

ECRI REPORT ON AUSTRIA

(fifth monitoring cycle)

Adopted on 16 June 2015

Published on 13 October 2015

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TABLE OF CONTENTS

FOREWORD	7
SUMMARY	9
FINDINGS AND RECOMMENDATIONS	11
I. COMMON TOPICS	11
1. LEGISLATION AGAINST RACISM AND RACIAL DISCRIMINATION	11
- PROTOCOL NO. 12 TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS (ECHR).....	11
- CRIMINAL LAW.....	11
- CIVIL AND ADMINISTRATIVE LAW	13
- SPECIALISED NATIONAL BODIES.....	16
2. HATE SPEECH	17
- EXTENT OF THE PHENOMENON	17
- RESPONSES TO HATE SPEECH.....	21
3. RACIST AND HOMO/TRANSPHOBIC VIOLENCE	23
4. INTEGRATION POLICIES	24
- PERSONS WITH MIGRATION BACKGROUNDS.....	24
- EFFECTS OF INTEGRATION POLICIES FOR PERSONS WITH MIGRATION BACKGROUNDS	25
- ROMA.....	29
II. TOPICS SPECIFIC TO AUSTRIA	30
1. INTERIM FOLLOW-UP RECOMMENDATIONS OF THE FOURTH CYCLE	30
2. POLICIES TO COMBAT DISCRIMINATION AND INTOLERANCE AGAINST LGBT PERSONS	30
- LEGISLATION.....	31
- POLICIES	32
INTERIM FOLLOW-UP RECOMMENDATIONS	35
LIST OF RECOMMENDATIONS	37
BIBLIOGRAPHY	41

FOREWORD

The European Commission against Racism and Intolerance (ECRI), established by the Council of Europe, is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, anti-Semitism and intolerance.

In the framework of its statutory activities, ECRI conducts country-by-country monitoring work, which analyses the situation in each of the member States regarding racism and intolerance and draws up suggestions and proposals for dealing with the problems identified.

ECRI's country-by-country monitoring deals with all member States of the Council of Europe on an equal footing. The work takes place in 5-year cycles, covering 9-10 countries per year. The reports of the first round were completed at the end of 1998, those of the second round at the end of 2002 and those of the third round at the end of 2007, and those of the fourth round will be completed at the beginning of 2014. Work on the fifth round reports started in November 2012.

The working methods for the preparation of the reports involve documentary analyses, a visit to the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidence. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on a large number of national and international written sources. The in situ visit provides the opportunity to meet with the parties directly concerned (both governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to provide, if they consider it necessary, comments on the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final ECRI report.

The fifth round country-by-country reports focus on four topics common to all member States: (1) Legislative issues, (2) Hate speech, (3) Violence, (4) Integration policies and a number of topics specific to each one of them. The fourth-cycle interim recommendations not implemented or partially implemented during the fourth monitoring cycle will be followed up in this connection.

In the framework of the fifth cycle, priority implementation is requested again for two specific recommendations chosen from those made in the report. A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report.

The following report was drawn up by ECRI under its own responsibility. It covers the situation at 20 March 2015; developments since that date are neither covered in the following analysis nor taken into account in the conclusions and proposals therein.

SUMMARY

Since the adoption of ECRI's fourth report on Austria on 15 December 2009, progress has been made in a number of fields.

The authorities are in the process of improving the criminal law provisions against racism and intolerance. They also consider ratifying the Additional Protocol to the Convention against Cybercrime. According to the 2013 government platform, the enforcement of the right to equal treatment will be evaluated and a new legislative proposal aims at extending the protection against discrimination. Since 2012 the Austrian Ombudsman Board (AOB) has an explicit mandate, vested in the constitution, to examine complaints on violation of human rights on the part of public authorities.

The police and prosecution services have invested considerable resources in investigating hate speech and intensified human rights training for their staff. In autumn 2014 an inter-ministerial summit on combating hate speech took place and the government has run several campaigns towards a balanced debate on migration and foreigners. In response to an ECRI recommendation, the Austrian Press Council was re-established in 2010. Some media have played an important role in combating hate speech and Google has introduced rules for removing online hate speech.

In 2010, the first ever National Action Plan on Integration was adopted. The authorities have set up a system of 25 integration indicators to measure its impact. The annual surveys on attitudes towards integration show improvements. The Expert Council for Integration conducts regular evaluations and makes recommendations for improvement such as strengthening the concept of "Integration from the beginning". A free compulsory pre-school year has been introduced and children with migration backgrounds benefit from language support in kindergartens.

Also in 2010, Austria created a special regime of registered partnership for same sex couples. Since then, the courts have annulled several discriminatory provisions and lowered the preconditions for legal gender recognition of transsexual persons. The Vienna Antidiscrimination Office for Same-sex and Transgender Life-styles is tasked with eliminating discrimination and establishing a social climate where all persons can live as equals. The living conditions of LGB persons are improving.

ECRI welcomes these positive developments in Austria. However, despite the progress achieved, some issues give rise to concern.

Austria has not ratified Protocol No. 12 to the European Convention on Human Rights. Several criminal law provisions only cover nationalist motivated, but not all racist motivated acts. The high number of anti-discrimination acts and institutions undermines their effectiveness. The Equal Treatment Act of the Federation does not contain a clear prohibition of all discrimination; nor does it place public authorities under the duty to promote equality. Outside the field of employment, it only prohibits discrimination on the grounds of gender and ethnicity. The Ombud for Equal Treatment (OET) is not fully independent and does not have the power to provide legal aid and represent victims in court proceedings.

In recent times, antipathy towards migrants has considerably increased. Several political parties and other organisations cultivate and disseminate racist, xenophobic and neo-Nazi ideas. In particular hate speech of politicians is not systematically countered. A new generation of right wing extremist organisations has appeared and others undergo radicalisation. In 2013, 1 900 incidents were denounced on a police website for reporting Nazi activities. There were several cases of racist attacks carried out by groups of perpetrators.

Certain media publish clearly racist content and do not respect the Press Council's decisions and members of vulnerable groups are given too little space to express their views. Hate speech on online forums is not systematically monitored; such content was also posted on the web pages of the Federal President and several ministers. There

are no official statistics on homophobic and transphobic incidents; numerous racist, homo- and transphobic acts go unreported.

Many persons originating from countries outside the European Economic Area (EEA) have completed only compulsory education. They are more frequently unemployed and affected by the risk of poverty than the rest of the population. Schools do not ensure that all children with migration backgrounds acquire adequate German skills. The 2015 Islam Act contains several controversial restrictions to freedom of religion and in the asylum system the principle of integration from the beginning is not applied. The Dialogue Platform for Roma set up in 2012 is still using a significant part of its resources for stock-taking. A considerable level of racial profiling and police misbehaviour persists in particular towards Blacks.

There is little official data and research on LGBT persons who experience comparatively high levels of discrimination. Young LGBT persons are subject to mobbing and lack assistance during their coming-out. On the federal level, there is no comprehensive approach to LGBT issues. The authorities have not enacted specific legislation on transgender issues and they have not abolished all unjustified differences in the regulation of married and registered same-sex couples.

In this report, ECRI requests that the authorities take action in a number of areas; in this context, it makes a series of recommendations, including the following.

Austria should ratify Protocol No. 12 to the European Convention on Human Rights. The authorities should bring the criminal, civil and administrative law in line with ECRI's standards and ratify the Additional Protocol to the Convention on Cybercrime.* The various anti-discrimination acts and institutions should be merged in order to improve the protection afforded to victims of discrimination.* The OET should be made fully independent and be given the power to represent victims before courts.

The authorities should set up an IT-based system for recording and monitoring racist, homo- and transphobic incidents. They should apply the law in a more vigorous way to curtail the activities of organisations that promote racist ideology and counter and condemn hate speech systematically, in particular during election campaigns. The authorities should encourage the media to strengthen their self-regulation and give adequate space to members of vulnerable groups to express themselves.

The school administration, but also employment, health care and other public services should take ownership of core elements of the integration policies. The principle of integration from the beginning should be applied in the asylum system. The authorities should ensure that any restriction and differential treatment with regard to practice of Islam is in line with the European Court of Human Rights case law and step up the implementation of the Roma-Strategy. The AOB should investigate allegations of misconduct on the part of the police.

The authorities should task, at federal level, an administrative service to develop and coordinate an action plan for LGBT persons. They should undertake research and collect data on their living conditions, enact legislation on transgender issues and re-examine whether each of the remaining differences in the regulation of married and same-sex couples is justified. Finally, they should provide LGBT adolescents with the necessary assistance and protection.

* This recommendation will be subject to a process of interim follow-up by ECRI no later than two years after the publication of this report.

FINDINGS AND RECOMMENDATIONS

I. Common topics

1. Legislation against racism and racial discrimination¹

- Protocol No. 12 to the European Convention on Human Rights (ECHR)

1. Austria has signed, but still not ratified Protocol No. 12 to the ECHR which was adopted on 4 November 2000. As in previous monitoring cycles the authorities state that they do not intend to ratify the Protocol in order not to add to the European Court of Human Rights workload. Also, prior to any ratification, they would like to have the scope of the Protocol clarified.
2. ECRI considers that the best way of avoiding adding to the workload of the ECtHR is to ensure that there are no violations of the right to equality at national level. Concerning the scope of Protocol No. 12 the Court has repeatedly said that it does not see any reason to depart, in the context of Article 1 of Protocol No. 12, from its settled interpretation of the notion of discrimination.²
3. ECRI reiterates its recommendation to the authorities to ratify Protocol No. 12 to the European Convention on Human Rights.

- Criminal law

4. ECRI has already examined on four occasions whether Austrian legislation is in line with its General Policy Recommendation (GPR) No. 7 on national legislation against racism and racial discrimination. Therefore, in this fifth report it will only address persistent shortcomings.
5. ECRI welcomes the amendments made to Article 283 of the Criminal Code (CC) on incitement to violence and hatred. Whereas, until 2011, Article 283 CC only criminalised acts which were likely to disrupt public order, Article 283 CC now also criminalises incitement to hatred that is noticeable before a broad public (including hate speech on the web). ECRI is pleased to note that the authorities intend to lower the number of persons that constitute “broad public” for the purposes of this provision from 150 to 10-30, as hate speech also needs to be combated at small gatherings of racist organisations.³ Also, the new ground of sexual orientation was introduced into Article 283 CC. However, this provision is not fully in line with § 18a of GPR, as it does not make it a criminal offence to incite to discrimination; nor to incite to hatred against a specific person.⁴
6. Concerning racist insults, Article 283.2 CC contains the additional requirement that the human dignity of the offended group needs to be violated. The clear case law of the Supreme Court notwithstanding⁵, some prosecutors and courts still cite old decisions and doctrine according to which it would be required that the

¹ According to ECRI's General Policy Recommendation (GPR) No.7, “racism” shall mean the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons. “Racial discrimination” shall mean any differential treatment based on a ground such as “race”, colour, language, religion, nationality or national or ethnic origin, which has no objective and reasonable justification.

² Maktouf and Damjanović v. Bosnia and Herzegovina, Nos. 2312/08 and 34179/08, 18 July 2013, § 81; see also the explanatory report to Protocol No. 12, in particular §§ 24-28.

³ A ministerial decree indicates the numbers. Cf. also § 38 of the Explanatory Memorandum to GPR No. 7.

⁴ Along the same lines UN CERD 2012: § 10.

