

## **APPENDIX: GOVERNMENT'S VIEWPOINT**

**The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Austria**

ECRI, in accordance with its country monitoring procedure, engaged in confidential dialogue with the authorities of Austria on a first draft of the report. A number of the authorities' comments were taken on board and integrated into the report's final version (which only takes into account developments up until 20 March 2015, date of the examination of the first draft).

The authorities also requested that the following viewpoint be reproduced as an appendix to the report.

**Observations by the Republic of Austria in respect of the fifth report by the European  
Commission against Racism and Intolerance (ECRI) on Austria  
August 2015**

**General Observations:**

The promotion and protection of human rights and fundamental freedoms, on national level as well as internationally, plays an important role for the Austrian government.

There is a clear understanding that special attention must be given to the fight against racism, xenophobia, anti-Semitism and related intolerance and Austria remains fully committed to this fight. In Austria good legal tools exist, which enable authorities and courts to combat right-wing extremist, xenophobic, anti-Semitic and racist acts. However, the Federal Government is aware of the fact that racist prejudices, attitudes and acts still exist and are occurring and that sustainable and differentiated policies are necessary in order to counteract this phenomena in the long term. Austria strives to continuously improve the protection system through legal provisions and their implementation as well as - equally important - through awareness-raising measures and education. This is an ongoing process based on a firm commitment, openness, understanding and dialogue.

Austria attaches great importance to the monitoring process by the European Commission against Racism and Intolerance (ECRI). The Fifth Report on Austria contains important findings and recommendations which constitute a good basis for further efforts and activities of the Austrian authorities in their endeavor to combat racism, racial discrimination and related intolerance.

**Specific Observations:**

**1. Legislation against racism and racial discrimination:**

**Protocol No. 12 to the ECHR**

Austria has enacted a comprehensive antidiscrimination legislation on the level of constitutional law: Article 1 of the Federal Constitutional Law on the Implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (Federal Law Gazette No. 390/1973) defines “racial discrimination” as “any distinction on the sole ground of race, colour, descent or national or ethnic origin”. According to well-established case-law of the Austrian Constitutional Court, any differentiation among foreign nationals by the legislature and the administrative authorities is prohibited due to this Federal Constitutional Law, unless the differentiation is based on an objective justification. Furthermore, legislation directed at foreign nationals generally has to be objective. In addition, all administrative authorities must adhere to the principle of proportionality and must not act arbitrarily (cf. judgment of the Constitutional Court of 2 July 2011, U 2106/10). Article 14 of the European Convention on Human Rights - which has the legal status of a constitutional law - prohibits discrimination on any ground such as (among others) race, colour, religion, national or social origin, association with a national minority.

Finally, the rights enshrined in the Charter of Fundamental Rights of the European Union - and thus the comprehensive prohibition of discrimination according to Article 21 of the Charter - can be claimed as constitutionally guaranteed rights in proceedings before the Austrian Constitutional Court whenever the Charter is applicable (cf. judgment of the Constitutional Court of 14 March 2012, U466/11).

Considering that Austria thus affords an equivalent protection against discrimination, it does not aim at ratifying this Protocol for the time being.

## Criminal law

Through the most recent comprehensive criminal law reform, the adoption of the “Criminal Law Amendment Act (*Strafrechtsänderungsgesetz*) 2015, which is to enter into force by 1 January 2016, important further improvements will be made for the implementation of Austria's international obligation to combat racism, racial discrimination and any advocacy of racial or religious hatred, anti-Semitism and xenophobia. Through this reform Austria further implements its obligations from the “Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law” of the European Union, follow recommendations of ECRI and the UN Committee on the Elimination of Racial Discrimination and prepares for the ratification of the Additional Protocol of the Cybercrime Convention of the Council of Europe. Furthermore it implements plans of the government programme 2013-2018 to better address radicalisation and right-wing extremism as well as results of the expert-conference on hate crimes and radicalisation, organised by the Ministry of Justice, Ministry of the Interior and Ministry of Europe, Integration and Foreign Affairs in October 2014.

This reform provides, inter alia, for changes of Art. 283 Criminal Code, which deals with the persecution of hate speech. It will read the following (in German):

“§ 283. (1) Wer öffentlich auf eine Weise, dass es vielen Menschen zugänglich wird,

1. zu Gewalt gegen eine Kirche oder Religionsgesellschaft oder eine andere nach den vorhandenen oder fehlenden Kriterien der Rasse, der Hautfarbe, der Sprache, der Religion oder Weltanschauung, der Staatsangehörigkeit, der Abstammung oder nationalen oder ethnischen Herkunft, des Geschlechts, einer körperlichen oder geistigen Behinderung, des Alters oder der sexuellen Ausrichtung definierte Gruppe von Personen oder gegen ein Mitglied einer solchen Gruppe ausdrücklich wegen der Zugehörigkeit zu dieser Gruppe auffordert, oder zu Hass gegen sie aufstachelt, oder
2. in der Absicht, die Menschenwürde anderer zu verletzen, eine der in Z 1 bezeichneten Gruppen in einer Weise beschimpft, die geeignet ist, diese Gruppe in der öffentlichen Meinung verächtlich zu machen oder herabzusetzen, oder
3. Verbrechen im Sinne der §§ 321 bis 321f, die von einem inländischen oder einem internationalen Gericht rechtskräftig festgestellt wurden, billigt, leugnet, gröblich verharmlost oder rechtfertigt, wobei die Handlung gegen eine der in Z 1 bezeichneten Gruppen oder gegen ein Mitglied einer solchen Gruppe ausdrücklich wegen der Zugehörigkeit zu dieser Gruppe gerichtet ist und in einer Weise begangen wird, die geeignet ist, zu Gewalt oder Hass gegen solch eine Gruppe oder gegen ein Mitglied einer solchen Gruppe aufzustacheln, ist mit Freiheitsstrafe bis zu zwei Jahren zu bestrafen.

