

COMMENTAIRES DU GOUVERNEMENT CONCERNANT LE RAPPORT SUR L'AUTRICHE

ANNEXE : POINT DE VUE DU GOUVERNEMENT

L'annexe qui suit ne fait pas partie de l'analyse et des propositions de l'ECRI concernant la situation en Autriche.

Conformément à la procédure pays-par-pays, l'ECRI a ouvert un dialogue confidentiel avec les autorités de l'Autriche sur une première version du rapport. Un certain nombre des remarques des autorités ont été prises en compte et ont été intégrées à la version finale du rapport (qui selon la pratique habituelle de l'ECRI ne pouvait tenir compte que de développements jusqu'au 3 juillet 2009, date de l'examen de la première version).

Les autorités ont demandé à ce que le point de vue suivant soit reproduit en annexe du rapport de l'ECRI.

Observations by the Republic of Austria in respect of the fourth report by the European Commission against Racism and Intolerance (ECRI) on Austria

November 2009

General Observations:

Austria remains fully committed to the fight against racism, xenophobia, anti-Semitism and strives to continuously improve the conditions within our society through legal provisions and their implementation and equally important through awareness-raising and education. This is an ongoing process based on a firm commitment, openness, understanding and dialogue.

Austria attaches great importance to the monitoring process by the European Commission against Racism and Intolerance (ECRI). The Fourth Report on Austria contains important findings and recommendations which constitute a good basis for further effort. Some of the findings are of a more general nature and thus make it difficult to identify concrete follow-up measures.

Specific Observations:

1. Legal Provisions:

1.1 International Legal Instruments and constitutional provisions

With regard to ECRI recommendations concerning the ratification of Protocol No.12 to the European Convention on Human Rights and the revision of the constitutional provisions against racism and racial discrimination, in particular, that protection against

discrimination on the basis of nationality be enhanced (paras 4 and 12): The Austrian federal constitutional law (article 7 of the Federal Constitutional Act, in connection with article 2 of the Basic State Law) stipulates a general prohibition of discrimination. The Austrian Constitutional Court has applied this non-discrimination rule for decades as a general principle of equality that must be observed both by the legislator and the law enforcing authorities and may be used as a basis by every individual affected to pursue court action.

The Federal Constitutional Act Prohibiting Racial Discrimination was already adopted in 1973. The ban on discrimination against foreigners has been interpreted by the Austrian Constitutional Court by reference to the aforementioned constitutional laws. In several of its decisions the Austrian Constitutional Court has stated that *any differentiating treatment against and among foreigners is only admissible if, and only to the extent, that there is a discernible reasonable ground and the differentiating treatment is not disproportionate*. This principle is firmly established in case law together with the general principle of equality under Austrian constitutional law. Discrimination is therefore only legitimated in those cases in which objective differentiating characteristics are applied; identical legal consequences must therefore apply to identical sets of facts, major differences concerning the facts of a case must lead to correspondingly different arrangements. Any discrimination that is solely based on nationality, race, colour of skin, origin or national or ethnic origin is therefore inadmissible in all cases. This interpretation of the Federal Constitutional Act Prohibiting Racial Discrimination does therefore not restrict the prohibition of discrimination in any manner. Rather, what is permitted is solely the differentiating treatment of nationals of different States on the basis of factual criteria such as on grounds of preferential treatment pursuant to bilateral or multilateral agreements or visa agreements.

Article 1 (1) of the Federal Constitutional Act Prohibiting Racial Discrimination protects foreigners the same way as article 7 of the Federal Constitutional Act, in connection with article 2 of the Basic State Law, protects Austrian nationals from discrimination by stating that all Austrian nationals are equal before the law. The case law of the Constitutional Court has clarified sufficiently that the Federal Constitutional Act Prohibiting Racial Discrimination not only protects foreigners against discrimination in relation to other foreigners but also against discrimination in relation to Austrian nationals (see decision VfSlg. 15.668/1999, as well as the decision of 25 November 2002, file number B 792/02, and most recently the decision of 21 June 2004, file number 531/02).

The prohibition of discrimination and the proportionality principle are to be applied by both the legislature and the administration. In our view, no loopholes are discernible so far in Austria's anti-discrimination legislation and the existing Conventional guarantees are also constantly being further developed by the European Court for Human Rights (ECHR).

Even though Austria does not intend to ratify Protocol No. 12 for the time being, Austria supports in principle a general discrimination ban as an expression of a common European value.

1.2 Citizenship Legislation:

Concerning ECRI's recommendation to the Austrian authorities to review their approach to dual nationality (paras 15 and 17): The Austrian legislation on citizenship is established

also along the lines of the European Council Convention on the Reduction of Cases of Multiple Citizenship. Pursuant to the Convention, there is, apart from persons entitled to asylum, only one case where Austrian citizenship may be acquired without a need to present a proof of giving up the previous citizenship Austria does not intend to deviate from this European Council Convention.