⁵ Austrian Supreme Court 13 Os 154/ 03, 14.1.2004 and 11 Os 87/ 10v, 28.9.2010.

perpetrator denies the targeted group's right to life.⁶ As this is not in line with § 18b of GPR No. 7 and § 40 of its Explanatory Memorandum, ECRI considers that this requirement should be removed.

7. The Criminal Code does not expressly criminalise racist threats (§ 18c of GPR No. 7).⁷ Sections 3a to g of the National Socialism Prohibition Act (NSPA) of 1947 and section III.1.4. of the Introductory Act to the Act on Administrative Procedures (EGVG) punish the dissemination of the national socialist ideology; however they do not punish the public expression, with a racist aim, of other ideologies which claim the superiority of, or which depreciate or denigrate, a grouping of persons (§ 18d of GPR No. 7). Section 3h NSPA only covers part of § 18e of GPR No. 7, as it only criminalises the public denial of the national socialist Holocaust and crimes against humanity.⁸ ECRI welcomes the fact that the authorities consider, as recommended in its 4th report, ratifying the Additional Protocol to the Convention against Cybercrime and aligning Austria's criminal law to its Article 6 on the criminalisation of the denial of genocide and of crimes against humanity without restriction to a particular ideology. ECRI recalls that § 18e of GPR No. 7 also covers war crimes; this element should be included in any future revision of the Criminal Code.
8. Section III.1.4 EGVG on the dissemination of the national socialist ideology, sections 1 to 4 of the Insignia Act on the use of uniforms and symbols of banned organisations and Article 283 CC only cover part of § 18f of GPR No. 7; this paragraph recommends criminalising not only the public dissemination or distribution, but also the production or storage of any (and not only national socialist) written, pictorial or other material containing racist manifestations. Section 3a NSPA makes it an offence to set up or support Nazi organisations. Article 278 CC criminalises the participation in a criminal organisation. This only covers part of § 18g of GPR No.7, as not all racist organisations are covered.
9. Article 302.1 CC punishes the misuse by a civil servant of his/her authority without making explicit reference to racism; sections 24 and 37 of the federal Equal Treatment Act (ETA) punish discriminatory job and flat advertisements and section III.1.3 EGVG denying access to public places and services on racist grounds. However, not all discrimination in the exercise of one's – private – occupation is punishable (§ 18h of GPR No. 7).
10. Only the criminal law provisions, but not the administrative provisions on discriminating job and flat advertisements provide for dissuasive sanctions. The latter only provide for a reprimand for first-time offenders and a fine of up to 360 Euros for persistent offenders.⁹ ECRI also considers that the authorities should extend the provisions on national socialist motivated criminal acts – in particular the NSPA, the Insignia Act and the EGVG - to all kind of racist motivated acts.
11. ECRI recommends that the authorities bring their criminal law, in general, into line with its General Policy Recommendation No. 7 as indicated in the preceding paragraphs; in particular they should (i) extend the provisions on national socialist

⁶ Decision of the Vienna General Prosecutor to discontinue the proceedings against Mr. Mölzer No. (038) 8 OStA 171/ 14s, 27.7.2014 (see below § 49); Appeals Court of Innsbruck, 11 Bs 110/ 13h, 30.04.2013.

⁷ Racist threats are however punishable under Articles 115 (threats), 275 (threats towards the population or a big portion of it – 800 to 1 000 persons), 33 CC (aggravating circumstance) and section 3g of the National Socialism Prohibition Act (national socialist activity). Public insults and defamation are punishable under Articles 115, 117.3, 283.2 CC.

⁸ Cf. EU 2014b: 5.

⁹ European Network of Legal Experts in the Non-discrimination Field (ENLENF) 2013: 7, 26, 79. For more details see Federal Ministry for Education and Women (FMEW) 2014b: 130 et seq.

motivated criminal acts to all kind of racist motivated acts, (ii) fill the gaps in the protection against incitement to hatred and discrimination and racist public insults and defamation, (iii) criminalise the public denial, trivialisation, justification or condoning, with a racist aim, of war crimes (iv) criminalise the production or storage of all pictorial or other material containing racist manifestations, (v) criminalise all discrimination in the exercise of one's occupation and (vi) provide for dissuasive sanctions for discriminating job and flat advertisements.

- **Civil and administrative law**

12. ECRI, in its 4th report, noted a marked improvement in the field of civil and administrative anti-discrimination legislation. At the same time it expressed its concern that the high number of anti-discrimination acts undermines its effectiveness. This fragmented legal and institutional environment is due to the division of competence between the Federation and the Länder: the Federation is competent for civil law, federal schooling, the federal civil service, agriculture and forestry; all other areas are matters for the Länder.¹⁰ ECRI was not provided with an exact number of anti-discrimination acts and bodies; there exist 35 to 60 acts and about 50 institutions.¹¹ Civil society and independent bodies informed ECRI that, as a result, many victims of discrimination do not know to which body they can turn in order to obtain assistance. The type of school would for example determine whether a body of the Federation or of the Land is competent. In addition, many victims do not pursue their quest for help, if they are redirected from an incompetent body to another institution. Many victims residing outside Vienna do not dare to contact the office of the Ombud for Equal Treatment (OET) in Vienna by phone or mail, as they do not master the German language fully. As the federal OET has no local officers working on racism, it receives only few complaints from outside Vienna.
13. ECRI welcomes the increasing awareness of these shortfalls.¹² As it is well aware of the difficulties to streamline this legal and institutional framework in a federal country, it encourages the authorities to explore all means available for simplification and improvement. This can involve the merger of the acts and institutions in the Federation and each of the Länder; the conclusion of an agreement under Article 15a of the Federal Constitutional Law (FCL) on cooperation between the Federation and the Länder in the field of combating discrimination; the streamlining of the division of labour in the field of discrimination in Articles 10 seq. FCL¹³; better cooperation between the bodies; better information about their competence; and appointment of regional Ombudsperson for the OET. On the institutional level the added value of each body should be evaluated. The goal should be to optimise and simplify the assistance for victims of discrimination and to bundle together the scarce human resources that are today scattered among various institutions.¹⁴ All these questions could be addressed as part of the ongoing process of drafting the first

¹⁰ Articles 10 et seq. of the Federal Constitutional Law (FCL).

¹¹ Federal Ministry for Labour, Social Affairs and Consumer Protection (FMLSACP) 2014: 67 et seq. lists 35 legal texts. There are for example one federal and nine provincial anti-discrimination acts for employment in the public sector. For a non-exhaustive list of equality bodies cf. <http://www.gleichbehandlungsanwaltschaft.at/site/7701/default.aspx>, accessed on 16.12.14.

¹² AOB 2013: 61 et seq.; CoE Commissioner for Human Rights 2012; ZARA 2014: 66.

¹³ Another possibility to streamline the system is contained in Article 148i FCL.

¹⁴ The federal OET has 23 posts. The honorary members of the three chambers of the ETC are assisted by three lawyers and several typists. The equality body of Styria has four posts and a comparable Vienna institution three posts. In Vienna, four other posts have been allocated to LGBT issues (cf. §87) and six posts to the Commissioner for Equality.

Austrian Human Rights Action Plan. A step in the right direction has already been taken by the Federal Ministry for Europe, Integration and Foreign Affairs, the OET and civil society, which set up, in February 2015, a “telephone hotline against discrimination and intolerance”.¹⁵

14. ECRI recommends that the authorities merge the various anti-discrimination acts and institutions of the Federation and the Länder in order to improve the protection afforded to victims of racism and discrimination.
15. In the following ECRI will focus on remaining shortcomings in the federal legislation. According to §§ 4 and 7 of GPR No. 7 the law should clearly define and prohibit racial discrimination on all grounds listed in § 1 of GPR No. 7. As pointed out in ECRI’s last report, the Equal Treatment Act (ETA) only refers to the grounds of sex, “ethnic affiliation”, religion or belief, age and sexual orientation. From sections 17.4, 31.4 and 43.3 ETA it can be indirectly deduced that discrimination on grounds of citizenship is also forbidden. The grounds of race, skin colour, language and gender identity are missing.¹⁶ Furthermore, outside the field of employment, the prohibition of discrimination is restricted to only two grounds: sex and ethnicity (section 30 ETA). ECRI welcomes the announcement of a new legislative proposal that aims to extend this protection.¹⁷
16. According to § 7 of GPR No. 7, the prohibition of discrimination should apply in all areas in the public and private sector. A general prohibition of discrimination in the public sector can be deduced from Articles 7.1 and 18.1 FCL, Article 1 of the Federal Constitutional Law on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination and Article 14 ECHR which has constitutional-law status.¹⁸ However, the ETA only applies to certain public-sector fields such as social protection and education (section 30.2); also, not the whole private sector is covered (sections 17 et seq.). As a result, not all victims of discrimination can benefit for example from a special rule facilitating the burden of proof such as the one in sections 26.12 and 38.3 ETA.
17. ECRI considers that a clear prohibition of all discrimination in the private and public sector on all grounds listed in § 1a of GPR No. 7 should be introduced in the ETA.¹⁹ Also, the law should place public authorities under a duty positively to promote equality when carrying out their functions (§ 8 of GPR No. 7).
18. Segregation, announced intention to discriminate, and aiding another person to discriminate are not expressly prohibited by sections 19 and 32 ETA (§ 6 of GPR No. 7). Sections 28 and 40 ETA provide that companies may only receive subsidies if they comply with the prohibition of discrimination. According to sections 84, 87, 68 and 19 of the Public Procurement Act²⁰, all those to which public authorities award contracts, need to respect labour and social legislation including the prohibition of discrimination which forms part of the ADL and ILO

¹⁵ <http://www.bmeia.gv.at/integration/hotline-gegen-diskriminierung/>, accessed on 20.5.15.

¹⁶ In practice, the ground of skin colour is covered by the ground of ethnic affiliation, cf. FMEW 2014b: 124. According to the authorities, the ground of gender identity is covered by the ground of gender and the ground of race by the ground of ethnic affiliation. It is a deliberate decision not to use the term “race”.

¹⁷ DerStandard.at 2015a.

¹⁸ Cf. EU 2013: 19. Sexual orientation and gender identity are also covered, cf. below § 80.

¹⁹ Cf. UPR-recommendation 93.8, Austrian Government 2013b: 48 and FMEW 2014b: 125. In the past, two initiatives to level up the protection against discrimination failed in Parliament, Klagsverband 2012.

²⁰ Bundesvergabegesetz. Contractors also need to possess a business licence; it can be withdrawn if the contractor has breached the prohibition of discrimination (section 87 of the Industrial Code).