(2) Wer die Tat nach Abs. 1 in einem Druckwerk, im Rundfunk oder sonst auf eine Weise begeht, wodurch die in Abs. 1 bezeichneten Handlungen einer breiten Öffentlichkeit zugänglich werden, ist mit Freiheitsstrafe bis zu drei Jahren zu bestrafen.

(3) Wer durch eine Tat nach Abs. 1 oder 2 bewirkt, dass andere Personen gegen eine in Abs. 1 Z 1 bezeichnete Gruppe oder gegen ein Mitglied einer solchen Gruppe wegen dessen Zugehörigkeit zu

dieser Gruppe Gewalt ausüben, ist mit Freiheitsstrafe von sechs Monaten bis zu fünf Jahren zu bestrafen.

(4) Wer, wenn er nicht als an einer Handlung nach den Abs. 1 bis 3 Beteiligter (§ 12) mit strengerer Strafe bedroht ist, schriftliches Material, Bilder oder andere Darstellungen von Ideen oder Theorien, die Hass oder Gewalt gegen eine in Abs. 1 Z 1 bezeichnete Gruppe oder gegen ein Mitglied einer solchen Gruppe wegen dessen Zugehörigkeit zu dieser Gruppe befürworten, fördern oder dazu aufstacheln, in einem Druckwerk, im Rundfunk oder sonst auf eine Weise, wodurch diese einer breiten Öffentlichkeit zugänglich werden, in gutheißenender oder rechtfertigender Weise verbreitet oder anderweitig öffentlich verfügbar macht, ist mit Freiheitsstrafe bis zu einem Jahr oder mit Geldstrafe bis zu 720 Tagessätzen zu bestrafen.“

- Through the inclusion of the wording “...or incites to hatred against them” in Art. 283.1 CC, the incitement to hatred not only against groups but also against a specific person belonging to such a group is becoming a punishable offence. Thus Art. 283.1 now comprises the prohibition of incitement to hatred against groups and individuals as well as of incitement to violence against groups and individuals.
- Through the inclusion of another qualification for a group in Art. 283.1, namely “...the existing or non-existing of nationality”, incitement to hatred or violence against “foreigners” or “non-Austrians” also became a punishable offence.
- Change in the criteria for “public”: statements or comments inciting people to violence or hatred will become punishable offences if “*they are made in public in a manner that is accessible to many people*”; the term “*in public*” refers as a rule to approximately 10 and the term “*many people*” to around 30 individuals (§ 283.1). If such acts are accessible to the “*general*” public (approximately 150 individuals) through distribution in print or other media, they will be punishable with a maximum of three years of imprisonment (§ 283.2).
- The establishment of or participation in associations whose purpose is that of “incitements” within the meaning of Article 283 of the Criminal Code fomented by their members will become a punishable offence.
- Anyone who through his/her own actions or deeds causes other persons to exercise violence against a protected group or against a member of any such group as a consequence of his/her affiliation with this group will face a prison sentence of between six months and five years.
- Racist threats and verbal abuses that are made with the intention to violate human dignity of the person in public are criminal offences (old § 283.2 CC, now § 283.1.Z2). The criminalisation of racist threats has been improved through lowering the threshold for “public” also in this context. Taking into account that the State has an obligation to find a right balance between the right of freedom of expression and fighting racism and racist discrimination, only those verbal abuses and slander against one of the groups or persons mentioned in § 283.1.Z1 that intend to violate human dignity are to be criminally liable. There exists clear case-law about the definition of “violation of human dignity” by the Supreme Court, which is to be followed by the courts. This limitation in § 283.1.Z2, set deliberately by the legislator, does however not impede sanctioning of racist and discriminatory threats and abuses outside the criminal law, like the civil Equal Treatment Act or the Administrative-Penal Law. In addition § 115 CC offers another criminal liability for the act of general “slander” or “mockery”, that can also be based on discriminatory remarks.

- Through the inclusion of a new § 283.3 CC, the public denial, trivialisation, justification or condoning, with a racist aim, of genocide, crimes against humanity and war crimes is now a criminal offence and can lead to imprisonment of up to two years.
- Following other international recommendations from VN-CERD and the EU Framework Decision, a new Art. 283.4 CC was included, making the public dissemination or distribution of material containing racist manifestations also a criminal offence. Explicit intent for incitement to hatred is not a necessary pre-condition for criminal liability in this case.
- Concerning the criminalisation of the participation in a criminal organisation in Art. 278 CC, the relevant ECRI recommendation will already be implemented with the new Criminal Law as in Art. 278 CC a reference has been made to Art. 283 CC, through which also the foundation of and/or participation in organisations or groups that incite to racism, racial hatred or racial discrimination is a criminal offence.
- The aggravating factors for punishable offences committed for particularly reprehensible motives in Art. 33.1.Z5 CC have been extended to include offences directed against a Church or religious society, or another group defined by criteria of race, skin colour, language, religion or belief, nationality, origin or national or ethnic background, gender, disability, age or sexual orientation or against a member of any such group.