1.3 Criminal Law Provisions:

Concerning awareness-raising and training of the need to counter racism, xenophobia, anti-Semitism and intolerance for those working in the criminal justice system (paras 25 and 28): Austria offers a wide range of awareness-raising programs in this context. A complete listing would go beyond the scope of this report. a.) *Police officers*: the training programs mentioned in para 25 of the report show only a small part of the awareness raising and training conducted. Specialized training courses are continuously maintained and expanded where necessary. The efforts to make ongoing training compulsive – so far it is done on a voluntary basis – continue. b.) *Judges and Public Prosecutors*: every future judge and public prosecutor goes through a mandatory four year initial training period. Within the initial training future judges and prosecutors attend special seminars that focus on the treatment of victims in court, on anti-racism and on anti-discrimination. Since the beginning of 2008 all future judges and prosecutors receive an additional three-day training course on human rights issues. Additional training is voluntary. It offers a wide range of seminars, e.g. on the treatment of victims (including minors) in courts, on the consequences of judicial decisions on asylum-seekers and on anti-discrimination. These seminars are very well-attended by members of the courts and by public prosecutors. For example, in 2007, the “Judges week” (RichterInnenwoche), which is the largest and most important annual conference for the judiciary, was dedicated solely to human rights issues. In 2008, the year of commemoration of the events in 1938, a series of seminars were held, among others: a guided tour to a former synagogue, which was recently renovated; an organized trip for 120 people to Hartheim castle, which was used by the Nazis as an euthanasia centre, under the motto “to serve justice – to prevent injustice” (Recht sprechen - Unrecht verhindern), followed by a workshop on the topic of how the judiciary can encourage its individuals to stand up for one’s beliefs; an introduction to Islam and many more. Furthermore, judges and public prosecutors are given the possibility to participate in a number of international training courses on anti-racism and anti-discrimination as provided by i.a. by ERA and EJTN . c.) *Court Officers and Public Servants*: Corresponding to the recommendation, that programmes to raise awareness of the need to counter racism, xenophobia, anti-Semitism and intolerance be made a compulsory part of on-going training for those working in the criminal justice system, as well as that special emphasis be placed on awareness-raising and training in the implementation of the relevant criminal law provisions, the Austrian Ministry of Justice has developed and is continuing to further develop numerous measures which shall ensure that court officers and public servants treat all parties fair and equally, independent of their race, sex or nationality. It starts with the basic training of court officers and public servants, which includes special training units with focus on the adequate treatment of and contact with parties as well as with witnesses and victims of crimes. In the on-going training numerous courses and workshops dealing with communication, especially under difficult and stressful situations, are offered to the public officers and servants. These courses and workshops have included as a main topic the “correct and adequate treatment of persons coming to courts and/or public prosecution offices”.

1.4 Administrative law, civil law and anti-discrimination bodies (para 29-41):

Fragmentation of anti-discrimination regulations (page 8, 1st paragraph; page 9, 3rd paragraph; recommendation no. 39):

On the basis of the anti-discrimination directives of the EU (Council Directive 2000/43/EC, Council Directive 2000/78/EC, Council Directive 2004/113/EC), equal treatment has become a cross-sectional matter affecting a number of domains and going far beyond the initially established competence within the labour law.

With the new Equal Treatment Act (*Gleichbehandlungsgesetz, GIBG*) the Federal Government has aimed at integrating in the domestic realm all equal treatment provisions, going beyond labour law, in order to avoid fragmentation and facilitate access to the law.

Despite this uniform approach, individual aspects of equal treatment are incorporated in the specific laws as well. This mixed approach seems more realistic and practice-oriented.

Through inter-ministerial dialogue and regular contacts between all stakeholders the Federal Government stays committed to an effective and coordinated system of equal treatment legislation.

Hierarchy (page 8, 1st paragraph; page 9, 3rd paragraph; recommendations 29, 33 and 37) : Austria's legislation is in line with European Community law and it supports ongoing efforts of the European Commission towards **harmonisation of all grounds of discrimination**.

The Equal Treatment Act is not a rigid system, but rather forms part of a dynamic process with the aim of safeguarding equality of persons. One of the core issues of the current amendment process concerns the harmonisation of discrimination.

Burden of proof: The anti-discrimination directives, the equal treatment directives and Directive 2004/113/EC stipulate that the EU Member States are obliged to ensure, in accordance with their national judicial systems, that, when persons establish before a court or other competent authority prima facie evidence of discrimination, it is the culprit who has to prove that there has been no breach of the principle of equal treatment. The burden of proof clause contained in the Austrian Equal Treatment Act meets exactly this requirement. It does not only ease the standard of proof but eventually shifts the burden of proof, meaning that in case of prima facie discrimination the culprit has to establish that he/she did not discriminate against the plaintiff.

Discrimination by association (recommendation no. 37): Following the rulings of the European Court of Justice (case no. C-303/06, Coleman), this item is on the agenda of inter-ministerial talks concerning the amendment of the Equal Treatment Act.