Convention No. 111. However, there is no rule on the need for contractors to promote equality positively (§ 9 of GPR No. 7).²¹

19. Compensation for discrimination cannot be obtained before the OET or the Equal Treatment Commission (ETC), but only before the law courts.²² Victims of discrimination have to bear the full cost of such court proceedings; only one NGO, the Litigation Association of NGOs, has the right to intervene in court cases.²³ Furthermore, the amounts of compensation awarded by the courts are low; in several cases they have been further reduced on appeal; at the end of the day, they amounted to only some hundreds Euros.²⁴ As a result, the enforcement of the ETA is deficient and there is not enough case law.²⁵ ECRI is of the opinion that this legislation is not in line with §§ 10 and 12 of its GPR No. 7, in particular with regard to compensation for both material and moral damage, as victims of discrimination have no easily accessible way to enforce their rights. In addition, the existing system does not provide for effective, proportionate and dissuasive sanctions. ECRI therefore welcomes the fact that the 2013 government programme contains the commitment to evaluate the enforcement of the right to equal treatment and that the Austrian Ombudsman Board (AOB) has made proposals for improvement.²⁶
20. The regulation about the burden of proof in discrimination cases is not in line with § 11 of GPR No. 7. If the victim has substantiated that there could be discrimination, the respondent needs, according to sections 26.12 and 38.3 ETA, only to prove that it is more probable that another motive than discrimination has been decisive. In such cases the GPR recommends however that it should be for the respondent to prove fully that there has been no discrimination.²⁷
21. There is no general rule providing for the suppression of the public financing of organisations which promote racism (§ 16 of GPR No. 7). However, subsidies have to be paid back if the conditions under which they were granted are not met. Furthermore, since 2014 print-media and their publishers are obliged to return public funding if they are convicted under Article 283 CC or the NSPA. Since 2010, the same applies to political parties and their educational branches; they are also obliged to return public funding if it has been spent in an unlawful manner.²⁸ Section 29.1 of the Associations Act provides that an association can be disbanded if the conditions of Article 11.2 ECHR are fulfilled and if it has infringed criminal law.²⁹ This is not totally in line with § 17 GPR No. 7 according to

²¹ For good practices cf. Human Rights Council of the City of Graz 2014: 135 et seq.

²² Section 12.1 of the ETC and Office of the OET Act (LETGO) only gives the ETC competence to verify whether there is a breach of the equal treatment requirement.

²³ Section 62 ETA. According to civil society representatives met by ECRI's delegation, the so-called Chambers of Labour (Arbeiterkammern), organisations which represent the interests of 3 million Austrian employees and consumers, are reluctant to help victims of discrimination.

²⁴ ENLENF 2013b: 79 et seq. For example, the compensation for repeated denial of access to a pub was reduced from 1 500 € to 250 €. In certain employment cases, compensation for moral damage is limited to a maximum of 500 € (section 26.1.2 ETA). By contrast, section 6 of the Austrian Media Act provides for considerable amounts of compensation for offences committed through media.

²⁵ ENLENF 2013a: 5. For an overview on the case law cf. FMEW 2014a: 218 et seq.

²⁶ Republic of Austria 2013a: 47; AOB 2013: 61 et seq.

²⁷ Cf. also FMEW 2014b: 128.

²⁸ Section 2.8 of the Press Subsidies Act 2004 and sections 4.3, 7.5 of the Publizistikförderungsgesetz. In 2010, the Freedom Party of Austria (Freiheitliche Partei Österreich - FPÖ) had to reimburse 1 000 Euros for a seminar entitled Basics on Islam, Rechnungshof 2014: 31.

²⁹ According to civil society only one organisation has ever been disbanded for promotion of racism. The authorities cannot identify from their statistics cases of disbanded racist organisations. However, according to a report of the Service for the Protection of the Constitution, one neo-Nazi association dissolved itself after the authorities lodged a request to have it disbanded, Federal Ministry of Interior (FMI) 2014: 47.

which the law should provide for the possibility of dissolution of all organisations which promote racism even if they have not breached criminal law.

22. ECRI recommends that the authorities bring their anti-discrimination legislation in line with its General Policy Recommendation No. 7 as indicated in the preceding paragraphs; in particular the federal authorities should (i) include in the Equal Treatment Act a general prohibition of discrimination in the private and public sectors on all grounds including citizenship; (ii) ensure that victims have an easily accessible way to enforce their rights; (iii) ensure that victims can obtain adequate compensation; (iv) reinforce the rule on the burden of proof and (v) provide for the possibility to dissolve all racist organisations.

- **Specialised national bodies**³⁰

23. As described in §§ 34 et seq. of ECRI's 4th report, in 2004 the office of the OET was set up and the ETC's mandate was broadened. Two of the OET's three divisions deal with the grounds falling under ECRI's mandate: discrimination in private-sector employment on grounds of ethnicity, religion, belief and sexual orientation; and discrimination in other areas on grounds of gender and ethnicity. The ETC's second and third chambers cover the same areas as the two divisions described just before.

24. The ETC and Office of the OET Act (LETCO) gives these bodies most of the functions and responsibilities enumerated in Principle 3 of GPR No. 2 on specialised bodies to combat racism.³¹ According to section 5.1 LETCO, the OET can give advice and assistance to victims of discrimination. Victims and the OET can initiate proceedings before the ETC. The ETC's main competence is to issue opinions and decide on individual complaints. However, the ETC may only decide whether discrimination has taken place or not; it has no power to award compensation or impose sanctions.³² Therefore, victims need to initiate proceedings before the competent court, if they want to obtain compensation. Under these circumstances, ECRI has doubts about the added value of the procedure before the ETC. At the same time, the OET has no right to provide legal aid or represent victims in court proceedings (Principle 3 d and e of GPR No. 2; § 51 of the explanatory memorandum to GPR No. 7). This contributes to the low number of court cases and decisions. ECRI considers that the OET should be given the power to assist victims before the courts and other institutions. This would de facto lead to the streamlining of the system.

25. ECRI, in its 2012 conclusions on the implementation of the interim follow-up recommendations addressed to Austria, found that the first recommendation to enshrine the OET's independence was not fully implemented. The situation has remained unchanged; the members of the OET are still appointed by the Federal Chancellor (section 3.4 LETCO) and their office is part of this authority.³³ Likewise, the chairs of the ETC's chambers are appointed by the Federal Chancellor and the ETC is part of the Federal Ministry for Education and Women (FMEW).³⁴ It is the government and not the OET and the ETC which reports to

³⁰ Independent authorities expressly entrusted with the fight against racism, xenophobia, antisemitism, intolerance and discrimination on grounds such as ethnic origin, colour, citizenship, religion and language (racial discrimination), at national level. All nine Länder have also set up equality bodies.

³¹ Cf. sections 5.2, 5.1, 12.4, 12.1, 13.1, 5.4, 12.1, 5.2 LETCO/OET. In practice, the OET seeks friendly settlements, ENLENF 2013a: 7.

³² The ETC can initiate court proceedings if the discriminating person does not comply with its proposals (section 12.4 LETCO). The OET has the same right, if it has initiated the procedure before the ETC.

³³ For more details see ECRI's interim follow-up conclusions on Austria.

³⁴ The ETC was set up within the Federal Chancellery and subsequently moved to the FMEW.

Parliament (section 24 LETCO vs. Principle 5.3 of GPR No. 2). ECRI takes note of the authorities' point of view that the closeness of the OET to the administration can be an advantage when working together on improvement. It considers however that an equality body should function without any interference from other state authorities (Principle 5.2 of GPR No. 2), especially when it is competent for discrimination cases in fields such as education and social services.

26. ECRI again recommends giving the Ombudspersons for Equal Treatment the power to represent victims of discrimination in court or administrative proceedings. As per Principle 5 of ECRI's General Policy Recommendation No. 2 on specialised bodies to combat racism, the Ombudspersons and the Commission for Equal Treatment should be made fully independent on the organisational level and function without interference from other state authorities.

27. ECRI welcomes the fact that, since its amendment in 2012, Article 148a FCL expressly provides that the AOB can examine complaints for violation of human rights on the part of public administration.³⁵ In its annual report 2012 the AOB stated that it had come across many instances of discrimination in public administration.³⁶ However, victims may only address themselves to the AOB if they have no other legal remedy.

28. ECRI recommends that the Austrian authorities consider removing the restriction that victims of discrimination can only lodge a complaint with the Austrian Ombudsman Board, if they have no other legal remedy.

2. Hate speech³⁷

- Extent of the phenomenon

29. Concerning hate crime in general the Austrian police refer to the statistics in the report on the Protection of the Constitution. In 2013, 574 acts committed with bias motivations were recorded (2012: 519). 10.6% of these were classified as racist and xenophobic (2012: 11.4%), 6.5% as antisemitic (2012: 5.2%), 2.1% as islamophobic (2012: 0.8%)³⁸, and 64.6% as right-wing extremist (2012: 56.4%). Out of these, charges were brought for incitement to hatred under Article 283 CC in 152 cases (2012: 83).³⁹ As for the prosecution services, they have informed ECRI that in 2013 162 (2012: 117) known persons were prosecuted under Article 283 CC; 77 (2012: 51) cases involved unknown persons. There were 13 final convictions (2012: 15). ECRI notes that there are no official statistics on homo- and transphobic offences. Moreover, the authorities have informed ECRI that they cannot provide an estimate of the number of unreported cases; they are in the process of reviewing their statistics as recommended in ECRI's 4th report.

30. Experts and civil society consider that hate speech is generally under-reported.⁴⁰ In a recent study on the life situation of Blacks in four Austrian cities 52% of the 717 participants responded having been insulted or harassed during the last

³⁵ The previously missing reference to human rights in the AOB's mandate was the main reason why it was only given B-status status in 2011, UN ICC Sub-Committee on Accreditation 2011: 11. Article 148i FCL provides that the Länder can make the federal AOB competent for their administration also.

³⁶ Austrian Ombudsman Board 2012: 61 et seq.

³⁷ This section covers racist and homo/transphobic speech. For a definition of "hate speech" see Recommendation No. R (97) 20 of the Committee of Ministers adopted on 30 October 1997.

³⁸ The 110 cases belonging to these three groups were reported to ODIHR, OSCE 2013: 25.

³⁹ FMI 2014: 17 et seq.

⁴⁰ ZARA 2014: 58. Cf. also FMI 2014: 20.

12 months on the ground of their skin colour or ethnic origin.⁴¹ According to the Fundamental Rights Agency (FRA) LGBT-survey conducted in 2012, almost all LGBT persons got harassed during the previous 12 months; 93% did not report the incidents.⁴² 29% of Austrian LGBT persons are of the opinion that offensive language about LGBT persons by politicians is fairly or very widespread. Roma, Jews, Muslims and asylum seekers also figure among the main targets of hate speech.⁴³ A 2011 study on antipathy towards migrants shows that the Austrian scores have considerably worsened during the last decade; Austria scored highest among the 16 western European countries covered.⁴⁴

31. ECRI considers that the authorities should take full advantage of the many possibilities offered by electronic data processing when setting up a new system for recording hate motivated offences. In particular, the police and prosecution services should adopt a broad definition of racist, homo- and transphobic incidents and establish a tool that automatically searches for keywords in their files, which can help to detect cases which might have been motivated by racism, homo- or transphobia. They should also ensure that data can be broken down according to various criteria such as the group to which the victim belongs and the criminal-law provision under which the offence is prosecuted. They should finally ensure that all cases with evidence of such bias motivation are correctly registered as hate crime; one way of achieving this would be specific training.
32. ECRI recommends that the authorities set up an IT-based system for recording and monitoring racist, homo- and transphobic incidents, and the extent to which these incidents are brought before the prosecutors and are eventually qualified as racist or homo/transphobic offences (§ 12 of General Policy Recommendation No. 11 on combating racism and racial discrimination in policing).
33. In its fourth report ECRI reiterated its call for the adoption of ad hoc measures to combat the use by political parties or their representatives of racially inflammatory or xenophobic discourse. Since then, many hate motivated public statements have been made - in particular during election campaigns - and nourish everyday racism and neo-fascism in Austria.⁴⁵ The far right – the FPÖ (Austrian Freedom Party) and the BZÖ (Alliance for Austria's Future⁴⁶) - is openly hostile to historical ethnic, religious and linguistic minorities, migrants, refugees and asylum seekers.⁴⁷ In its Handbook for Liberal Policies the FPÖ quotes documents accusing migrants of causing crime and unemployment, spreading diseases and being responsible for rising real estate prices. As a solution, "negative immigration" is suggested, i.e. the removal of foreign nationals to their countries of origin. In March 2012 the FPÖ used an election poster with a racist statement⁴⁸, in December 2012, a Viennese local FPÖ politician and police officer issued an islamophobic press release⁴⁹ and in 2014 an FPÖ candidate employed

⁴¹ Philipp and Starl 2013: 29 et seq.