Furthermore next to the Austrian Criminal Code other laws provide for a prohibition of discrimination, like the Equal Treatment Act in civil law or the Administrative Penal Law. As an example of the latter, Art. III, para 1, sub-para 3 of the Introductory Act to the Administrative Proceedings Laws (Einführungsgesetz zu den Verwaltungsverfahrensgesetzen, EGVG) provides in its first part for a general prohibition of discrimination based on race, skin colour, national or ethnic origin, religious denomination or disability. The second part of this Article punishes the denying of access to public places and services for such reasons.

In Austria, matters of labour law are primarily regulated in civil law provisions. If necessary, these are complemented by administrative penal provisions. Therefore, the claims under the ETA are mainly civil claims. Exceptions thereto are provisions on the mandatory non-discriminating job and flat advertisements. A breach of these prohibitions is sanctioned with administrative penalties.

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

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

The ETA specifically stipulates that the calculation of the amount of compensation for the moral damage shall ensure that the victim is compensated effectively and adequately as well as prevent future discrimination. The last criterion in particular reflects the important notion of prevention inherent to the Austrian compensation law.

In this context, Austria also puts a lot of attention to the awareness-raising aspect. Discriminatory job and flat ads are not always designed with the intention to discriminate but are often a result of a lack of knowledge of the legal situation. In these cases misconduct can

be countered by issuing a reprimand. In case of repeated violation, however, the full scope of the penalty will become applicable.

Summing up, Austria would like to reiterate that in the Austrian legal system the “sole” discrimination, that is not linked to incitement to violence or hatred covered by § 283 CC or fulfills the criteria of slander in § 115 CC, is not regulated in the judicial criminal law but in civil and administrative penal law, i.e. the EGVG and the Equal Treatment Act. Taking into account the underlying principle of criminal law as “ultima ratio” Austria does not deem it appropriate to deviate from this general principle in the Austrian legal framework.

### **Civil and administrative law**

With regard to merging and simplifying the various anti-discrimination acts and institutions Austria would like to point out that the fragmentation is the result, on the one hand, of Art. 10 ff of the Austrian Federal Constitution Law which regulate the distribution of competences between the federal state and the regional provinces “Länder”, and on the other hand of the Federal Ministries Act which assigns the competences of the federal state to the respective ministries.

Equal treatment is an interdisciplinary issue affecting a number of areas. Due to the distribution of competences of these areas, it was not possible to create a uniform law.

The federal government is aware of the difficulties for alleged victims to find the competent institution relevant for their case due to the vast amount of legal provisions and anti-discrimination institutions. Therefore, the government strives to offer as much as support and guidance as possible. For instance the Federal Ministry for Labour, Social Affairs and Consumer Protection issues a regularly updated brochure on the topic of equal treatment. In this brochure, both the relevant legal framework on equal treatment and a list of anti-discrimination institutions on the level of the federal state and the regional provinces are described and listed in order to support persons in finding the competent institution. In addition the office of the Ombud for Equal Treatment acts as a clearing institution and, in case it has not competences itself, tries to refer concerned persons to the adequate institutions.

Finally, within the ongoing process of the preparation of a National Human Rights Action Plan, it is planned to produce a guideline that offers a better overview of the institutions responsible for equal treatment and/or anti-discrimination in the individual cases and, thus, improve access to such facilities. This guideline will take the form of a questionnaire, which can be used by the individual to identify the relevant authority in a particular case. It will also summarise the tasks and services provided by each of the different equal treatment and/or anti-discrimination institutions, thus improving the access to remedy and increasing knowledge about the issue of discrimination as such.

Concerning the recommendation to include “nationality” in the ETA, it has to be pointed out that the discrimination based on nationality is already part of the legislation. The only possibility to allow a different treatment on the basis of nationality is for cases regulating the entry or stay of citizens of third countries or stateless persons in Austria as well as the treatment resulting from the legal status of such persons. However, if the discriminating behaviour is in reality based on the ground of ethnicity and the attribute “nationality” is only used as a pretext, the discrimination falls under the scope of the Equal Treatment Act.

As already mentioned above, the legal consequences for a violation of the prohibition of discrimination as regulated in the Equal Treatment Act (ETA) are of a civil law nature. Accordingly, every person feeling discriminated against, has the right to take legal action in court. In addition, he or she also has the possibility to address, free of charge, the Equal Treatment Commission (ETC), whose main competence is to issue opinions and decide on individual complaints but has no power to award compensation or impose sanctions, which is the prerequisite of courts. The ETC through its informal proceedings provides easy access for filing complaints of discrimination. Concerning doubts issued by ECRI about the added value of the procedure of the ETC, it has to be said that the ETC and its procedure was deliberately installed in order to create a parallel - low-threshold and cost-free - process, that allows people to address an alleged discrimination in a more low-risk manner, taking into account that many shy away from initiating legal proceedings. In addition the possibility of finding an agreement through arbitration by the ETC plays another important role in favour of this process. Proceedings before the Equal Treatment Commission are subject to confidentiality. This provides some degree of protection to the discriminated individual, who is often under extreme psychological stress, particularly in the case of harassment; thus further victimisation can be avoided. Informants are also subject to confidentiality, which makes it easier to witnesses to provide information. In the last years, the proceedings constantly have been improved and made more efficient and as simple as possible for the victims. Furthermore, the preventive aspect of the findings, arbitrary interventions and opinions issued by the ETC outside of the official court proceedings should not be underestimated. The high number of cases brought before the ETC seems to indicate a positive acceptance by the population who see the ETC as an appropriate mechanism for dispute settlement in cases of discrimination.