Maximum compensation (recommendation no. 37): It is important to note that the provisions regarding maximum compensation in cases where discrimination is based on the fact that the candidate's application was disregarded in a discriminatory way, comply with the requirements of the rulings of the European Court of Justice (case no. C-180/95, Draehmpael).

Administrative penal proceedings regarding discriminatory job advertisements (recommendation nos. 31, 32 and 37): The Ombuds Office for Equal Treatment (*Anwaltschaft für Gleichbehandlung*) is responsible for compliance with the equal treatment principle. Due to its expertise, this organisation is best qualified to identify discriminatory job advertisements.

In this context, the awareness-raising aspect seems to be of importance. Discriminatory job ads are not always formulated with discriminatory intent, but are often a result of lack of awareness. In these cases misconduct can be countered by issuing a reminder. In case of repeated violation, however, the offence will be sanctioned by law.

Ensuring the independence of the Equal Treatment Commission (Gleichbehandlungskommission) and The Ombuds Office for Equal Treatment, assignment to the Federal Minister for Women and Civil Service (page 8, 1st paragraph; page 9, 4th paragraph; recommendation nos. 38 and 41):

As a consequence that the responsibility of the Equal Treatment Commission and Ombuds Office for Equal Treatment for equal treatment of men and women was established prior to the extension of the scope of the Equal Treatment Act in 2004, these matters were transferred to the Federal Ministry for women's affairs.

When the scope of the Equal Treatment Act was extended, the new responsibilities were allocated to the Equal Treatment Commission and Ombuds Office for Equal Treatment in order to create uniform access to the law for those concerned and to make use of the existing expertise.

Section 3 para. 5 of the Equal Treatment Commission and Ombuds Office for Equal Treatment Act (*Bundesgesetz über die Gleichbehandlungskommission und die Gleichbehandlungsanwaltschaft, GBK/GAW-Gesetz*) explicitly stipulate that Ombuds Office for Equal Treatment may conduct independent investigations regarding discrimination and publish reports.

The legal basis for reinforcing its independence is provided in the amendment of the Federal Constitution (B-VG) and Enactment of the First Law on Adjustment of Constitutional Provisions (*Bundesverfassungsrechtsbereinigungsgesetz*) which entered into force on 1 January 2008. According to the new clause in Art.20 para 2 B-VG certain types of organisational bodies can be exempted from instructions (expert assessment bodies, bodies involved in arbitration, mediation and interest groups such as the Equal Treatment Commission and the Ombuds Office for Equal Treatment); it binds the legislator in this case to provide for supervisory rights in compliance with the duties of the instruction-free body.

Effectiveness of proceedings before of the Equal Treatment Commission (recommendation no. 38): the Equal Treatment Commission through its informal proceedings provides easy access for filing complaints of discrimination. Many of the individuals concerned avoid legal action before the court but consider the proceedings before the Equal Treatment Commission more convenient to present cases of discrimination.

Proceedings before the Equal Treatment Commission are subject to confidentiality. This provides some degree of protection to the discriminated individual, who is often under extreme

psychological stress, particularly in the case of harassment; thus further victimisation can be avoided. Informants are also subject to confidentiality, which makes it easier to witnesses to provide information.

Last but not least, the Equal Treatment Commission acts as a preventive body through its recommendations and as an arbitration body through mediation outside formal court proceedings.

The large number of cases filed demonstrates that the proceedings before the Equal Treatment Commission are appreciated and considered suitable for dispute settlement in cases of discrimination.

With the new Equal Treatment Act (Federal Law Gazette I no. 98/2008) the instruments for enforcing the equal treatment principle were improved, procedural mechanism are made more efficient by for example establishing deputies for the chairperson(s), introducing a deadline for the expert's reports of the Equal Treatment Commission and introducing mandatory publication of all findings of the Equal Treatment Commission on the website of the Federal Chancellery.

Collective action (*Verbandsklage*) (recommendation no. 37): Community law stipulates that all persons who feel that their rights have been violated through non-compliance with the principle of equal treatment must be granted the possibility to lodge a complaint.

In case of a violation of the equal treatment principle, the Equal Treatment Act provides for

- compensation for financial damage, i.e. actual harm (*positiver Schaden*) and loss of profit or
- creating/restoring a discrimination-free situation and, in both cases, additionally
- compensation for the immaterial damage and the personal injury suffered.

These claims have to be asserted at court.

Furthermore, as regards legal protection, Community law requires that the Member States ensure that associations, organisations or other legal entities which, in accordance with the criteria laid down by their national laws, have a legitimate interest in ensuring that the provisions of the anti-discrimination directives are observed, may engage, either on behalf of or in support of the complainant, with his or her approval, in any legal and/or administrative proceedings provided for the enforcement of the claims.

The option for NGOs to file a suit by virtue of their own right, i.e. irrespective of the individual case, for example by collective action (*Verbandsklage*), is not provided.