⁴² FRA 2012a.

⁴³ Cf. ZARA 2013 and 2014; for 2013 the Forum against Antisemitism recorded 49 cases of hate mail/hate call and 21 other cases of verbal abuse/threats/harassment, FGA 2014; Romano Centro published a report on 82 recent cases of discrimination towards Roma including hate speech, Roman Centro 2013.

⁴⁴ Rosenberger and Seeber 2011: 181 et seq.

⁴⁵ For examples see United Press International 2015 and thelocal.at 2015.

⁴⁶ In 2005, the BZÖ was created by Jörg Haider and other members of the FPÖ. Despite several initial election successes, in 2013 it failed to reach the 4% threshold for representation in the federal Parliament.

⁴⁷ Annual reports of ZARA; in particular ZARA 2013: 58 et seq.; ENAR 2012.

⁴⁸ Diepresse.com 2014a; ZARA 2013: 28 et seq.; ZARA 2014: 30: "My Plan for Innsbruck: Homeland love instead of Moroccan thieves".

⁴⁹ The title of the press release was: "Subway sex monster hides in Turkish community in Brigittenau! Uneducated, criminal and hateful towards women - the desirable goals of the multi-cultural society?"

racist terms in the European elections race.⁵⁰ Members of the centre right Austrian People's Party also succumb to the temptation of using hate speech.⁵¹

34. The Service for the Protection of the Constitution (SPC) reports that a new generation of right wing extremist organisations has appeared, which present racist views through “more diplomatic propaganda” and aim at recruiting young people to a large extent from universities and student fraternities (Burschenschaften). For example, the IBÖ (Austrian Identitarian Movement) campaigns for maintaining the Austrian identity and states that Austria needs to be protected from mass immigration and “Islamisation”. Music is also used to spread neo-Nazi ideas.⁵²
35. Until 2002 the SPC used to report on strong ties between student fraternities and right wing extremists.⁵³ According to the authorities, the SPC then changed the focus areas of its reports and did not cover the activities of the fraternities anymore.⁵⁴ Experts observe an ongoing radicalisation among the members of the umbrella organisation German Fraternity (Deutsche Burschenschaft): in 2011 two motions were signed by 14 Austrian fraternities, which aimed at establishing that not only German citizenship but German descent was required to be a member of any fraternity and at excluding an organisation which had accepted a student of Chinese descent. According to the explanatory statement “for example a non-European facial and body morphology [...] was a sign of non-German decent”. In 2013 another motion, drafted by a working group, aimed at linking membership to a kind of “certificate of Aryan descent”. Under public pressure this motion was withdrawn and many liberal fraternities left the umbrella organisation. The SPC, in its 2013 annual report, noted anew that the fraternities had repeatedly been criticised for being latently fascist. Many FPÖ politicians are fraternity members. Following reports about antisemitic comments made in 2012 by the FPÖ leader Heinz-Christian Strache at their “Vienna corporations’ ball” at the Vienna Hofburg, the authorities announced that they would stop renting the premises to the fraternities; the ball has been renamed; it is now organised by the FPÖ.⁵⁵
36. Racism on the Internet and social media is on the rise. In 2013 the number of cases denounced on a police website for reporting Nazi activities rose to 1 900 (2012: 940; 2011: 338). The authorities give three reasons: better sensitisation, the possibility of reporting anonymously and a rise in the number of relevant acts.⁵⁶ Research indicates that this type of content is posted not only by individuals, but also by political parties, other racist and neo-Nazi groups, as well as extreme right-wing and racist musicians.⁵⁷ In 2013, such racist postings on Facebook made reference to the bomb attack in Oberwart which had killed four

⁵⁰ Andreas Mölzer had to admit that he had stated that the EU was a “conglomerate of negroes”; DerStandard.at 2014a. He is also suspected of having written an article which denigrates the family of the Black soccer player David Alaba, Süddeutsche Zeitung 2014.

⁵¹ ZARA 2014: 32: in December 2013 a mayor belonging to this party made antisemitic and xenophobic statements during a debate on the accommodation of asylum seekers. For other examples of hate speech from politicians see § 38 and the annual reports of ZARA.

⁵² FMI 2014: 15 et seq. and 63 et seq.; ZARA 2014: 55 et seq.

⁵³ FMI 2003: 26.

⁵⁴ Individual members may still be subject to surveillance if they are suspected of infringing criminal law.

⁵⁵ Spiegelonline 2013a, 2013b and 2014; FAZ 2013; FMI 2013: 58; Weidinger 2015: 443 et seq.; Peham 2014: 13 et seq.

⁵⁶ FMI 2013: 19 et seq. This website, Meldestelle NS-Wiederbetätigung, can be consulted under http://www.bmi.gv.at/cms/bmi_verfassungsschutz/meldestelle/, accessed on 20.05.2015.

⁵⁷ Institut für Gesellschafts- und Sozialpolitik an der Johannes Kepler Universität Linz 2012: 21 et seq. For homophobic hate speech cf. <http://www.profil.at/articles/1421/983/375446/shitstorm-conchita-wurst-heinz-fischer>.

Roma in 1995.⁵⁸ In 2014 racist comments were posted on the web-pages of several federal ministers⁵⁹ and the Eurovision Song Contest victory of Conchita Wurst triggered a lot of online hate speech and threats. Such comments were even posted on the Facebook page of the Federal President and only deleted four days later.

37. According to the SPC, some radical Islamist preachers generate hatred against persons of a different faith. In November 2014 the Vienna school authority asked a private school to provide a certified translation of a history book after allegations that it contained antisemitic material.⁶⁰ In July 2014 antisemitic comments were posted on the Facebook-page of the Minister of Foreign Affairs in reaction to his appeal for peace in the Near East.⁶¹
38. Traditional media also publish clearly racist content⁶² and often disclose the ethnic origin of suspects when reporting criminal acts. Some media are considered to produce xenophobic content, which has not been properly researched; resentment is stirred up and Roma, asylum seekers and other vulnerable groups are portrayed as criminals.⁶³ Media reports have for example contributed to intensifying antipathy against Roma during discussions about the alleged existence of “begging mafias”. In Salzburg the debate became more heated during the 2014 local election campaign. Although research had already concluded that it was unlikely that such structures existed, the ongoing discussion resulted in the setting up, in August 2014, of a special police unit to investigate the issue. Four agents invested 3 300 man hours before the police could conclude that there was no organisation holding sway over a significant share of those begging. The operation’s cost was at least 35 000 Euros.⁶⁴
39. On a positive note, public figures such as the singer Conchita Wurst and the soccer player David Alaba have a positive impact on the perception of people with different backgrounds.⁶⁵ Also, there are no more reports about hostility towards the Slovenian minority in Carinthia.⁶⁶

⁵⁸ Romano Centro 2013: 14

⁵⁹ Diepresse.com 2014b.

⁶⁰ In December 2014 the school authority prohibited the operation of this school after the end of the school year as it had refused to provide a list of its teaching and managing staff, standard.at 2014e.

⁶¹ FMI 2014: 50 et seq ; Focusonline 2014; Vorarlberg.orf.at 2014; cf. DerStandard.at 2014c.

⁶² For example in December 2012 the free newspaper „heute“ published an article about a murder case in Klagenfurt; even though there was no information on the culprit’s origin, he is described as the “sort of man who usually and luckily live behind the half moon. In countries where the buttocks are higher than the head when praying. They see partners as their property. If she tries to be independent, they feel injured in their pride and go crazy”, ZARA 2014: 27. On 23 December 2013 the Kronen Zeitung wrote about an attack on a taxi driver: “Just before the arrival, the Southerner (one out of hundreds of criminal aliens that make our home uncertain) pulled out a knife”, Austrian Press Council, decision no. 2013/1. On 20 March 2013 the Tiroler Tageszeitung published under the headline “The Moroccan who deals with beer and toast instead with drugs” the following passage “North Africans in Innsbruck actually have only two alternatives: deal drugs or prison”, ZARA 2014: 32.

⁶³ Concerning Roma see Roma Centro 2014: 14 and Austrian Press Council (APC), decision no. 2014/ 18 and 27 on several articles of the Kronen Zeitung. Concerning asylum seekers cf. APC decision no. 2013/ 78, 80 and 82 on several articles published by the same newspaper. The articles suggest that three asylum seekers, who were housed in a monastery, are the heads of a criminal gang and had gained 20 million Euros with human trafficking. The APC found that the newspaper had breached the rules on proper research and protection of privacy. See also ZARA 2014: 26.

⁶⁴ Schoibl 2013; Salzburger Nachrichten 2014; Romano Centro 2013: 17. ECRI welcomes the decision of the Austrian Constitutional Court that the absolute begging-bans of Salzburg violated the freedom of expression (Art. 10 ECHR), No. G155/10, 30.6.2012.

⁶⁵ Unfortunately, successful Roma do not dare to disclose their origin, Schmatz 2014: 10.

⁶⁶ Cf. § 97 of ECRI’s 4th report on Austria.

- **Responses to hate speech**

40. ECRI notes that several racist statements including some made by politicians have gone unpunished. One reason is that the courts considered that they had not been made in front of a sufficiently large audience (see § 5).⁶⁷ At the same time, the police and prosecution services have invested considerable resources to ensure a criminal-law response to hate speech. The police, for example, set up a special taskforce to investigate the Nazi web-site Alpen-Donau-Info. This was a complicated operation as most data and content had been encrypted and anonymised. As some perpetrators resided abroad, other countries had to be asked for assistance in criminal matters. In 2013 the three main perpetrators were convicted in second instance to prison sentences of up to seven years and nine months for breach of section 3g NSPA. Several users of the site were also sentenced to six to 18 months imprisonment.⁶⁸ Furthermore, the identity of the neo-nazi musician “Reichstrunkenbold” was discovered; he and five other perpetrators were sentenced to prison terms of up to three years.⁶⁹ The police has stepped up initial and further education on racism and discrimination and the judiciary has dealt with these issues in several seminars. Approximately 300 police agents were trained to investigate cybercrime. ECRI welcomes these initiatives together with the website for reporting Nazi activities.
41. ECRI is pleased to note that the Authorities are in the process of further improving their criminal-law response to hate speech. There was an increase in criminal investigations following the wave of online-hate speech in 2014⁷⁰ and an inter-ministerial summit on combating hate speech was organised in autumn 2014.⁷¹ Concerning the issues of amending section 283 CC and ratification of the additional Protocol to the Convention on Cybercrime ECRI refers back to §§ 7 et seq. of this report and the recommendation made in § 7 of its 4th report. In ECRI’s view, ratification of this Protocol would considerably improve the Austrian authorities’ response to cyber hate speech: it would not only lead to the alignment of the relevant Austrian criminal law provisions to international standards, but would also allow the Austrian cybercrime police units to draw benefit from international cooperation.
42. ECRI strongly recommends that Austria ratifies the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.
43. ECRI also considers that more needs to be done to stop certain political parties and other organisations from cultivating and disseminating neo-Nazism, racism and xenophobia. Showing tolerance towards such parties and organisations and failing to take clear action to stop the dissemination of their ideology nourishes everyday racism and neo-fascism in Austrian society. In response to the developments described in § 35, such action also needs to be taken against student fraternities that keep alive such ideology in academia. In addition to applying criminal law vigorously in such cases, the public funding of such organisations, including political parties, should be discontinued. Public authorities should ensure that racist organisations do not receive any further public support and be dismantled (§§ 16 and 17 of GPR No. 7).