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

According to the ETA a person feeling discriminated against has the possibility to be represented by an NGO when addressing the ETC, as well as can turn to the Ombud for Equal Treatment, an advisory institution that also guides possible victims in their actions and rights. In addition for court proceedings the ETA foresees the possibility of an intervention by a third party in support of a plaintiff or defendant (“Nebenintervention”). According to the provisions of the Austrian Code of Civil Procedure, an intervener is a person who has a legal interest in the proceedings and who participates, without being a party to the proceedings, in a lawsuit pending between other persons in support of one of the parties.

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

forms of discrimination. Especially legal entities that focus on anti-discrimination and equality can become members.

However, the possibility to intervene as a third-party is not limited only to the *Klagsverband*, any other NGO has the right to this legal support for a victim. In this context, Section 26 of the Code of Civil Procedure should be mentioned, according to which the parties can also have authorised representatives to act on their behalf in the court proceedings. This also applies to representatives or employees of NGOs, unless there is a statutory requirement to be represented by a lawyer in the proceedings. As regards labour law proceedings § 40 para. 2 no. 4 of the Labour and Social Court Act (*Arbeits- und Sozialgerichtsgesetz, ASGG*) stipulates that there is a possibility to be represented by a “suitable person” in proceedings of the first instance. Representatives or employees of NGOs can hence also act as such representatives. Finally the Austrian Chambers of Labour and the Austrian Federation of Trade Unions can also represent their members in labour and social court proceedings.

The primary legal consequences in the ETA are compensatory measures. In general the concerned person has a right that the discrimination is being abolished, to compensation of the financial damage and in addition compensation for the personal incurred detriment. The minimum amount of compensation in cases of sexual harassment and harassment based on grounds as set out in the ETA is set with € 1.000,-, there exists no legal limit for the maximum amount. The extension of granting compensation with a view to achieve a deterrent impact however is limited with the Austrian constitution as the principles of penalty (criminal law) and compensation (civil law) are not to be interlinked so that in the anti-discrimination law compensation cannot have a penal character. Nevertheless, taking into account changing social realities and cultural practices, over the last years in particular regulations for offences related to harassment have been considerably reinforced with higher granted damages. This contributed significantly to a better awareness in society about obligations of equal treatment in all spheres of life, for judges and prosecutors themselves but also for the general Austrian public, which consequently will also lead to a more uniformed and lenient case law when applying anti-discrimination laws.

With regard to the rule on the burden of proof Austria would like to reiterate that the ETA basically follows the Anti-Discrimination Directives of the European Union that provide the framework for all anti-discrimination legislation for member states of the EU. Those relevant EU directives (RL 2004/113/EG and RL 2000/78/EG und RL 2000/43/EG) clearly speak of a “shift in the burden of proof” (*Beweislastverlagerung*) and not of a reversed burden of proof (*Beweislastumkehr*).

This principle is exactly reflected in the ETA, where once the victim has substantiated a possible discrimination (“Glaubhaftmachung”) the burden of proof is then shifting to the culprit, who has to prove the non-discrimination with the evidence available to him/her, meaning the culprit (alleged discriminating person) has to deliver a proof of exoneration (*Entlastungsbeweis*). This regulation in the ETA also has to be seen in the context of the two principles enshrined in the Austrian civil procedure law, the so-called “prima facie evidence” (*Anscheinsbeweis*), which requires a reduced probability and the regular evidence, the direct evidence, that requires the litigant party in a civil law suit to proof its demand with high probability.

Finally, Austria would like to inform, that the current government programme foresees a comprehensive evaluation of the anti-discrimination legislation and its instruments. This



evaluation process was initiated at the end of 2014 under the chairmanship of the Federal Ministry for Labour, Social Affairs and Consumer Protection and the Federal Ministry of Education and Women's Affairs. All stakeholders dealing with the equal treatment legislation (federal ministries, Equal Treatment Commission, Ombud for Equal Treatment, social partners, NGOs) are participating in this process and are analysing the effectiveness of the existing legal framework. They are also examining possible options for improvement, including related to the fact that responsibility for protection against discrimination is currently shared by a number of institutions. To this end, smaller working groups have been created in order to discuss the various thematic clusters.

The contents of the different working groups are:

- Enforcement of equal treatment (in particular judicial procedures, procedures before the Equal Treatment Commission and the Ombud for Equal Treatment)
- Screening of the legal consequences
- Access to justice, awareness raising
- Evaluation of the existing offences of discrimination

### **Specialized national bodies**

A reform of the ETA in 2011 included inter alia the explicit exemption from instructions for the Ombudspersons for Equal Treatment, as well as an exemption from the so-called right to supervision (*Aufsichtsrecht*) of the Federal Chancellor. Thus even so the OET remains organisationally part of the Federal Chancellery it acts as an independent entity within the Chancellery, with the Ombudspersons being fully independent in their work. The organisational integration in the Chancellery on the contrary allows for important synergies in administrative and staff matters concerning logistics, office work and accommodation, so that more funding can be used for the substantive work of the OET and its ombudspersons.