One possibility of participating in the judicial proceedings is in the form of a third-party intervention (*Nebenintervention*), i.e. an intervention by a third party in support of the plaintiff. According to the provisions of the Austrian Code of Civil Procedure, an intervener is a person

who has a legal interest in the proceedings and who participates, without being a party to the proceedings, in a lawsuit pending between other persons in support of one of the parties.

This type of intervention is principally open to everybody. It was modified with respect to the Litigation Association of NGOs against Discrimination (*Klagsverband zur Durchsetzung der Rechte von Diskriminierungsopfern*) for the enforcement of rights of discrimination victims' to the effect that the Litigation Association does not have to produce an explanation for its legal interest, which is taken for granted. The Litigation Association may participate in the proceedings to support the plaintiff (= the discriminated individual) if the plaintiff so wishes.

The Litigation Association is an organisation of specialised institutions dealing with various forms of discrimination. Especially legal entities that focus on anti-discrimination and equality can become members.

In this context, Section 26 of the Code of Civil Procedure should be mentioned, according to which the parties can also have authorised representatives to act on their behalf in the court proceedings. This also applies to representatives or employees of NGOs, unless there is a statutory requirement to be represented by a lawyer in the proceedings.

As regards labour law proceedings, § 40 para. 2 no. 4 of the Labour and Social Court Act (*Arbeits- und Sozialgerichtsgesetz, ASGG*) stipulates that there is a possibility to be represented by a "suitable person" in proceedings of the first instance. Representatives or employees of NGOs can hence also act as such representatives.

The Chambers of Labour (*Kammern für Arbeiter und Angestellte*) and the Austrian Federation of Trade Unions (*Österreichischer Gewerkschaftsbund*) also represent their members in labour and social court proceedings.

NGO dialogue (recommendation no. 40): Dialogue with NGOs takes place on a regular basis. NGOs were involved in the legislative process of the new equal treatment legislation as well as in preparing special events like the European Year of Equal Opportunities for All in 2007.

In the framework of the European Community action programme to combat discrimination (2001-2006) and its follow-up programme PROGRESS, a wide range of national projects in the field of equal opportunities, run by NGOs, have and still are being promoted.

Equal Treatment legislation from the viewpoint of the *Länder*: The legal situation in the federal states, in particular their laws against discrimination, is insufficiently dealt with in the report (see p.7, second paragraph, or p.17, footnote 8). The deficiencies highlighted in the report (see for instance on p.9, fourth, fifth and sixth paragraph, p. 18 item 33, p.19 item 37 and on p.45, first bullet) do not apply to the Anti-discrimination Act of Vorarlberg, to mention one example. This law provides an extensive non-discrimination rule not only with respect to ethnic affiliation, but also with respect to religion or ideology, disability, age, sexual orientation or gender. The non-discrimination rule applies not only to employment and labor, respectively, but equally to social protection including social security and health services, social benefits, education as well as access to and supply with goods and services that are available to the public including housing (as far as these issues are part of the legislative competence of the federal state).

Concerning anti-discrimination bodies in the federal *Länder*, the example of Vorarlberg demonstrates that the independence of equal treatment bodies is ensured by law. In Vorarlberg two anti-discrimination authorities (“Landesvolksanwalt” – State Ombudsman and “Patientenanwalt” – patients counsel) are installed whose full independence is guaranteed. During the establishment of the Anti-discrimination Act of Vorarlberg the number of staff members of the Ombudsman Board has been increased.

2. Discrimination in various fields

2.1 Education (para 42-51):

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

Para 43: ECRI recommendation to set up a system to monitor racist incidents at school and compile data on these phenomena: Austria acknowledges the importance of monitoring racist incidents at schools and agrees that a system of data collection should be developed. Such efforts could be facilitated by the development of further guidance and good practice through regional institutions like for example the Vienna-based European Union Agency for Fundamental Rights.

The collection and exchanging of “best practices” of school projects in the field of anti-racism, intercultural dialogue and intercultural learning would be another option to provide a good basis for developing strategies to combat racism and racial discrimination in schools.

ECRI’s recommendation regarding measures to rectify the disadvantaged educational position of non-Austrian children (para 51): Austria would like to point to one of the pilot projects which was launched by the Ministry of Education, Arts and Culture in 2008 with setting up the “*Neue Mittelschule*” (New Secondary School) as a new form of general secondary school for all 10 to 14-year-olds in Austria. Preventing early streaming at the age of 10 and enabling all 10 to 14-year-olds to attend these pilot schools regardless of their social, cultural and language backgrounds or their individual performances at the age of 10 was one major objective. Together with this structural change there is a strong focus on quality as these New Secondary Schools have an obligation to individualise teaching and learning processes so as to encourage, promote and challenge all children equally.

Furthermore, education in the respective mother-tongue is available altogether in 20 languages other than German with an increase of students, teachers and teaching units.