⁶⁷ ZARA 2014: 29 et seq.; Heute.at 2014

⁶⁸ FMI 2013: 45 et seq.; 2014: 20.

⁶⁹ Oe24.at 2014a.

⁷⁰ Until November 5th, 193 known persons and another 77 unknown persons were prosecuted under Article 283 CC. There were 23 convictions.

⁷¹ oe24.at 2014b; Diepresse.com 2014b.

44. ECRI recommends that criminal and administrative law is applied in a more vigorous way to curtail the activities of organisations that promote a racist ideology. Imposing sanctions on and dismantling such organisations should be part of the response.
45. ECRI notes that the authorities have also opted for non-criminal-law responses to hate speech. At the hate speech summit in 2014, the commitment to continue prevention was renewed. School-education was found to be an important area for prevention activities. Also self-regulation by internet providers, moderators of online forums and media was discussed.
46. ECRI, in its 4th report, recommended that the authorities systematically condemn all forms of racism in political discourse. In this respect, human rights monitoring in the city of Graz - covering the use of hate speech during election campaigns - can be cited as a good example.⁷² Unfortunately, on the federal level, racist and homo- and transphobic speech, in particular hate speech from politicians, is not systematically countered. Quite often, the members of the federal government prefer not to react. Moreover, the Parliament's rules of procedure only prohibit the use of insulting language, but do not expressly address hate speech. ECRI considers that the federal authorities should follow the example of the city of Graz and set up or task an existing body⁷³ to monitor hate speech.
47. ECRI recommends that the Austrian authorities, including the members of the government, the Austrian Ombudsman Board and the specialised bodies systematically counter and condemn hate speech and develop instruments to prevent and combat its use in particular during election campaigns.
48. ECRI welcomes the efforts of the government towards more tolerance and a balanced debate on migration and foreigners. Several campaigns were run in the framework of the project "together:Austria".⁷⁴ 300 prominent persons from the fields of sport, the economy and culture, but also ordinary persons with migration backgrounds, serve as integration ambassadors and visit schools, companies and associations to discuss about their successful integration. The authorities have also published an integration glossary for journalists, which explains a number of key terms having to do with integration.⁷⁵ The 2014-initiative #proud of focuses on Austrians with migration backgrounds being proud of Austria.⁷⁶
49. Some media have played an important role in combating hate speech and pushed several FPÖ-politicians, such as Andreas Mölzer, who had made hate motivated statements, to resignation. Researchers and civil society consider, however, that persons with migration backgrounds and members of other vulnerable groups like Roma are still not given enough opportunities to express themselves in the media.⁷⁷ Roma and asylum seekers, for example, are rarely quoted in reports about issues of concern to them.
50. In response to an ECRI recommendation, the Austrian Press Council was re-established in 2010. The Council found violations of its Code of Ethics in most of

⁷² In 2009 it led to the condemnation of a FPÖ frontrunner for incitement for hatred, Steiermark.orf.at 2009.

⁷³ The federal ETC, due to restrictions in its mandate, can only address hate speech in the fields of employment, education and social services. ECRI refers back to the recommendation made in § 22 (i).

⁷⁴ <http://www.zusammen-oesterreich.at/index.php?id=2>.

⁷⁵ Medien-Serviceestelle Neue Österreicher/innen 2012.

⁷⁶ m-media.or.at 2014b.

⁷⁷ Gruber, O., Herczeg, P., Wallner, C. 2012; Brantner, C., Herczeg, P. 2012.

the media-related cases in §§ 33 et seq.⁷⁸ Membership in the Council is however not mandatory. As the main tabloids are not members, they are not obliged to follow and publish the Council's decisions. Also, there is no comparable mechanism for other media including television and radio. ECRI considers that the authorities should promote the extension of the Council's mandate to other media. Also, sanctions should be introduced for all media who have been found to have breached the Code of Ethics; the authorities could consider extending the obligation to return public funding (section 2.8 of the Press Subsidies Act) to those whom the Press Council has found to have breached its Code of Ethics. Furthermore, ECRI supports a proposal made by an expert that such subsidies, which are currently paid to all media, should be limited to those that comply with certain criteria (quality journalism and thorough research).⁷⁹ Finally, the authorities should ensure that the ethnic origin of alleged perpetrators of an offence is only disclosed by the police and the judiciary where it is strictly necessary and serves a legitimate purpose. They should also promote the inclusion of such a rule for the media in the Press Council's Code of Ethics (§§ 20 and 88 to 89 of GPR No. 11). If self-regulation does not produce sufficient results, an external regulatory framework should be set up.

51. ECRI also considers that more regulation is needed for online forums. To date hate speech can be posted anonymously on many electronic media and there is no systematic monitoring of their content. An explanation is that media have an economic interest in having as many comments as possible. ECRI considers that the Authorities should promote the idea that all media develop mechanisms ensuring that hate motivated comments are removed. In this respect ECRI highlights a good practice from Google world, which has recently introduced the possibility of reporting hate speech in order to obtain its removal.⁸⁰

52. ECRI recommends that the authorities promote (i) accession of more media to the Press Council, (ii) respect and publication of its decisions by non-members, (iii) the extension of the Press Council's mandate to all media or the setting-up of similar bodies for other types of media including radio and television, (iv) the idea that media only disclose the ethnic origin of alleged perpetrators of an offence when it is strictly necessary and serves a legitimate purpose and (v) self-regulation to ensure the removal of online hate speech. The authorities should sensitise the media, without encroaching on their editorial independence, to give members of vulnerable groups adequate space to express themselves. ECRI recommends that the authorities consider enacting legislation if there is no other option. The authorities should finally ensure that the police and the judiciary only disclose the ethnic origin of alleged perpetrators of an offence when it is strictly necessary and serves a legitimate purpose.

3. Racist and homo/transphobic violence

53. According to the latest report on the Protection of the Constitution, in 2013 two persons were injured in antisemitic attacks; in 2012 one person had been injured in such an attack, while eight persons had been injured in other racist and xenophobic attacks (nobody in 2013). Data from other sources indicate that the number of hate motivated offences is significantly higher. During a 2012 FRA study, 7% of the respondents of Turkish origin indicated that they had been

⁷⁸ See the decisions published on the Press Council's webpage <http://www.presserat.at>. Section 5.5. of its Code of Ethics provides: "Any discrimination on racial, religious, national, sexual or other reason is inadmissible".

⁷⁹ Cf. § 38 and the expert opinion Haas 2012: 192 et seq.

⁸⁰ <http://googlepublicpolicy.blogspot.co.at/2014/09/fighting-online-hate-speech.html> and <http://www.adl.org/combating-hate/cyber-safety/best-practices/>.

victims of attacks or other serious offences during the past 12 months.⁸¹ Also, the 2013 lethal knife attack on a Black in Vienna⁸² does not seem to be reflected in the official statistics. The perpetrator was sentenced to 8 years and Article 33 CC on aggravating circumstances was applied.⁸³ As on hate speech, there is no official data on homophobic and transphobic violence. 23% of the respondents at the FRA's LGBT survey responded that they had been physically or sexually attacked or threatened with violence during the last five years. 54% of those who had been subject to such an attack in the past 12 months thought that this had happened partly or entirely because they were perceived to be LGBT. Only 19% of the victims had reported an incident to the police.⁸⁴

54. Among the recent hate motivated offences the attack on the encampment of several Roma families on 2 September 2013 is of particular concern. After a Facebook campaign inciting to hatred, violence and arson, and despite the intervention of the police, approximately 20 young adults damaged several vehicles, which had been parked legally near Bischofshofen. Eight perpetrators were sentenced for incitement to hatred to three and four months of prison.⁸⁵ On 24 July 2014, around 20 young persons attacked the football players of Maccabi Haifa during a friendly game with OSC Lille in Bischofshofen. The perpetrators waved Turkish and Palestinian flags; a knife and stones were used. Leading politicians condemned the antisemitic attack and the criminal proceedings resulted in a five month suspended prison sentence.⁸⁶ The Jewish community informed ECRI that its members increasingly fear physical attacks and that it needs to invest a growing part of its budget into security. Mosques and shelters for asylum seekers are also targets of attacks. In 2010 several shots were fired in front of the mosque in Freistadt and in 2011 there was an arson attack on the mosque of Kufstein. In October 2014, five shots were fired next to a shelter for asylum seekers near Kitzbühel.⁸⁷
55. Concerning the registration of hate crime, ECRI refers back to the recommendation made in § 32. It considers that sustained action is needed to ensure the adequate punishment of all those resorting to hate motivated violence. With regard to the attack on the Roma encampment in 2013, it again underlines that the authorities should intensify their action to prevent the dissemination of racist, homo- and transphobic content on the Internet and refers back to the recommendations previously made in this report.

4. Integration policies

- Persons with migration backgrounds

56. 1 625 million persons with migration backgrounds lived in Austria in 2013 (19.4% of the global population). Out of the 1 197 million persons born abroad and the 428 200 persons with a parent born abroad, 566 700 persons originated from EU

⁸¹ FRA 2012b: 11.

⁸² DiePresse.com 2013.

⁸³ After allegations that another murder – the one of a Romanian national in 2011 - was racially motivated, the authorities double-checked the presence of a bias motive; they concluded that the perpetrator did not act out of a specific ideology but that he was convinced that there were too many migrants in Austria.

⁸⁴ FRA 2012a. Cf. also OSCE 2013: 45. See also Human Rights Council of the City of Graz 2014: 37.

⁸⁵ Romano Centro 2013: 17; Salzburg.orf.at 2014b and c.

⁸⁶ For further details cf. Salzburg.orf.at 2014a and DerStandard.at 2015b.

⁸⁷ WienerZeitung.at 2012; DerStandard 2011; DerStandard.at 2014d.

countries, 533 100 from ex-Yugoslavia and 268 400 from Turkey. 17 413 persons had applied for asylum (2012: 17 400).⁸⁸

57. Despite a long history of migration, integration has only recently become a political priority on the federal level. ECRI welcomes the fact that - following a recommendation made in ECRI's 4th report – the government has adopted the first ever National Action Plan on Integration (NAP-I) in January 2010. It targets “the whole society, foreign citizens living permanently in Austria, Austrian citizens born abroad and people with parents born abroad living permanently in Austria.” Several bodies are involved in its implementation. The Expert Council for Integration (ECI) was set up as a competence centre, which consolidated, in 2011, the various measures of the NAP-I into a 20-point programme. The Advisory Board on Integration shall facilitate coordination among stakeholders. In 2011, the State Secretariat for Integration was set up. In 2014 the responsibility for integration policies was transferred to the Federal Ministry for Europe, Integration and Foreign Affairs, which has taken over leadership for this topic in the federal administration. The Integration Fund runs six integration centres and carries out integration projects.
58. A basic principle of Austrian integration policy is the concept of “Integration from the beginning”: the learning process that promotes integration should start as early as possible; it begins with pre-integration measures in the country of origin and ends with the attainment of citizenship.⁸⁹ According to section 21a of the Settlement and Residence Act (SRA), aliens who are not citizens of an EEA-country or Switzerland (third country nationals) must provide proof of basic German language skills when applying for a residence permit. Those who are granted a temporary permit for the first time, have to complete module 1 of the Integration Agreement⁹⁰ within two years (section 14a.1 SRA). Module 1 teaches language skills at level A 2, in order to facilitate participation in social, economic and cultural life. Module 2 provides German language skills at B1 level. Its completion is not mandatory, but a requirement for obtaining long-term residence permits and for acceding to citizenship. Migrants need to pay for both modules. Those who complete module 1 within 18 months can have the cost of tuition reimbursed up to a maximum of 750 Euros. According to the NAP-I, obtaining the Austrian citizenship should be the end-point of a comprehensive integration process.⁹¹ In 2013, 7 400 foreigners received Austrian citizenship.⁹²
59. In the field of employment of foreigners, ECRI welcomes the fact that, after repeated recommendations on its part, section 8.2 of the Aliens Employment Act was repealed in 2011, which required employers, when making staff cuts, to dismiss foreign employees first.