Concerning the legal representation of victims the various means for persons to be represented before the court has already been described in the chapter above.

The proposed removal of the restriction stating that victims of discrimination can only lodge a complaint with the Austrian Ombudsman Board when there is no other legal remedy would require an amendment of the Constitution. Moreover, Austria is of the view that the problem is not a lack of competent institutions where victims may ask for help as there exist already many respective bodies that can investigate alleged discrimination (next to courts). What is needed is rather more guidance and a clearer overview on all the existing institutions, making the access easier and more comprehensible. The ongoing evaluation process of the ETA and the work on the National Action Plan on Human Rights addresses this problem as described above.

## **2. Hate Speech**

With regard to the recommendation to ratify the Additional Protocol to the Convention on Cybercrime Austria would like to point out that with the entering into force of the "Criminal Law Amendment Act (*Strafrechtsänderungsgesetz*) on 1 January 2016, comprehensive changes in Art. 283 Criminal Code, dealing with the prohibition of incitement to racial hatred and violence, become effective. Further details on this reform have been described above under the chapter "Criminal Law". Through these changes important steps for a possible ratification

of the Additional Protocol have been made. Currently internal consultations are being continued in order to fully clarify and analyse all further questions and possible necessary legal adaptations in relation to a ratification of the Additional Protocol.

With the Associations Act (*Vereinsgesetz*,) as well as through various individual criminal-law and civil law provisions described above, Austria developed a robust set of legal measures to combat hate speech and the promotion of racism by individuals or groups and association. Under the Association Act it is prohibited to found and/or maintain associations that promote and/or incite racial discrimination. Such associations will be dissolved by decision of the Ministry of the Interior who is in charge of the implementation of the Association Act.

To combat the radicalisation of extremist groups, Austria is intensifying and fostering its cooperation at international level, within the European Union (e.g. the Radicalisation Awareness Network - RAN), with intelligence and security agencies as well as in the science and research context (universities). The Federal Office for the Protection of the Constitution and Counterterrorism (*Bundesamt für Verfassungsschutz und Terrorismusbekämpfung* - BVT) has also hired a substantial number of specialised staff to deal with the rise in Islamic extremism.

Austria has taken extensive measures to counter politically and ideologically motivated radicalisation, including right-wing extremism. These measures include:

- awareness-raising workshops organised by the BVT to train police officers in correctly recognising and interpreting signs of radicalisation in the population;
- the opening of an extremism information and advice centre in December 2014 to provide advice to relatives who have noticed that a family member is potentially attracted by terrorism or is becoming radicalised. The centre was set up based on recommendations from the “Islam” dialogue forum and the EU Council’s conclusions on “*de-radicalisation and disengagement from terrorist activities*”. Intervention is affected by a network of civil society actors, with the BVT assuming the role of a network partner. The centre’s main goals are to develop a pool of information on extremism, to assist people in recognising threats and to create a solid basis for a comprehensive de-radicalisation process;
- awareness-raising workshops for prison staff with regard to radicalisation and recruitment by extremists in prisons. To assist early detection and prevention and develop relevant measures, the EU project “*Violent radicalisation - recognition of and responses to the phenomenon by professional groups concerned*” aims at raising the awareness of front-line staff confronted with the phenomenon of radicalisation.

The following projects are of particular importance from a prevention of radicalisation perspective:

- in the education sector: alongside the measures taken to prevent violence, numerous activities have been launched over the past few years to prevent religious and political radicalisation. On a general level, it should be emphasised here that human rights education is already an integral part of the “*political education*” syllabus. In order to ensure that a human rights culture is established at all levels, this syllabus is being incorporated into large parts of the education system and a number of corresponding projects have been launched.
  - A project aimed at preventing and reducing racist prejudice and patterns of behaviour by offering children and teenagers the opportunity to approach “the

unfamiliar” in a positive, playful setting that permits an inter-cultural learning process in an environment that is free from fear and prejudice.

- A comprehensive range of programmes has been put together for schools to enable them to provide workshops that meet their individual requirements with regard to the prevention of violence and radicalisation.
  - “*Holocaust education*” programmes are being organised and extensive material and information provided on this topic.
  - As part of the cooperative-communicative religious education initiative in schools, churches and religious societies have initiated a joint project in which pupils of different religions to learn together about their respective faiths;
  - In their efforts to avoid religious conflicts, the *Kirchliche Pädagogische Hochschule Wien-Krems* (University College for Teacher Education of Christian Churches Vienna-Krems) and the Islamic Teacher Training College in Austria (IRPA) operate a joint competence centre designed to serve as a point of contact and/or help desk for teachers.
- Counter-narrative initiatives include a brochure produced in cooperation with the Islamic Community in Austria, which provides counter-narratives and information on how Islam is being abused by terrorists and which clearly condemns the barbaric actions of “IS”. The brochure is available in four languages and has been distributed in mosques and prayer rooms across Austria.
  - A platform has been established to facilitate the sensitization of mothers to early signs of radicalisation and raising their awareness of their own potential to prevent this phenomenon. It also serves as a discussion forum for teenagers.