Austria would like to underline that in areas with a higher-than average migrant population (like Vienna), the school administration has over the years constantly paid particular attention to the problem of the disadvantaged educational position of non-Austrian children. In Viennese compulsory schools 13 languages are offered for “mother-tongue education”. School projects to promote interculturality and multilingualism such as the European Primary School, European Middle School, European High School, International Regional College, CentroLING, “Grenzenlose Nachbarschaft” (Neighbourhood without borders), “Bildungsraum Centropo” are being implemented successfully. Language proficiency within the “German-as-second language”- programmes is being promoted, especially in order to facilitate the entry into schools. In order to provide better access to higher education the pilot project “*Wiener Mittelschule*” sought to avoid early drop-out and counter potential disadvantage for students with migration background.

2.2 Housing and goods and services intended for the public (para 59-64):

ECRI recommendation of creating a statutory provision governing discrimination-free wording of property advertisements (page 8, 2nd paragraph; page 9, 2nd paragraph; recommendation nos. 61 and 63): Austria would like to point out that this issue is on the agenda of inter-ministerial talks concerning the amendment of the Equal Treatment Act.

3. Racism in public discourse (para 71-87)

3.1 Media (para 77-85):

With regard to the re-establishment of a regulatory mechanism for the press, to reporting and to the improvement of the availability of electronic media in the languages of the minorities: Any effort of national authorities to “impress on the media” has to be in strict compliance with the autonomy and independence of media as guaranteed under constitutional law and the European Convention on Human Rights which also forms part of Austria’s constitutional law. According to the case law of the Austrian Constitutional Court, the national Austrian Broadcasting Corporation (ORF) is independent from any governmental interference in fulfilling its statutory mandate (VfSlg. 13.336/2009

All Austrian newspapers are bound by the “Code of Honour of the Austrian Press” which naturally condemns xenophobic and racist reporting.

The re-establishment or new foundation of an Austrian self-regulatory body (Austrian Press Council; *österreichischer Presserat*) for the enforcement of relevant journalistic standards is foreseeable and the national authorities support this initiative. The Austrian Parliament has passed an ordinance within the “*Budgetbegleitgesetz* “ 2009, BGBl.I Nr. 52/2009 to provide financial support so as to assure the independence of such self-regulatory bodies.

Concerning ECRI’s recommendation to provide special training for media professionals on the role of reporting in a diverse society and to improve the representation in media professions of persons of immigrant origin or belonging to ethnic minorities and to improve the availability of electronic media in the languages of national minorities (para 84, 85): The Austrian Broadcasting Corporation (ORF) has taken several measures in this context in the past years, including an exchange of editors with the Croatian Public Service

Broadcaster and workshops on diversity management of its staff. The Austrian Broadcasting Corporation is also actively involved in the work of the European Broadcasting Union (EBU) with the aim of gathering experience and exchanging best practice relating to diversity and training at European level. The basic training course for new journalists in the Austrian Broadcasting Corporation includes a workshop with representatives of ZARA (German acronym of “*Zivilcourage und Anti-Rassismus-Arbeit*”) concerning “linguistic interaction with Austrians of immigration background”. A staff information event on “media and migrants” is going to be organised in cooperation with the Audience Council of the Austrian Broadcasting Corporation. This event will give advice on media use on the one hand and the appropriate use of language in news coverage and reporting on the other hand.

The Austrian Broadcasting Corporation has a mandate pursuant to § 5 ORF-G which stipulates that an adequate part of programs has to be broadcasted in the minority languages. The Austrian Federal Communication Senate (“*Bundeskommunikationssenat*”) has ruled that the Austrian Broadcasting Corporation has to guarantee the presence of certain minority groups in the programs. The inclusion of minority languages is one of the main criteria in obtaining a broadcasting license (e.g. broadcasters “Okto” and “Radio Agora”).

3.2 Internet (para 86-87):

In close cooperation with the Federal Agency for State Protection and Counter-Terrorism of the Ministry of the Interior, the Criminal Investigation Service Austria (*Bundeskriminalamt* (.BK)) plays an important role in the screening of web pages. In case of racist, xenophobic or anti-Semitic comments or material being found, the Federal Agency for State Protection and Counter Terrorism is immediately notified via a gateway. Urgent tracing operations and announcements are handled by the .BK, after which the competent offices take over.

4. Racist violence (para 88-89)

Austria is fully committed to combating all forms of racist violence. Concerning the investigation and prosecution of criminal acts, the Austrian Criminal Code of Procedure CCP does not leave any flexibility as to which acts should be investigated, prosecuted or indicted and which should not be. The strict principle of legality (principle of compulsory prosecution, Art. 18 paragraph 1 and 2 Austrian Federal Constitutional Act and Section 4 of the Austrian Criminal Code of Procedure – CCP) imposes inter alia a duty on the state to prosecute all crimes if there is sufficient evidence to expect a conviction. Another principle stipulated by Section 2 of CCP is the principle of ex officio investigation, whereby the criminal police or public prosecutor is obliged to conduct investigations in respect of any charges brought to his/her knowledge. The investigation is governed by the principle of ascertaining the truth (Section 3 CCP – *Objektivität und Wahrheitsforschung*) which obliges all authorities competent in criminal proceeding to investigate all circumstances and facts that could have an impact on the verdict.