- **Effects of integration policies for persons with migration backgrounds**

60. In an assessment of Austria's integration policies from 2010, Austria did not receive a very high ranking.⁹³ Since then, the Austrian authorities have set up a

⁸⁸ Statistics Austria 2013: 8 and 2014: 9. First generation means persons born abroad, second generation persons with one parent born abroad.

⁸⁹ Expert Council for Integration 2014.

⁹⁰ Despite the title, no negotiation or conclusion of contract takes place between the authorities and the foreigner.

⁹¹ Republic of Austria 2010: 9.

⁹² Statistics Austria 2014: 9. This figure was much higher before.

⁹³ This was the year when the Migrant Integration Policy Index (MIPEX) had been last updated for Austria; Austria ranked 24th. MIPEX had taken into account the first positive impact of the NAP-I.

system of 25 integration indicators in order to evaluate the impact of the NAP-I.⁹⁴ The five main indicators are: educational level, labour market participation, unemployment by citizenship and educational level, annual income and poverty. Migrants from EU-countries, EEA-countries and Switzerland do better than the average, while persons originating from ex-Yugoslavia, Turkey and other countries score below. For example, in 2013 62% of persons of Turkish descent had only completed compulsory education (compared to 16% of the whole population). The unemployment rate for persons originating from ex-Yugoslavia (outside EU) was 11.6%, from Turkey 15.4% and from other third countries 17.2%, whereas the general rate was 7.6%. The labour market participation of women with migration backgrounds is significantly worse than that of majority-population women (58% compared to 70%; for women of Turkish origin it is 40%). Between 2009 and 2011 44% of persons of Turkish origin were affected by the risk of poverty; so were 47% of migrants from other third countries (compared to 14% of the whole population).⁹⁵

61. 24% of Austrians who are in contact with migrants believe that the latter are disadvantaged; one third of the migrants feel the same way. A survey of Blacks showed that they were feeling discriminated by courts and other public authorities as well as in the field of health care and on the employment market. Their unemployment rate was about 20%; 50% stated that they were overqualified for their job.⁹⁶ Foreigners, particularly persons of African descent, are not only victims of hate motivated crime, but also of other criminal offences.⁹⁷
62. As already referred in § 30, Austria scored highest among 16 western European countries on an index on antipathy towards migrants. Since 2010, the Austrian authorities conduct annual surveys on attitudes towards integration. A majority of Austrians still believe that integration works badly or very badly, but the results are improving. While in 2010 17.8% of the population considered that integration worked very badly, in 2013 only 8.6% did so. People above the age of 60, with low income and/or low education and unskilled workers are the most pessimistic groups. 82% of migrants feel totally or mostly at home in Austria. The majority of Austrians consider that migrants should better adapt to the Austrian life style. ECRI welcomes the commitment of Federal Minister Sebastian Kurz and the competent authorities, which have had considerable positive impact. Given the persisting extent of antipathy towards migrants, ECRI considers that the authorities should continue their efforts towards rebalancing the public debate on migration by, for example, highlighting the needs of ageing societies for migration and the positive impact of the latter.
63. ECRI welcomes the fact that the authorities have set up, with the ECI, an efficient body which conducts, in its annual reports, regular evaluation of the integration policies and makes recommendations for their improvement. From its 2014 report it transpires that many integration initiatives take the form of standalone projects; at the same time, core parts of the civil service, such as the school system, are still unable fully to meet the needs of persons with migration backgrounds who quite often start off at a disadvantage. Also, the impact of the NAP-I in the Länder is limited. During its field visit to Burgenland, ECRI's delegation observed that the NAP-I was almost unknown among regional authorities. A project-based approach outside established structures is certainly appropriate when developing

⁹⁴ Expert Council for Integration 2014: 7. The system covers the fields of education, employment, health and social affairs, security, housing and climate of integration. Statistics Austria publishes annual reports on integration.

⁹⁵ For §§ 60 to 62 and the figures given therein see Statistics Austria 2013 and 2014.

⁹⁶ Philipp and Starl 2013: 3 et seq.; m-media.or.at 2014b.

⁹⁷ Statistics Austria 2014: 13.

new instruments. In order to ensure sustainability and adequate budgeting, it is however important that integration policies are mainstreamed and that educational institutions, employment, health care and other public services take over ownership of core areas.

64. ECRI recommends that the classical parts of public service, such as the federal and regional school administration, employment, health care and other public services take ownership of core elements of the integration policies.
65. ECRI has repeatedly recommended that the authorities address the disadvantaged educational position of children with migration backgrounds and consider a more radical reform of the school education system. In education, the authorities now also focus on early acquisition of high level German language skills as a key element for successful integration. The introduction of a free compulsory pre-school year for all five year old children was an important step forward. The ECI considers that kindergartens should gradually be transformed into educational institutions and recommends that children should be entitled to a second year of free kindergarten. ECRI welcomes the fact that the government has started implementation of this ECI-recommendation⁹⁸ and that language support programmes in kindergarten have already produced positive results: the monitoring of the language level among 4 ½ and 5 ½ year-old children showed in 2008 that 58% of children, whose first language was not German, needed additional language training. The percentage was even higher among children who had not attended kindergarten before.⁹⁹ A subsequent test showed that about 80% of the children who had benefited from language support programmes during one year had no need for further support.¹⁰⁰
66. Elementary and secondary schools are still not sufficiently equipped for helping children with persistent difficulties to catch up. Also, schools continue to rely to a considerable degree on parent support. As many parents with migration backgrounds cannot provide help, the schools need to provide individualised support to ensure that their children acquire adequate German language skills. Initial and continuous training should prepare pre-school and school teachers better to teach German to children with another mother tongue and to the challenges they face in diverse classrooms.¹⁰¹ Schools should also better involve parents in schooling and human rights education should be included in schooling as from kindergarten. ECRI considers that the authorities should continue focusing on education in their integration policies and include the issue of human rights education in the Human Rights Action Plan currently under preparation.
67. The NAP-I does not specifically address asylum seekers and persons having been granted asylum or subsidiary protection. However, due to the length of asylum procedures, many of them stay for years in Austria without receiving appropriate language training and with restricted access to the labour market. Their children have problems to be enrolled in kindergarten. During the first three months, asylum seekers are not allowed to take up regular work, but only to carry out unpaid or low remunerated community work or auxiliary work in their accommodation facility. Subsequently they can only be employed during harvest or in seasonal jobs up to six weeks and twelve months respectively within any 14 month period, or work as self-employed persons; there are no incentives for them to work, as their wages are deducted from social benefits and as they need to leave their accommodation. ECRI considers that these restrictions are

⁹⁸ Federal Ministry for Family and Youth 2014.

⁹⁹ Statistics Austria 2014: 42 et seq.

¹⁰⁰ Expert Council for Integration 2014: 33.

¹⁰¹ For this paragraph see Expert Council for Integration 2014: 33 et seq.

counterproductive, as many newly arrived asylum seekers are highly motivated to work. At the same time, asylum-seeker unemployment is expensive and contributes to xenophobic and racist attitudes in the media, public discourse and among the population in general. ECRI therefore considers that the Austrian principle of Integration from the beginning should be applied to the asylum system as well. In this context, it welcomes the facilitation of access to apprenticeships for young asylum seekers. Concerning refugees, UNHCR points out that better language tuition, in particular through vocational language tuition and combined work and language programmes, is a key factor for better integration.¹⁰²

68. ECRI recommends that the authorities apply the principle of Integration from the beginning in the fields of asylum and subsidiary protection. They should design and implement a concept for addressing the special integration needs of the persons concerned.

69. The regulatory framework for the exercise of religion also raises important integration issues. Until now, Muslims could set up associations, religious communities¹⁰³ and religious societies, which are composed of one or more communities of worship.¹⁰⁴ The 2015 Islam Act brings considerable improvement such as state protection for Islamic holidays, the right of religious societies to provide Islamic spiritual care in public hospitals and other institutions and regular university studies in Islamic theology. Concerns have been raised about several other provisions which, for example, ban ongoing foreign funding of Islamic religious societies and provide for the dissolution of a considerable number of associations whose purpose is to spread the doctrine of a religious society already recognised under the Islam Act (Articles 6.2 and 31.3).¹⁰⁵ ECRI recalls that freedom of religion needs to be fully guaranteed (Article 9 ECHR) and that the authorities need to ensure that Muslim communities are not discriminated against as to the circumstances in which they organise and practice their religion.¹⁰⁶ The Venice Commission has stated that a blanket prohibition on all foreign funding is arguably unreasonable and not necessary in a democratic society. Also, consideration should be given to prescribing a range of sanctions of varying severity, before taking the harsh step of liquidating a religious organisation, which should be a measure of last resort.¹⁰⁷ According to the ECtHR, State's power to protect its institutions and citizens from associations that might jeopardise them¹⁰⁸ must be used sparingly and correspond to a pressing social need.¹⁰⁹

70. ECRI recommends that the authorities ensure, in view of the sustainable integration of important parts of the population, that any restriction and differential

¹⁰² UNHCR 2013: 9 et seq.; AOB 2012: 25 et seq.; 2013: 116; Ammer 2013: 2 et seq.

¹⁰³ Cf. the Austrian Act on the Legal Status of Registered Religious Communities.

¹⁰⁴ For more details cf. OSCE/ODIHR 2014: 3 et seq.

¹⁰⁵ OSCE/ODIHR 2014: 3 et seq.; Hafez 2014; OSCE 2012: 51 et seq.

¹⁰⁶ ECRI's GPR No. 5 on Combating intolerance and discrimination against Muslims, ECtHR, *Jehovas Zeugen in Österreich v. Austria*, no. 27540/05, 25.09.2012, §§ 28 et seq. and the series of other Austrian discrimination cases cited therein.

¹⁰⁷ CoE, *European Commission for Democracy through Law 2014: 49 et seq.*

¹⁰⁸ ECRI has already explained in §§ 8, 10 and 21 of this report how criminal, civil and administrative law can be used, in line with §§ 16, 17 and 18g of GPR No. 7, to combat any type of racist organisations, including any that may wish to give the appearance of promoting religious beliefs. Cf. also CoE, *European Commission for Democracy through Law 2014: 37 et seq.* and *Stavros 2014*.

¹⁰⁹ *Magyar Kerestény Mennonita Egyház and others v. Hungary*, nos. 70945/11, 23611/12, 26998/12, 41150/12, 41155/12, 41463/12, 41553/12, 54977/12 and 56581/12, 8.4.2014, §§ 79 et seq.

treatment with regard to practice of Islam is in line with the European Court of Human Rights case law.

