance-Burgenland (Topographieverordnung-Burgenland), (Federal Law Gazette II No. 170/2000) went into force on 22 June 2000. The scope of application of the ordinance covers a total of 28 municipalities with Croat as language, as well as with mixed languages (and there 47 places) and four municipalities and/or places with Hungarian as language, as well as with mixed languages. On 31 July 2000 the last of the altogether 260 municipal signs was put up in Burgenland. In the course of placing the signs, there was not a single negative act or act of vandalism by anyone. All political forces in Burgenland cooperated in connection with the municipal signs – not only the regional government of Burgenland but also all persons concerned, the principal district authorities and the police officers, as well as mayors and the population at large. They were all informed in advance and contributed to the success of the campaign.

In 1977 a so-called topographical ordinance for Carinthia and the corresponding ordinance defining the Slovenian topographical names entered into force. Both were replaced by entry into force of the Topographical Ordinance-Carinthia (Topographieverordnung-Kärnten), Federal Law Gazette II No. 245/2006.

Political initiatives towards new arrangements taken after the so-called "Topographical Signs Decision" of the Constitutional Court dated 13 December 2001:

Notwithstanding the intensive political efforts a final new regulation could not be reached.

First of all the intention was to work out a solution within the framework of the so-called consensus conference with political representatives on the federal and provinces (Länder) level. The topic was also discussed in the Federal Chancellery at the highest political level together with mayors of affected municipalities. A new topographical ordinance for Carinthia was adopted by the Federal Government on 17 July 2006 (Federal law Gazette II 2006/263). However, according to § 6 (1) of the ordinance it will only enter into force "at a point in time to be determined by federal constitutional law". The required political consensus has not been reached on parliamentary level before the parliamentary election in autumn 2006.

In the government program 2007 – 2010 is stated as follows:

“Regulation of the implementation of decisions relating to municipal signs made by the Constitutional Court shall be constitutionally safeguarded with the maximum possible consensus from the ethnic groups, on the basis of existing proposals. For localities in the ancestral settlement area of the respective ethnic groups, there will be an opening clause, according to which, on the basis of a petition by a defined percentage of the population, further bilingual municipal signs can be set up. This regulation will be implemented by the summer of 2007.”

With a view to an opinion-forming process as broad as possible, the Federal Chancellor has led numerous rounds of talks with representatives of the Federal Republic and the Länder, with representatives of the Slovenian minority and other organisations as well as with mayors of municipalities affected. As the political outcome of these efforts, the draft of a federal act amending the National Minority Law (Volksgruppengesetz) was finally submitted as a bill (“Initiativantrag”) to the National Council on 4 July 2007 (263/A XXIII.GP).

It is up to the members of the National Council to take further steps.

II. Regarding the second part of the question concerning the enjoyment of linguistic rights by the Slovenian minority in Carinthia

The decree defining the courts, administrative authorities and other offices where the Slovenian language is the second official language besides German lays down that Slovenian may be used as an official language with the following authorities:

- municipal authorities and municipal offices of those municipalities in which the use of bilingual topographical signs is compulsory as well as additional municipalities to be enumerated individually; in the district of Völkermarkt the State Treaty of Vienna is currently directly applicable;
- police offices situated in the relevant municipalities;
- the district courts (“Bezirksgerichte”) of Ferlach, Eisenkappel and Bleiburg
- the district administrations (“Bezirkshauptmannschaften”) of Villach Land, Klagenfurt Land - with the exception of the external branch offices in Feldkirchen – and Völkermarkt
- other authorities and offices of the Federal Republic and the Land having their seat in the Land of Carinthia if their area of competence coincides entirely or partly with that of the aforementioned district courts or district administrations and if the use of Slovenian as an official language is permitted by these district courts or district administrations; or if the authority is competent as an appellate instance in proceedings conducted in the first instance before an authority permitting the use of the Slovenian language as an official language in addition to German;
- the military command in Klagenfurt provided that matters dealing with the call-up and recruitment of soldiers (“militärisches Ergänzungswesen”) are concerned;
- in all official matters concerning the mail and telecommunications sector as well as the railway sector.

The aim is to have officials of the respective body mastering the Slovenian language; if this is not the case interpreters have to be called in.

Question No. 23:

The education of children of the Czech, Slovak, Hungarian and Croatian ethnic minorities in Vienna as well as the Roma outside Burgenland in and about their minority languages is based on two pillars: on the one hand, private initiatives receiving substantial support from the public sector, on the other hand instruction in the minority language which was not conceived as a specific offer for the children of the autochthonous minorities but does not exclude them. The only requirement is that they do not have German as their first language and have not attended school in Austria for more than 6 years. Mother-tongue instruction can be arranged for in basically all types of school. The only prerequisites are the availability of suitable teachers and financial resources for these positions as well as a demand for this offer. In Vienna in this respect 12 children per class or course are the minimum number of participants. Mother-tongue instruction can be provided in the form of team teaching or in a course attended by children from different classes or schools. However, due to the dispersed settlement of the speakers of Austrian minority languages, i.e. the low percentage in which they are represented on average in the classes, projects based on instruction in courses outside the regular curriculum have the best chances of realisation. The pilot project "European Middle School" (EMS) should be mentioned as a special measure in this field.