5. Vulnerable/target groups (para 90-96)

Black persons (para 90-91):

Efforts within the police to counter potential prejudice towards minority groups are successfully undertaken through different projects such as the project “*Polizei und Afrikaner*” (Police and

Africans) or “*Polizeiliches Handeln in einer multikulturellen Gesellschaft*” (Acts of Police in a multicultural society), through which confidence-building measures and direct contacts between police officers and minority members are promoted. In the framework of training programs for police officers, seminars like “A World of Difference” are regularly being held together with the Anti-Defamation League since 2001. The participation in both basic and advanced training courses is compulsory for law enforcement officers.

Awareness-raising activities and the promotion of intercultural dialogue are an integral part of a wide range of programs to combat racism and intolerance in Austria.

Muslims (para 92-93):

The Islamic community has been legally recognized in Austria since 1912 and is one of 13 religious communities recognized as corporations under public law. This status confers specific rights on the Islamic community, particularly in the area of education. Since 1982, Islamic religious instruction is offered in public schools. There are no legal or other restrictions on the wearing of religious symbols in public in Austria. Wearing of religious symbols, like headscarves is primarily regarded as an expression of the freedom of religion of the individual and is protected by constitutional law.

Austria currently counts 400 000 Muslims among its inhabitants. The long history of co-existence with Islam and its adherents has played a positive role which influences the present situation in Austria. It is characterized by flexibility, pragmatism and a commitment to dialogue.

In response to the developments since 9/11 a series of measures, including the detailed collection of data regarding racist and discriminatory incidents and specific state security activities to counter this phenomenon were adopted.

Concerning amendments of regional Town Planning laws (para 92) and the underlying allegation of discriminatory measures to prevent the building of Mosques it is worth noting that Art.9 of the ECHR, which has the rank of constitutional law in Austria, guarantees the right to worshipping, including the existence of buildings dedicated to this purpose. The latest amendment of the Town Planning Act of Vorarlberg (which was cited in the ECRI report) has introduced specific requirements for the establishment of highly frequented venues. These requirements apply to all highly frequented venues designed for more than 150 visitors, not only to mosques.

Roma (para 95-96):

The ethnic group of the Roma is an autochthonous group in Burgenland (they have lived there and have been native to the region for almost 300 years). Roma have also settled e.g. in Vienna and Linz mostly in the recent past. Roma associations, in and outside of Burgenland, receive funding from the State earmarked for the promotion of ethnic groups. This special funding focuses primarily on preserving the five main Roma languages spoken in Austria, as well as on supporting Roma children and juveniles through (extra-mural) teaching assistance. By financially supporting the establishment of the most frequently spoken variants of Romany languages in Austria in written form, bilingual newspapers were founded and, for example, Roma ethnic stories recorded in two languages, which is an important contribution to preserving

Roma cultures. The production of bilingual teaching material for language classes is supported as well. The Minorities School Act for Burgenland, Federal Law Gazette 1994/641, expressly stipulates in its § 14 (1) that it is a statutory requirement to teach in the Romany language.

In general, the Roma enjoy the same rights and the same legal protection as all other Austrian nationals, as well as all other people living in Austria.

Other national minorities (para 97-98):

Implementation of the Constitutional Court judgment of December 2001 (para. 98): In its current work programme for the XXIVth legislative period (2008 until 2013) the Austrian Government has committed itself to aim for the implementation of the Austrian Constitutional Court's rulings on topographical signs in Carinthia on the basis of a highest possible consensus with the autochthonous national minority groups and on the basis of existing proposals.

The Government programme also contains a package of additional measures in favour of Austria's autochthonous national minority groups: A revision of the National Minority Act (*Volksgruppengesetz*) with a view to amendments in cooperation with the Minorities' Advisory Boards; and funding for inter-cultural projects which promote the interaction of autochthonous national minority groups in the framework of financial support for minorities (*Volksgruppenförderung*).

In December 2009 the Federal Chancellor will host a conference on this issue to which stakeholders are invited.

Non-citizens: migrants and asylum-seekers (para 99-131):

Migrants (para 100-110): with regard to para 107 of the ECRI report it is important to note that the regulations of the Residence and Settlement Act (SRA) concerning family reunification are in compliance with Directive 2003/86/EC of 22 September 2003 on the right to family reunification and with the right to respect for private and family life according to Art.8 ECHR. The quota requirement for family reunifications ceases to have effect three years after submitting the application, which is in compliance with Art. 8 of Dir.2003/86/EC. Due to the amendments to the SRA of April 2009, concerning the residence titles for humanitarian reasons, the issuance of a quota free residence permit *ex officio* or upon justified application in case of prevailing grounds according to Art. 8 ECHR is now provided for in Art. 43 para 2 and Art. 44 para 3 SRA. Art. 8 ECHR is explicitly taken into account in the SRA: according to §11 para 3 SRA, a residence permit may be issued to an alien, notwithstanding the legal prerequisites according to paragraph 2 Z 1-6 or a prevailing impediment to granting a residence permit as to paragraph 1 Z 3, 5 or 6, if it is essential for preserving the applicant's private or family life pursuant to Art.8 ECHR. The procedural cure as well as the submission of application within Austria is granted upon justified application if it is essential for the maintaining of privacy or family life. A residence title can only be withdrawn, according to Art. 28 para 4, if this is required in order to achieve the objectives specified in Art.8, para 2 ECHR.