- **Roma**

71. ECRI, in its 4th report on Austria, recommended that the authorities pursue their efforts to combat racism and discrimination against Roma, especially in the field of education and that they involve civil society in the design and implementation of new measures.¹¹⁰ Estimates of the Roma population in Austria amount to 35 000 to 50 000. It is composed of autochthonous Roma and many persons originating from ex-Yugoslav countries, which arrived since the 1960s.¹¹¹ The government presented a Roma-Strategy in 2012 and summarised all activities and projects under way in its 2013 progress report. A Dialogue Platform was set up to monitor the strategy's implementation; it has met a dozen times since 2012. ECRI's delegation, during its country visit, met several Roma organisations which successfully run projects in the areas of education and employment.
72. Civil society deplores that the Dialogue Platform has no clear goals, lacks efficiency and is still in the phase of stock-taking and data collection. Only one out of the three studies commissioned was completed in 2014. Roma point out that the strategy is only project-based (see also the situation described in § 63). There is no national budget for new programmes or projects - even though some of them are fully drawn up - and EU funds arrive late.¹¹² Roma organisations do not have the financial resources to pre-finance EU-funded projects; some need external empowerment to be able to carry out such projects. The timeline set for updating the Roma Strategy is early 2016. The authorities have informed ECRI that the Austrian ESF Operational Programme was approved by the European Commission on 28 November 2014 and that a call for Empowerment of Roma in the labour market was published in April 2015. The authorities will provide pre-financing for projects and a special focus will be put on applications from the target group itself.
73. ECRI welcomes the fact that the authorities invest in careful stocktaking and data collection for the evaluation of on-going and future integration measures. At the same time, it considers that they should accelerate the implementation and (pre)-financing of concrete programmes to achieve all the goals of the strategy in parallel with these stocktaking activities without waiting for the strategy's updating in 2016. Special care should be taken to include, wherever possible, positive measures in favour of Roma individuals and to empower Roma communities and organisations further. For example, future calls for tender could stipulate that a certain percentage of staff carrying out a project should be of Roma descent or able to speak Romani.
74. ECRI recommends that the authorities step up the implementation of concrete programmes and projects to achieve the objectives set out in the Roma-Strategy. Special attention should be paid to the further empowerment of Roma and their organisations by positive measures.

¹¹⁰ In Austria there exist six recognised national minorities: the Croat minority in Burgenland, the Slovene minority, the Hungarian minority, the Czech minority, the Slovak minority and the Roma minority. As Roma are still particularly vulnerable, ECRI will focus its 5th report on this historical minority. For programmes for the protection and integration of national minorities see the third opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities, ACFC 2011.

¹¹¹ Federal Chancellery 2012: 6. For a wider range of estimates cf. Schmatz et al. 2014: 10 et seq.

¹¹² An ESF-call for projects in the field of employment had still not been published when ECRI's delegation carried out its contact visit in November 2014.

II. Topics specific to Austria

1. Interim follow-up recommendations of the fourth cycle

75. ECRI in its fourth report addressed an interim follow-up recommendation to Austria to strengthen the OET. ECRI has reviewed its implementation in §§ 23 et seq. of this report. It considers that the authorities should discuss with the OET the need of additional resources for representing victims of discrimination in proceedings before public authorities and the courts (see § 26).
76. Another interim follow-up recommendation was to ameliorate the response given to allegations of racist or discriminatory behaviour by the police. ECRI notes with interest that the police have invested considerable resources in human rights training and into support for the association Fair and Sensible which is composed of representatives of law-enforcement and persons with migration backgrounds, in particular from the Black community.¹¹³ However, research indicates that there is still a significant level of racial profiling and police misbehaviour towards Blacks.¹¹⁴ As experience shows that victims of police abuses do not generally have confidence in the complaints mechanisms internal to the police, ECRI is pleased to note that the AOB can now receive complaints for such misbehaviour. It would however seem that victims and civil society are not sufficiently informed about this new competence. Therefore, ECRI considers that the Ombudsman Board should build up a platform for regular dialogue with civil society (Principle 3 I and m of ECRI's GPR No. 2). Given the research results cited above, ECRI considers that the AOB should make use of its ex-officio powers and open an investigation into this matter.
77. ECRI recommends that the Austrian Ombudsman Board uses its powers to investigate allegations of racial profiling and misconduct on the part of police officers towards persons with migration backgrounds. It should also build up regular dialogue with civil society.

2. Policies to combat discrimination and intolerance against LGBT persons

78. In Austria, little official data and research are available on LGBT persons. Their number can be estimated at several hundreds of thousands.¹¹⁵ The FRA LGBT survey provides precious insights into their living conditions and the Vienna Antidiscrimination Office for Same-sex and Transgender Life-styles (VAASTL) recently commissioned a survey of the living conditions of LGBT persons in the capital. A prize for research on homosexuality is awarded every two years.¹¹⁶ ECRI considers that sound quantitative and qualitative research is needed to understand the living conditions of and design and evaluate the legal framework and policies for LGBT persons.
79. ECRI recommends that the authorities undertake research and collect data on the living conditions of LGBT persons as well as on intolerance and discrimination against them.

¹¹³ For further information cf. <http://www.fairundsensibel.at/>.

¹¹⁴ Philipp and Starl 2013; Inou and Achaleke 2011.

¹¹⁵ The Vienna Antidiscrimination Office for Same-sex and Transgender Life-styles estimates the number of LGBT persons living in Vienna at 180 000. Cf. also research and surveys cited in ECRI's last reports on Germany and Norway. Transgender persons are by far the smallest of the four groups. Austrian civil society representatives give the figure of 80 cases of gender reassignment surgery per year.

¹¹⁶ <http://www.agpro.at/foerderpreis1.html>.

- **Legislation**

80. As stated above, in 2012 the ground of sexual orientation but not the one of gender identity was introduced in Article 283 CC on incitement to hatred. Article 33 CC does not expressly mention these grounds which are covered by its open-ended list of aggravating circumstances. The federal ETA expressly prohibits discrimination on the ground of sexual orientation; gender identity is covered by the ground of gender.¹¹⁷ However, the protection for sexual orientation is restricted to the area of employment¹¹⁸ and the ETA cannot be applied in cases such as the 2015 refusal of the famous Vienna café Prückel to serve a lesbian couple.¹¹⁹ Eight out of the nine Länder have expanded the scope of protection to the field of goods and services. However, awareness of this legislation and of the competence of equality bodies is relatively low. At the FRA LGBT-survey, 58% responded that they would not report discrimination because they believed that nothing would happen; 36% did not know how or where to report.¹²⁰ Only few cases are brought to equality bodies and courts.
81. ECRI welcomes the fact that, in 2010, Austria created a special regime of registered partnerships only for same sex couples.¹²¹ Austria has also, as a follow-up to an ECtHR judgment, extended sickness insurance cover to the homosexual partner of an insured person.¹²² Asylum can be granted due to sexual orientation and gender identity and registered partners can benefit from family reunification.¹²³ However, civil society published a list with more than 40 differences between the regulation of partnership and marriage.¹²⁴ Several discriminatory provisions have been annulled since then as a result of strategic litigation. These concerned, inter alia, differences in double-barrelled names for registered and married persons and the fact that only married persons could assume the name of their partner after the marriage, that the partnership could not be concluded outside the office of the registry office, that different ceremonies were held for marriage and partnership and that medically assisted reproduction was restricted to heterosexual couples.¹²⁵ In 2013, the ECtHR found a violation on account of the difference in treatment between same-sex and unmarried different-sex couples wishing to adopt the other partner's child (second parent adoption). In another case, it found discrimination because Austria refused to delete convictions from gay men's criminal records for homosexual relations with consenting male adolescents.¹²⁶ On 11 December 2014 the Austrian Constitutional Court annulled the ban of joint adoption for same-sex partners.¹²⁷
82. Civil society representatives do not challenge some of the remaining differences such as the minimum age of 18 instead of 16 years for registering a partnership. Whereas the authorities are in the process of aligning legislation to some of the

¹¹⁷ Nowak 2010: 26.

¹¹⁸ Nowak 2010: 26. ECRI refers back to the recommendation already made in § 22 (i) of this report.

¹¹⁹ DerStandard.at 2015a.

¹²⁰ EU FRA 2015: 3; EU FRA 2012a; Nowak 2010: 4.

¹²¹ In its judgment *Schalk and Kopf v. Austria*, no. 30141/04, 24.06.2010, the ECtHR held that the ECHR does not oblige a State to grant same-sex couples access to marriage.

¹²² *P.S. and J.S. v. Austria* no. 18984/02, 22.07.2010.

¹²³ FRA 2014: 4.

¹²⁴ Rechtskomitee Lambda 2010.

¹²⁵ Constitutional Court, no. B 518/ 11, 22.09.2011; no. G 131/ 11, 03.03.2012; nos. G 18, 19/2012, 29.06.2012; nos. B 121/11 and B 137/ 11, 12.12.2012; nos. G 16/2013 and G 44/2013, 10.12.2013.

¹²⁶ *X and Others v. Austria*, no. 19010/07, 19.02.2013; *E.B. and Others v. Austria*, nos. 31913/07, 38357/07, 48098/07 et al., 7.11.2013.

¹²⁷ Constitutional Court, no. G 119-120/2014-12, 11.12.2014.

court decisions mentioned in the previous paragraph¹²⁸, the ECtHR judgment on the deletion of convictions from criminal records is not implemented yet.¹²⁹ The authorities have, on ECRI's request, drawn up a list of remaining differences in legislation such as the fact that partners cannot have the same family name¹³⁰, different rules concerning the family home in case of separation and the rules on medically assisted reproduction and adoption which were the subject matter of the judgements referred to in § 112.

83. In Austria there are administrative procedures for changing a transgender person's first name, for gender recognition and for changing the gender marker in official documents. However, there exists no specific legislation on these issues, as the Constitutional Court, in 2006, annulled secondary legislation on the ground that it lacked an adequate legal basis.¹³¹ According to civil society representatives the authorities still use a decree from 1983.¹³² On 27 February 2009, the Higher Administrative Court (HAC) decided that to have access to legal gender recognition, it is sufficient to have undergone gender-corrective measures which have led to a significant similarity in the external appearance of the opposite sex; the Court also recalled that gender recognition was not restricted to unmarried persons.¹³³ It can be deduced from this decision that no sterilisation is needed. In 2014, the Federal Ministry for Health issued recommendations according to which a medical opinion is needed prior to any change in the personal status. The HAC has also held that the change of gender of a married person needs to be taken into account when issuing a new marriage certificate.¹³⁴ As there is persistent legal uncertainty on crucial aspects of transgender persons' private life, ECRI considers that the authorities should enact legislation on the matters discussed in this paragraph.¹³⁵

84. ECRI recommends that the authorities re-examine whether there is an objective and reasonable justification for each of the remaining differences in the regulation of married and same-sex couples and that they abolish all unjustified differences. It also recommends that legislation is enacted on the issues of access to gender reassignment treatment, changing a transgender person's first name, gender recognition and changing the gender marker in documents.

85. The federal ETO and the AOB¹³⁶ are competent for dealing with LGBT issues. ECRI refers back to the recommendations made in §§ 14 and 47 of this report.

- Policies

86. The FRA LGBT-survey of 2012 showed comparatively high levels of discrimination experienced by LGBT persons in Austria.¹³⁷ 78% answered that

¹²⁸ On medically assisted procreation cf. Federal Ministry of Justice 2014b.