Article 283 of the Criminal Code provides for the prosecution of hate speech irrespective of the medium through which it is communicated. Accordingly, racist content publicised on the internet is covered by this provision if it exceeds a certain threshold.

The association of Austrian internet providers has set up a virtual contact point (<http://www.stopline.at>) for all internet users who happen to come across, for instance, any neo-Nazi content. Once the content has been identified and verified as illegal, the respective provider, foreign partner hotlines and competent authorities are promptly informed to enable them to take necessary action. “Stopline” cooperates in this context with the Austrian Federal Ministry of the Interior as well as with its relevant reporting offices (e.g. the Reporting Office for National Socialist Activities or the Reporting Office for Extremist and Radicalising Videos).

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

Finally it should be mentioned here, that a special working group was set up in response to the recommendations received following the latest Universal Periodic Review (UPR) of the UN Human Rights Council. This working group analysed the data that have already been collected

on racially motivated crimes and identified the extent to which existing statistics can be utilized. A harmonisation of Austrian crime statistics and judicial statistics is the goal of a new project that will also be part of the National Action Plan of Human Rights.

Concerning the role, membership and tasks of the Austrian Press-Council Austria would like to reiterate that taking into account the nature of a self-regulatory system the decision to considerably expand the membership to other media is primarily a decision of the media themselves. It would not be compatible with the guarantee of the independence of the media if state authorities formulated conditions about the membership in self-regulatory bodies.

With regard to the publication of the decisions of the Press Council it has to be stressed that due to the perfect press work of the Press-Council itself the decisions are extensively reflected and reported in all the other media. Several recent examples show that even if a tabloid is not a member to the Press Council an effective publication and announcement of a decision about this media to the public is not inhibited.

Taking legislative measures with the aim to force private media to provide more space for vulnerable groups would not be in line with the constitutional provisions warranting editorial independence. That is why only the public service broadcaster, the Austrian Broadcasting Corporation (ORF), within its public service remit can be expected to provide "comprehensive information on all important political, social, economic, cultural and sports-related issues", to "promote understanding for all questions of democratic society" and to give "due regard for and promotion of social and humanitarian activities, including raising awareness of the integration". (cf. § 4 (1) ORF-Act). Its mandate stipulates in § 4 (5a) ORF-Act that reasonable shares of broadcasting time shall be provided in the languages of national (autochthonous) minorities that are represented by a national minority advisory board.

Concerning the publication of personal data of suspects it has to be stressed that ECRI's recommendation - to reveal such data only when necessary and pursuing a legitimate aim - is one of the leading principles in the Austrian data protection legislation.

#### **4. Integration policies**

As already mentioned in the first contribution sent to ECRI, Austria regards the fight against xenophobia and racism a priority task and is constantly taking measures, at several levels, to promote equal treatment, eliminate prejudices and advance integration. As ECRI pointed out in 2009 Austria developed a new integration strategy and organisational structures for the implementation thereof on the national level, involving various stakeholders. Since then many new measures have been implemented, various projects and initiatives started and new bodies and structures have been set up. Since the topic of integration became part of the Federal Ministry for Europe, Integration and Foreign Affairs and thus was lifted from a State Secretariat to a Federal Ministry, the government proved once more the importance it is giving to this field. It goes without saying that the authorities will continue their efforts towards rebalancing the public debate on migration by focusing on the promotion of a positive image of integration and migration and its added value for the migrants as well as for the receiving society.

The implementation of the NAP on Integration is an ongoing process. Both the measures taken and the status of implementation are described in detail in the Integration Reports, which are all publicly available. In order to ensure equal participation of immigrants in economic and

social life, further measures in the fields of language assistance, integration into the labour market and recognition of professional qualifications will have to be adopted. Concrete steps for providing for an expansion of early childhood language classes at institutional child care facilities have already been prepared. Furthermore, additional first contact points, so-called “welcome desks” were established throughout the country to provide immigrants with the information they need for a successful start in Austria. A website that provides assistance and information on the recognition of foreign school and college degrees have been set up, negotiations concerning a Recognition Act for professional qualifications acquired abroad are currently ongoing. The NAP is also coordinated with the nine provinces (*Länder*) through the Integration Advisory Board. In this board all federal ministries, the provinces, trade unions and other interest groups as well as civil society organisations are represented and exchange views on the implementation of the integration measures and give recommendations to the Government on a regular basis. All these integration measures are designed for migrants as well as recognised refugees, meaning asylum-seekers whose application for asylum has been approved or who have received subsidiary protection, so that they have a legal residence status in Austria.

In order to facilitate the planning and preparation of a legal migration to Austria the concept of “integration from the beginning” has been developed as an additional tool aiming at providing relevant information already one step before, namely at the Austrian Embassies where persons apply for a work-permit and/or visa.

Currently due to the refugee crisis in the Middle East many people are coming to Austria from war-zone areas, in particular from Syria. The demand for integration measures thus was growing considerably over the last months. In order to support the refugees, that have been granted asylum in Austria, in the best possible manner in their first months, a special contingent for additional language classes was created, which will be operated through the Austrian Integration Fund.