Para.108 concerning the quality of training in connection with the "integration contract": The courses which have to be passed in compliance with the integration agreement, in particular the German language integration course, are certified and evaluated by the Austrian Integration

Fund (ÖIF). Descriptions of course contents, educational objectives, teaching methods and qualification of the teaching staff, as well as number of teaching units can be found in the regulations on the integration agreement. The Austrian Integration Fund (ÖIF) may withdraw the accreditation if educational objectives, teaching methods or qualification of the teaching staff do not meet the specified objectives. Thus, it is ensured that courses offered within the scope of the integration agreement are of high quality and individually adjusted. The costs of the courses are determined by the organizers of the courses. With regard to alphabetization courses, costs (up to 375 EURO) are fully reimbursed by the State (*Bund*) under the condition that the course is successfully completed within one year after the beginning of the contract. For certain family members the *Bund* refunds 50% of the costs of the course, if the integration agreement is successfully completed within two years from the beginning of the contract. A fulfilled integration agreement is a prerequisite for an unlimited residence permit and for subsequent Austrian citizenship.

Para 109 concerning a national integration plan: A National Action Plan for Integration (NAPI), which is being drafted at the moment, will provide a basis for the Government's policies in the field of integration. The Federal Ministry of the Interior coordinates the development of the NAPI. Stakeholders at all levels are involved in this process. A steering group, composed of representatives of the federal ministries, provinces, cities, municipalities, social partners and main NGOs, is in charge of developing and drafting the NAPI. Work on the NAPI has made considerable progress so that the final version should be available in the near future.

Asylum seekers (para 111-131)

Para 126 : All asylum seekers are entitled to receive basic welfare support. The services offered are in compliance with, and in certain fields even exceed the standards of the Reception Directive. The provision of accommodation is a core service and as such only refused when one or more criteria of Art. 16 of the Reception Directive are met. Such a refusal is subject to legal scrutiny.

Para 127 : The Basic Welfare Support Agreement and its corresponding federal and regional regulations – which are in accordance with Art. 19 of the Reception Directive – include provisions regarding persons in need of special protection. The personal interests of unaccompanied minors are complementary safeguarded by the Youth Welfare Offices which pay particular attention to the individual development needs. With regard to the requested provision of accommodation in general, we wish to refer to the remarks made in reply to recommendation 126. In case that Art. 16 of the Reception Directive on unaccompanied minors (withdrawal of reception conditions) is applied, the protective provisions for children and young persons are subsidiarily applied. This ensures that UAMs are not left destitute under any circumstances.

Para 130: The report suggests that asylum seekers detained pursuant to Section 76(2) of the Aliens Police Act have access only to social counselling and voluntary return assistance, but no right to receive legal support. While it generally holds true that individuals must arrange their legal representation themselves, there are specific provisions for asylum seekers which provide them with legal aid funded by the state. Section 64 and 66 of the Asylum Act 2005 provide for legal advisors (*Rechtsberater*) and refugee advisors (*Flüchtlingsberater*) respectively, who are mandated to provide legal aid in procedures under the Asylum Act. Refugee advisors are also

tasked with providing aid in procedures under the Aliens Police Act, insofar as the use of an attorney is not required by law. Similar procedures for other migrants (third-country nationals illegally residing in the country) will be put in place pursuant to the EU Return Directive (Directive 2008/115/EG dated December 16th, 2008).

Para 131: The Austrian asylum procedure provides for adequate legal facilities to ensure broad legal advice for asylum seekers. Financial support is provided by the Ministry of Interior and within the European refugee fund (EFF).

6. Antisemitism:

Austria is strongly committed to the fight against anti-Semitism and all related forms of intolerance. Austria's legislation regarding the prohibition of neo-Nazi activities, including Holocaust denial, is strict and implemented consistently by prosecutors and courts. However, legal measures alone are not sufficient. We have to continue to combat anti-Semitism at its roots. The International Holocaust Task Force (ITF), which Austria chaired successfully in 2008, has become a valuable partner in improving efforts towards promoting Holocaust education, remembrance and research and thus contributes to the fight against anti-Semitism, extremism, discrimination and all those attitudes that, as the tragedy of this unprecedented genocide shows, lead to crimes against humanity and the worst violations of human rights and dignity. Together with our EU partners Austria is also committed to promote the fight against anti-Semitism in other relevant international fora, such as the OSCE and the UN. Austria attaches the utmost importance to education and awareness-raising in schools. In cooperation with Yad Vashem each year about 50 Austrian teachers are being trained there.