¹²⁹ Rechtskomitee Lamda 2014. Cf. also the declarations made by Austria summarised under [https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD\(2014\)1006&Language=lanEnglish&Site=CM](https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD(2014)1006&Language=lanEnglish&Site=CM).

¹³⁰ Cf. on this issue Verwaltungsgerichtshof no. 2012/01/0005, 23.09.2014; Rechtskomitee Lamda 2014a.

¹³¹ Constitutional Court No. V4/06, 08.06.2006.

¹³² <http://transx.at/Lib/Law/BMI1983.pdf>. See also Human Rights Council of the City of Graz 2014: 36 and Constitutional Court, 3.12.2009, no. B1973/08.

¹³³ Verwaltungsgerichtshof, no. 2008/17/0054, 27.02.2009; cf. also Constitutional Court, no. B1973/08, 3.12.2009. For the moment, it does not appear to be required, under international standards, that it should be possible to change name or obtain gender recognition without prior medical expert opinion, CoE Commissioner for Human Rights 2010: 13 et seq.; CoE, Committee of Ministers 2010: § 20, but cf. § 34 of the Explanatory Memorandum.

¹³⁴ Verwaltungsgerichtshof, no. 2010/17/0042, 29.11.2010.

¹³⁵ Cf. Human Rights Council of the City of Graz 2014: 38 to 39, 135.

¹³⁶ Cf. AOB 2013: 73 et seq. on breast augmentation surgery for transgender women.

casual jokes about LGBT are fairly or very widespread in everyday life. 65% are of the opinion that positive measures to promote respect for the human rights of lesbian, gay and bisexual (LGB) persons are fairly or very rare. 60% strongly agree and 27% agree that training of public servants (e.g. police, teachers) on the rights of LGBT would improve their situation. Among transgender persons this figure was 77%. LGB representatives reported on a positive note that their situation is improving and that the victory of Conchita Wurst at the 2014 Eurovision song contest has contributed to a better public awareness about LGB issues. The situation of transgender persons remains much worse; the general population and civil servants have little knowledge about their situation. There is also very little knowledge about intersex persons.¹³⁸

87. ECRI considers that the authorities should have a more systematic approach to LGBT issues. They should adopt a strategy or action plan to ensure the LGBT persons' right to equality and to address the specific needs of each subgroup and also intersex persons. Also, an administrative unit should be tasked, on the federal level, with initiating and coordinating research on and policies for LGBT persons.¹³⁹ At the level of the Länder, Vienna can serve as a good example. The VAASTL is tasked with eliminating discrimination against LGBT persons and establishing a social climate where all persons can live as equals.
88. ECRI recommends that the authorities task at federal level an administrative service to develop and coordinate an action plan or a comprehensive programme for LGBT persons aiming to ensure that LGBT persons can live on an equal footing with others in Austria.
89. The coming-out process is a particularly sensitive phase for young LGBT persons. Many of them are victims of mobbing and homosexuals are at higher risk of suicide than heterosexuals. During the FRA survey, 73% responded that they had never talked openly about their being LGBT at school. About 90% agreed or strongly agreed that measures implemented at school to respect LGB persons would allow them to feel more comfortable as a LGB person (82% of transgender persons responded likewise). Research indicates that LGBT issues are not addressed in a systematic or standard way in schools even though sexual education is part of the curriculum. In Vienna for example, there are no requirements concerning the number of hours for sexual education, the issues to address and materials and methods to use. Teachers are not sufficiently prepared to address LGBT issues and do not treat them adequately or do not treat them at all.¹⁴⁰ The Federal Ministry for Education's decree on sexual education dates back to 1990 and does not refer to homosexuality, same-sex partnership, diverse family structures, sexual orientation or gender identity.¹⁴¹ Nevertheless, specific information and training for schools is provided by LGBT organisations.
90. ECRI welcomes the fact that the authorities are in the process of updating the decree on sexual education; at the same time ECRI considers that additional

¹³⁷ FRA 2012a. For example, 41% of all LGBT persons responded that they had felt discriminated against for being L, G, B or T during the last 12 months. 53% of all transgender persons responded likewise.

¹³⁸ Human Rights Council of the City of Graz 2014: 38 to 39. On the specific issues of intersex persons, in particular early surgical interventions, cf. e.g. CoE PACE 2013; Swiss National Advisory Commission on Biomedical Ethics 2012; Deutscher Ethikrat 2012.

¹³⁹ ECRI finds it positive that an NGO representing diverse families was admitted to the Family Council set up by the Federal Ministry of Family and Youth.

¹⁴⁰ See the study Danish Institute for Human Rights 2009: 4 et seq. which was commissioned by the CoE Commissioner for Human Rights; Wien.orf.at 2014.

¹⁴¹ Federal Ministry for Education, Art and Culture 1994. On diverse family structures cf. CoE Commissioner for Human Rights 2010: 96 et seq.

efforts by the school and/or other authorities are needed to provide the necessary aid and assistance to young LGBT persons during their coming-out and to protect them from bullying and discrimination.

91. ECRI recommends that the authorities of the Federation and the Länder provide LGBT adolescents with the necessary information, assistance and protection to enable them to live in accordance with their sexual orientation and gender identity. It also recommends that they implement, in particular in schools, measures to promote mutual understanding and respect for all persons irrespective of sexual orientation or gender identity.

INTERIM FOLLOW-UP RECOMMENDATIONS

The two specific recommendations for which ECRI requests priority implementation from the authorities of Austria are the following:

- ECRI recommends that the authorities merge the various anti-discrimination acts and institutions of the Federation and the Länder in order to improve the protection afforded to victims of racism and discrimination.
- ECRI strongly recommends that Austria ratifies the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

A process of interim follow-up for these two recommendations will be conducted by ECRI no later than two years following the publication of this report

LIST OF RECOMMENDATIONS

The position of the recommendations in the text of the report is shown in parentheses.

1. (§ 3) ECRI reiterates its recommendation to the authorities to ratify Protocol No. 12 to the European Convention on Human Rights.
2. (§ 11) ECRI recommends that the authorities bring their criminal law, in general, into line with its General Policy Recommendation No. 7 as indicated in the preceding paragraphs; in particular they should (i) extend the provisions on national socialist motivated criminal acts to all kind of racist motivated acts, (ii) fill the gaps in the protection against incitement to hatred and discrimination and racist public insults and defamation, (iii) criminalise the public denial, trivialisation, justification or condoning, with a racist aim, of war crimes (iv) criminalise the production or storage of all pictorial or other material containing racist manifestations, (v) criminalise all discrimination in the exercise of one's occupation and (vi) provide for dissuasive sanctions for discriminating job and flat advertisements.
3. (§ 14) ECRI recommends that the authorities merge the various anti-discrimination acts and institutions of the Federation and the Länder in order to improve the protection afforded to victims of racism and discrimination.
4. (§ 22) ECRI recommends that the authorities bring their anti-discrimination legislation in line with its General Policy Recommendation No. 7 as indicated in the preceding paragraphs; in particular the federal authorities should (i) include in the Equal Treatment Act a general prohibition of discrimination in the private and public sectors on all grounds including citizenship; (ii) ensure that victims have an easily accessible way to enforce their rights; (iii) ensure that victims can obtain adequate compensation; (iv) reinforce the rule on the burden of proof and (v) provide for the possibility to dissolve all racist organisations.
5. (§ 26) ECRI again recommends giving the Ombudspersons for Equal Treatment the power to represent victims of discrimination in court or administrative proceedings. As per Principle 5 of ECRI's General Policy Recommendation No. 2 on specialised bodies to combat racism, the Ombudspersons and the Commission for Equal Treatment should be made fully independent on the organisational level and function without interference from other state authorities.
6. (§ 28) ECRI recommends that the Austrian authorities consider removing the restriction that victims of discrimination can only lodge a complaint with the Austrian Ombudsman Board, if they have no other legal remedy.
7. (§ 32) ECRI recommends that the authorities set up an IT-based system for recording and monitoring racist, homo- and transphobic incidents, and the extent to which these incidents are brought before the prosecutors and are eventually qualified as racist or homo/transphobic offences (§ 12 of General Policy Recommendation No. 11 on combating racism and racial discrimination in policing).
8. (§ 42) ECRI strongly recommends that Austria ratifies the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.
9. (§ 44) ECRI recommends that criminal and administrative law is applied in a more vigorous way to curtail the activities of organisations that promote a racist

ideology. Imposing sanctions on and dismantling such organisations should be part of the response.

10. (§ 47) ECRI recommends that the Austrian authorities, including the members of the government, the Austrian Ombudsman Board and the specialised bodies systematically counter and condemn hate speech and develop instruments to prevent and combat its use in particular during election campaigns.
11. (§ 52) ECRI recommends that the authorities promote (i) accession of more media to the Press Council, (ii) respect and publication of its decisions by non-members, (iii) the extension of the Press Council's mandate to all media or the setting-up of similar bodies for other types of media including radio and television, (iv) the idea that media only disclose the ethnic origin of alleged perpetrators of an offence when it is strictly necessary and serves a legitimate purpose and (v) self-regulation to ensure the removal of online hate speech. The authorities should sensitise the media, without encroaching on their editorial independence, to give members of vulnerable groups adequate space to express themselves. ECRI recommends that the authorities consider enacting legislation if there is no other option. The authorities should finally ensure that the police and the judiciary only disclose the ethnic origin of alleged perpetrators of an offence when it is strictly necessary and serves a legitimate purpose.
12. (§ 64) ECRI recommends that the classical parts of public service, such as the federal and regional school administration, employment, health care and other public services take ownership of core elements of the integration policies.
13. (§ 68) ECRI recommends that the authorities apply the principle of Integration from the beginning in the fields of asylum and subsidiary protection. They should design and implement a concept for addressing the special integration needs of the persons concerned.
14. (§ 70) ECRI recommends that the authorities ensure, in view of the sustainable integration of important parts of the population, that any restriction and differential treatment with regard to practice of Islam is in line with the European Court of Human Rights case law.
15. (§ 74) ECRI recommends that the authorities step up the implementation of concrete programmes and projects to achieve the objectives set out in the Roma-Strategy. Special attention should be paid to the further empowerment of Roma and their organisations by positive measures.
16. (§ 77) ECRI recommends that the Austrian Ombudsman Board uses its powers to investigate allegations of racial profiling and misconduct on the part of police officers towards persons with migration backgrounds. It should also build up regular dialogue with civil society.
17. (§ 79) ECRI recommends that the authorities undertake research and collect data on the living conditions of LGBT persons as well as on intolerance and discrimination against them.
18. (§ 84) ECRI recommends that the authorities re-examine whether there is an objective and reasonable justification for each of the remaining differences in the regulation of married and same-sex couples and that they abolish all unjustified differences. It also recommends that legislation is enacted on the issues of access to gender reassignment treatment, changing a transgender person's first name, gender recognition and changing the gender marker in documents.

19. (§ 88) ECRI recommends that the authorities task at federal level an administrative service to develop and coordinate an action plan or a comprehensive programme for LGBT persons aiming to ensure that LGBT persons can live on an equal footing with others in Austria.
20. (§ 91) ECRI recommends that the authorities of the Federation and the Länder provide LGBT adolescents with the necessary information, assistance and protection to enable them to live in accordance with their sexual orientation and gender identity. It also recommends that they implement, in particular in schools, measures to promote mutual understanding and respect for all persons irrespective of sexual orientation or gender identity.

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