Concerning integration measures and access to labour market for asylum-seekers Austria once again would like to reiterate that the seasonal jobs which asylum-seekers may take up comprise a wide range of professions related to the agriculture and tourism sectors at all levels of qualification. Young asylum-seekers up to 25 years are admitted to professional training and employment in sectors which require additional apprentices.

A new Islam Law became necessary as social realities in Austria have changed completely over the last hundred years or more. When the law was originally adopted in 1912, Austria was the first European country to officially recognize Islam as a religion. Today, approximately 570,000 Muslims live in Austria and make up about 7% of the total population. Muslims are the second largest religious group in Austria, after Christians. The original Islam Law no longer lived up to modern legal and societal expectations. It was the express wish of the Islamic Community in Austria (IGGiÖ) that a new legal basis be created, and the IGGiÖ was comprehensively involved in all phases of the development process, which took about three years (2012 - 2015). The Islamic Alevi Community supported the draft law and all of its content from the beginning; the Islamic Community (IGGiÖ) consented after numerous negotiations. The new Islam Law was thus adopted by the Parliament on 25 February 2015 and entered into force on 31 March 2015.

The reform followed the model of the laws on other religious communities in Austria. The new law explicitly stipulates that Islamic religious communities are free in belief and teaching

and have the right to manifest their religion in public (see Article 2 para. 1). It defines their rights and obligations, in the same manner as for all the other 14 religious societies in Austria. It was the wish of the IGGiÖ to strengthen its organisational structure and to be able to dissolve associations who claim to speak in the name of Islam but do not comply with the official faith as represented by the IGGiÖ. Just as no association outside the Catholic Church can claim to speak on behalf of Catholicism [as was confirmed by the Austrian Constitutional Court], no association outside the IGGiÖ can claim to speak on behalf of the IGGiÖ. However, this rule does not impede diversity among Islamic communities - if the statutes of an Islamic association include a faith-based denomination which is not covered by the IGGiÖ, the association can continue to exist. All new religious communities who want to be registered as a new legal religious society must differ in their teachings from already existing ones. In order to be able to examine compliance with this provision, the teachings of all communities have to be available and explained. For registration as a state-registered religious denominational community the religious communities must provide an outline of both their teachings and their principle sources of faith in the German language.

With regard to the issue of receiving funds from abroad, the law highlights that one-time donations from outside Austria are still allowed. Only the “ongoing, daily conduct” of a religious community must be financed from within Austria. This is based on the principle of ability of self-sufficiency with regard to financial aspects that must be observed by each registered religious community.

According to the legal analyses of Austrian authorities these measures are all in line with the European Court of Human Rights case law as according to Art. 9.2 ECHR restrictions to the freedom of religion and belief are allowed if they are prescribed by law, sufficiently clear, aim at a legitimate goal and are necessary in a democratic society, meaning they don't discriminate and are proportional.

## **Roma**

Austria introduced an integrated set of policy measures focusing on Roma in 2012 within its broader social inclusion policies. These policies aim at the gradual elimination of the marginalisation of socially disadvantaged groups (including some Roma communities) in the fields of education, employment, housing and health, combining both general and Roma-targeted integration measures. The implementation of integration measures has been ongoing ever since. An overview of the measures is available on the National Roma Contact Points website.

A National Roma Contact Point was established at the Federal Chancellery. Under this concept, a dialogue platform involving representatives of the Roma community, administrative authorities at federal, regional and local level as well as academia was established to regularly discuss and monitor the implementation of the integrated set of policy measures aimed at promoting the integration of Roma in Austria. This dialogue plays a key role in the implementation of the EU framework. It facilitates the exchange of views on inclusion policy developments in the fields of education, health access, employment, housing and anti-discrimination with Roma civil society. As institutionalised meetings they also contribute essentially to mainstreaming Roma integration policies within the Austrian broader social inclusion policies in these fields.

To appropriately monitor and evaluate the effectiveness of the Member States efforts, the Council Recommendation on effective Roma integration measures in the EU Member States calls for Member States to collect relevant qualitative or quantitative data on the social and economic effects of such measures. It is against this background, that the National Roma Contact point - in cooperation with other relevant ministries - commissioned three qualitative studies designed to monitor and evaluate the effectiveness of integration measures taken within the framework of Austrian effort for Roma integration.

In the context of the related efforts, Austria provides 1 million euros from the European Social Fund (ESF) annually to support employment market measures targeted on Roma: The first call was published in April 2015 on [www.esf.at](http://www.esf.at), the deadline for the submission of projects was 30 June 2015. This first call involves instruments to develop and implement labour market measures (especially consulting and qualification measures) and to prepare a one year curriculum for key players in the field of empowerment for Roma. As regards project selection, applications from Roma will receive a preferential ranking. The selection will be finalised by 30 September 2015; projects may thus start as of 1 November 2015 at the earliest.

## II. Topics specific to Austria

### 1. Interim follow-up recommendations of the fourth cycle

In executing their tasks police forces are obliged by law to refrain from any activity that could lend itself to even giving the impression of partiality. In the context of the efforts aimed at avoiding even the most rudimentary development of racism and discrimination, like *racial profiling*, among police forces, the range of training and advanced training activities on the topic of human rights was expanded: Police officers have to attend a seven-day module “Fundamental Rights” during their basic training. Commanding officers have two modules on human rights in their training and the mandatory advanced training also comprises of a human rights module. These training activities not only raise police officers’ awareness of their own behaviour, but also enable them to better identify, handle and process racially-motivated crimes.