The following educational offers for members of national minorities respectively speakers of national minority languages receive support under the scheme for the promotion of ethnic minorities:

Hungarian minority:

In the framework of the project "Hungarian School" and "Hungarian Kindergarten", the association "Zentralverband ungarischer Vereine und Organisationen in Österreich" provides instruction in the Hungarian language and about the Hungarian culture to about 118 children and young people in courses held partly once a week and partly once every second week.

In the framework of the project "Honismeret", the association "Ungarischer Schulverein" in Vienna provides instruction in the Hungarian language and about the Hungarian culture to about 60 children and young people once a week.

The latest development on which information can be provided is that with effect of 1 October 2007 a Hungarian kindergarten group will be established. However, it will be integrated into a Czech bilingual group on a preliminary basis. In the launch phase one Hungarian bilingual nursery teacher will be responsible for 5 children but a considerable increase in the number of children is expected. As of autumn 2008, the Hungarian kindergarten group is to be managed independently and will be available to more children – as soon as the restructuring of the building has been completed.

Czech minority and Slovak minority:

For the Czech and Slovak minorities, the following number of pupils was reported by the Komensky School Association (private school):

Institution	Total	Mother tongue. Czech	Mother tongue. Slovak	Mother tongue. German	Mother tongue. Hungarian
Kindergarten *)	80	59	12	4	5
		Czech lessons	Slovakian lessons		
Bilingual primary school **)	154	123	31		
Bilingual secondary school **)	96	74	22		
Oberstufenreal-gymnasium (Higher secondary school with a focus on natural sciences **)	83	48	35		

*) – Classification based on the mother tongue stated by the parents

***) – Classification based on the participation in the Czech or Slovak lessons

Slovak minority:

The scheme for the promotion of ethnic minorities supports Slovak lessons for children, which are offered by the Slovak School Association (SOVA) in the form of a language course on the premises of this institution.

Croatian minority:

The association “Burgenland-kroatischer Kulturverein in Wien” runs a Burgenland-Croatian bilingual kindergarten group. Furthermore, it offers Burgenland-Croatian courses or bilingual courses as well as minority-specific courses for pupils at school and pre-school level.

Minority of the Roma:

The activities for the minority of the Roma focus on extra tuition. For example, the association “Romano Centro” provided a total of 2.384 free tuition lessons to 131 pupils (aged 6 to 14 years) in 2006. With the support of the City of Vienna, other associations offer extra tuition as well. With the support of the Federal Ministry of Education, Art and Culture, Romano Centro employs two Roma assistants, who have the task of improving the communication with schools and teachers and to participate in solving problems, e.g. due to irregular school attendance.

Based on the available information, currently there is no instruction in Romany and about Roma culture at schools in Vienna. Recently the Vienna-based Thara House organised a Romany language course which was, however, not geared to pupils at compulsory school level. The Ketani Association in Linz offers a conversation course in Sintitikes.

Mother-tongue instruction:

The following statistical data provided by the Federal Ministry of Education, Art and Culture shows how many pupils participated in mother-tongue instruction in the ethnic minority languages in Vienna in the school year 2005/06. For comparison also the number of pupils of the most frequently taught immigrants' languages, i.e. Bosnian/Croatian/ Serbian and Turkish, are stated. Slovak mother-tongue instruction was provided to 24 children in Lower Austria; currently there is no mother-tongue instruction in Slovak in Vienna. One should bear in mind that almost all children who are Roma by ethnic origin also speak the language of their country of origin besides Romany, i.e. above all Serbian, Macedonian, Romanian, Hungarian and Turkish. It can be assumed that in the classes in which instruction is offered in Bosnian/Croatian/ Serbian and Turkish also Roma children benefit from bilingual teaching. A special problem is the lack of qualified teachers for Romany.

Pupils in Vienna in the school year 2005/06			
Romany	Hungarian	Bosnian/Croatian/ Serbian	Turkish
33	12	6.621	5.226

School pilot project "European Middle School"

The school pilot project "European Middle School" has been conducted in Vienna since 1997/98. Instruction at this school is based on the curriculum of the secondary level for the age group 10 to 14 of the Realgymnasium (grammar school with a focus on natural sciences) but also takes into account Hungarian, Czech and Slovak curricula. The concept is based on classes with 50% of the pupils having German as a mother tongue and 50% of them having Slovak, Czech or Hungarian as a mother tongue. Pupils from neighbouring countries as well as Austrian pupils with the respective mother tongues can be admitted. Besides Austrian teaching staff, teachers from Slovakia, the Czech Republic and Hungary are giving lessons.

Dissemination of information relating to the Covenant and the Optional Protocol (art. 2)

Question No. 24:

As with all judgments of the ECHR against Austria concerning a violation the views of UN-Treaty-Bodies are automatically transmitted to the Presidency of the competent authority/tribunal. Furthermore, decisions and judgments of international courts and human rights mechanisms concerning Austria are habitually published in a summary version via www.menschenrechte.ac.at together with a link to the decision and judgment in English. The Austrian government habitually also sends out an explanatory circular stressing the obligations of the competent authorities deriving from these decisions and judgments.