Since 2001 the Austrian Ministry of Interior cooperates successfully with the "Anti Defamation League" in organizing anti-bias training programs for law enforcement officers. All newly recruited officers have to undergo such a training course, which aim at enhancing their capacity for dealing with ethnic diversity.

7. Conduct of law enforcement officials (para 134-148)

Para 140: concerning the ECRI recommendation to establish an independent body with powers to investigate individual complaints of human rights violations on the part of the police, including acts of racism and racial discrimination.

The Federal Bureau for Internal Affairs (BIA) is an autonomous agency of the Austrian Federal Ministry of the Interior that is set up outside the classical law enforcement structures. In its capacity as an independent autonomous organizational unit which is not bound by instructions regarding the cases it handles, it conducts security and criminal police investigations in cases of suspected corruption or malpractice by public officers, as defined by the Austrian Penal Code, including cases of human rights abuse. In such cases, the BIA cooperates directly with the competent public prosecutor's offices and courts. According to the Austrian Constitution, the competence of law enforcement is split into the Federal Ministry of Interior and the Federal Ministry of Justice. In order to ensure absolute independence of all investigations, the new Code of Criminal Procedure (CCP) stipulates that the criminal police is required to send reports on the ongoing investigation to the public prosecutor who monitors the respective investigation.

According to Section 195 CCP the court has to order the continuation of the investigation by the public prosecutor on the request of the victim, if the dismissal of the investigation in regard of Section 190 to 192 CCP was based on 1) an infringement of the law or on an incorrect application of the law or 2) serious doubts about the accuracy of the facts on which the decision on the dismissal is based occur or 3) new facts or evidence are presented which may be considered as sufficient grounds to accuse (according to Section 210 CCP) or to continue with diversions measures (Section 198 to 209 CCP). If the public prosecution service considers the request justified the investigation has to be continued. Otherwise the file and a reasoned statement by the public prosecution service have to be forwarded to the court. According to Section 196 CCP before deciding upon the request, the court has – with regard to the public prosecutions reasoning – to provide the possibility of a statement to the defendant and the person who requested the continuation. If the court grants the request the prosecution service has to continue with the criminal proceeding. Further legal remedies against the courts decision are not admissible. (The Act on Reform of the Criminal Code of Procedure which entered into force as of 1 January 2008, published in Federal Gazette I Nr 19/2004, already established in Section 195 and 196 CCP the right to request the continuation of the investigation for victims and other interested parties on which the court of appeal had to decide in case that the public prosecutor did not continue the investigation on his own. Section 195 and 196 CCP in the current version were amended and entered into force as from 1 June 2009, published in Federal Gazette I Nr 52/2009.) Thus, the independent court finally has to decide whether the dismissal of the investigation by the public prosecutor had been justified or the investigation shall be continued upon request.

A new federal law has recently been passed by the parliament providing for the implementation by January 1, 2010 of a specialised federal agency for preventing and fighting corruption (Federal Law Gazette No.72/2009). According to this law, the agency will have nation-wide jurisdiction. The agency will be set up outside the Directorate-General for Public Security, i.e. outside the classical law enforcement hierarchies. Furthermore, an independent commission will be established, which, inter alia, will be responsible, under certain circumstances, to observe legal rights of complainants. Pursuant to the aforementioned law, the members of the commission will act fully independent and will not be bound by any instructions. Thus, the establishment of the agency is of utmost importance in order to continue and strengthen objective and independent investigations as well as to maintain and reinforce public confidence in the system. The jurisdiction of the newly set up independent structure will also cover cases of suspected corruption or malpractice by public officers, as defined by the Austrian Penal Code, including cases of human rights abuse.

Para 141: Austria would like to reiterate, that racist behavior by police officers is not tolerated and will be prosecuted through penal, administrative penal and disciplinary measures.

Para 143: Since 2001 the Austrian Ministry of Interior cooperates successfully with the US “Anti Defamation League” in organizing anti-bias training programs for law enforcement officers. All newly recruited officers have to undergo such a training course, which aim at enhancing their capacity for dealing with ethnic diversity.

8. Monitoring racism and racial discrimination, awareness-raising and co-operation with NGOs (para 149-152)

Austria is aware of the importance of monitoring racism and racial discrimination, the importance of awareness-raising and cooperation with NGOs in this context.

A wide range of awareness-raising measures have been successfully implemented over the past years at different levels and in different fields.

The National Plan of Integration, which is currently being prepared, will provide a long-term national integration strategy and will also include measures to combat racism and discrimination.

Austria attaches great importance to the cooperation with NGOs. Regular meetings and ad hoc consultations with NGOs are an integral part of the decision-making process at the political level.

Austria considers the establishment of a comprehensive and viable data collection system for monitoring racism and racial discrimination an important tool to combat racism but equally a big challenge to implement. National efforts are there to some extent. Guidelines to collect data according to objective criteria would still have to be elaborated. In this context regional cooperation could be instrumental.