Human rights education and advanced training is based *inter alia* on a manual developed by the European Union Agency for Fundamental Rights aimed at promoting more effective police work. In 2012 the subject area “*Ethnic profiling*” was integrated in a series of seminars entitled “*A World Of Difference*”, which was specifically developed by the American citizens’ rights organisation *Anti-Defamation League* for training Austrian police forces

On 1 August 2014, the Federal Minister of the Interior issued a decree that set out new regulations on how to handle a complaint against police action that is *not* considered a criminal offence. A special complaints management department was also established at the Federal Ministry of the Interior.

In the field of jurisdiction, the public prosecutor’s offices were upgraded to jurisdictional authorities in 2008 (Article 90a Federal Constitutional Law), which guarantees independent and impartial investigations in their area of jurisdiction; victims, moreover, are entitled to obtain a judicial review of any cessation of procedures on the part of a public prosecutor.

Furthermore, allegations of misconduct by law-enforcement officials are subject to examination by the Austrian Ombudsman Board (AOB) under its general mandate relating misconduct in the public administration. However during such examinations - contrary to adversarial proceedings - the AOB cannot summon suspects or witnesses, question under oath or gather evidence by itself. It can however request the submission of statements by the examined authority and the access to files.

Since the assumption of the OPCAT mandate in 2012, reports on problems in police stations, police detention centres or the issuing of direct orders and coercive measures can initiate a visit of one of the six independent commissions to certain facilities and/or ask the Ministry of Interior for statements. The aim of preventive controls is, inter alia, to draw attention to possible structural shortcomings as well as the background of misconduct and the use of excessive force by police officers in detention areas, and to demand the adoption of measures to prevent police abuses in the future as much as possible.

In addition it can be mentioned that during the preparations for the establishment of the Austrian National Action Plan for Human Rights the Austrian Ombudsman Board plays a crucial role and offers a platform for the participation of the civil society in this process. The cooperation of the AOB with civil society is also ensured through their integration in the Human Rights Advisory Council, which is set up as an advisory body of the AOB. In addition a NGO Forum is held at the AOB every year, to further deepen the exchange between civil society and the AOB.

## **2. Policies to combat discrimination and intolerance against LGBT persons**

As already mentioned by ECRI in its report the research and gathering of official data and information on the situation of LGBT persons in Austria is a gradual process, taking into account that the criteria of sexual orientation as a ground of discrimination has been put only quite recently in the centre of attention of international and national monitoring mechanisms, institutions and authorities. Thus, Austria will also use the visit of ECRI and its report as a further possibility to address these issues in more detail, study the respective recommendations carefully and will address them in existing implementation processes within the network of human rights coordinators of the Federal Ministries and the Länder.

It should be noted once again, that the Fundamental Rights Agency with its seat in Vienna plays a crucial role in pushing the subject further and increasing awareness and knowledge about the life and situation of LGBT persons, not only for the society as such but also for the public authorities. In this regard its comprehensive and well-founded research, studies and reports play an important role. Austria has contributed to all scientific studies developed so far by the FRA with as much information and data possible and will continue to actively follow the work of the FRA on this subject.

Concerning the situation of transgender persons it has to be stated that the recommendations issued by the Federal Ministry for Health in 2014 regarding the treatment process on gender dysphoria and transsexualism were developed by an interdisciplinary and multi-professional expert group, in which also legal specialists were represented. Regarding ECRI's recommendation to enact legislation on the matters discussed, the competent Federal Ministry of Health will take this suggestions into consideration when dealing with the next legal reform process.



An important step for equal treatment of same-sex relationships has been made with the adoption of the Registered Partnership Act. Subsequent to the judgement of the ECHR of February 19, 2013, the adoption law was amended in 2013 in order to allow a so-called stepchild adoption for same-sex couples. Due to a judgement by the Constitutional Court of December 10, 2013, the laws for medically assisted reproduction were amended, so that the use of sperm-donation will also be possible for registered same-sex partners. Subsequently, the legal provision which prohibited joint adoption of a child by registered partners was rescinded through a judgement of the Constitutional Court of December 11, 2014. Implementation of this judgement is currently ongoing.

Finally with regard to providing information and adequate information to LGBT adolescents and implementing measures to promote mutual understanding for all persons irrespective of sexual orientation or gender identity, in particular in schools, Austria would like to point at a very recent so-called “general ordinance” (*Grundsatzertlass*) on sexual education issued by the Federal Minister for Education on 22 June 2015 ([https://www.bmbf.gv.at/ministerium/vp/2015/2015\\_11.pdf?4xy5ka](https://www.bmbf.gv.at/ministerium/vp/2015/2015_11.pdf?4xy5ka)), replacing the former one dating from 1994. Such general ordinances are addressed at Austrian schools and provide for the general line of teaching on certain subjects. This one includes a part on international standards in sexual education and states that sexual education has to take into account the age of the pupil, has to be adapted to the living-reality of children and adolescents and has to be based on scientifically supported information. It has to provide a positive and open view on human sexuality, promote a positive view on oneself and improve the own well-being. It has to be based on the principles of gender equality and diversity of forms of living (i.e. sexual orientation or gender identity), is to teach and foster competences such as critical thinking, ability to communicate and be orientated on international human rights standards.