



**Convention against Torture  
and Other Cruel, Inhuman  
or Degrading Treatment  
or Punishment**

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COMMITTEE AGAINST TORTURE

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES  
UNDER ARTICLE 19 OF THE CONVENTION**

**Combined fourth and fifth periodic reports of States parties due in 2008**

**AUSTRIA \***

[12 March 2009]

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\* The third periodic report submitted by the Government of Austria is contained in document CAT/C/34/Add.18.

## I. General remarks

1. As requested in paragraph 22 of the conclusions and recommendations of the Committee against Torture after considering the third periodic report of Austria (CAT/C/AUT/CO/3), Austria herewith presents its combined fourth and fifth periodic report under article 19 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention).
2. In conformity with the general guidelines regarding the form and content of periodic reports to be submitted by States parties under article 19, paragraph 1, of the Convention, the present report describes the new measures taken by Austria to implement the Convention since the date of submission of its previous report. The report also describes measures Austria has taken regarding issues raised in the Committee's previous conclusions and recommendations, in addition to the measures described in Austria's comments submitted on 24 November 2006 (CAT/C/AUT/CO/3Add.1).
3. Austria greatly values its cooperation with the Committee against Torture and its regional sister institution, the European Committee for the Prevention of Torture (CPT). Over the last two decades, dialogue and cooperation with these bodies have contributed to an enhancement of Austria's human rights standards as regards criminal procedure, measures of detention, and other coercion measures by State organs. The CPT last visited Austria from 15 to 25 February 2009. Consideration of the CPT's last report, of 2004, by the Austrian authorities, and the drawing up of Austria's response, which was publicized along with the report on 21 July 2005, led to a thorough re-examination of regulations and policies in the fields concerned.
4. Austria signed the Optional Protocol to the Convention against Torture (OPCAT) on 25 September 2003. According to long-standing Austrian practice, national legislative implementation measures mandated by any given international agreement are taken prior to ratification of the agreement. Establishing a national preventive mechanism in Austria in accordance with articles 17-23 of OPCAT will require extensive legislative measures. The programme of the previous national Government, whose term of office extended from January 2007 until December 2008 contained a commitment to ratify OPCAT and create a national preventive mechanism. Between 2004 and 2007, the Austrian Federal Ministry for Foreign Affairs organized two conferences, and the Human Rights Advisory Board at the Federal Ministry of the Interior organized one conference on OPCAT and options for a national preventive mechanism. Those conferences involved representatives from Austria's competent Government departments, the Ombudsman Office, the Human Rights Advisory Board, the Federal Provinces, civil society and academics. Due to early national elections on 28 September 2008, it was not possible to implement the commitment of the Government programme. Following the elections, on 2 December 2008 a new Government was sworn in whose programme reaffirms the commitment regarding OPCAT.
5. Furthermore, the new Government's programme contains the following commitments which are relevant to Austria's obligations under the Convention:
  - (a) To increase the proportion of women in the national police force;

- (b) To increase the proportion of persons with a migrant background in the national police force (N.B., in 2007, a campaign was started by the Vienna police force in cooperation with the city of Vienna in order to raise interest among young people from the migrant community to join the police force – see paras. 46-47 below);
- (c) To professionalize further the training of all staff of the Interior Department;
- (d) To clarify, by means of legislation, the relation between asylum procedures and extradition procedures in case they concern one and the same person;
- (e) Improve care and supervision in prisons, especially with respect to juvenile inmates, by increasing the number of prison staff in relation to the increased number of inmates and rendering their employment more effective;
- (f) To further strengthen the legal position of crime victims. This entails securing priority of their compensation claims before enforcement of fines and (certain) other rights of the State treasury;
- (g) To expand the scope of the existing fundamental rights complaint with the Supreme Court beyond the fundamental right to liberty and security (article 5 of the European Convention on Human Rights) to encompass other fundamental rights;
- (h) To amend the Penal Code in order to incorporate obligations deriving from the Rome Statute of the International Criminal Court regarding crimes against humanity and war crimes;
- (i) To incorporate a definition of torture into the Penal Code and to amend provisions regarding the penal law protection from torture in implementation of a recommendation made by the Committee against Torture;
- (j) To make penal law protection from racism and xenophobia more effective, by amending the provision regarding incitement in the Penal Code and by widening the circle of protected groups and persons.

6. Austria is also making a contribution towards the implementation of the Convention by participating in the European Union's human rights policy, notably as regards implementation of the European Union Guidelines on torture and other cruel, inhuman or degrading treatment or punishment. During Austria's European Union Council Presidency in the first half of 2006, the European Union carried out démarches in more than 40 countries, which raised the issues of cooperation with the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, and the implementation of obligations under the Convention.

7. The Austrian Foreign Minister has repeatedly spoken out for upholding and implementing an absolute ban on torture. At the occasion of the International Day in Support of Victims of Torture on 26 June 2008, Foreign Minister Ursula Plassnik said in a public statement: "Torture is one of the worst human rights violations. Austria, the European Union and like-minded States are undertaking consistent efforts at the international level to enforce the absolute

prohibition of torture. No country in the world has the right to relativize or repeal this prohibition, on any grounds whatsoever. In particular, there must be no compromises or distinctions based on gender, tradition, or religion. Each country must continuously review and develop its protection mechanisms against torture and inhuman treatment. In this respect, cooperation with the international bodies combating torture is indispensable. We must make sure that they can exercise their mandate without any restrictions.”

**II. General information on new measures and developments given in the order of the articles of the Convention**

**Article 3**

8. At the outset, we would like to mention that, internationally, Austria still ranks high on the list of receiving countries despite the general decrease in the number of asylum-seekers.

Figure I

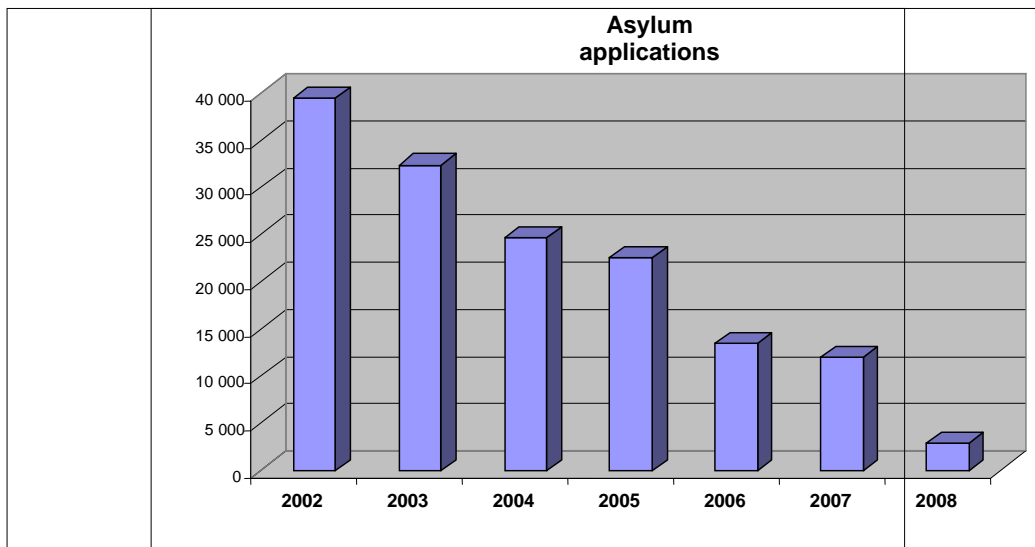


Table 1  
**Annual comparison**

	Asylum applications	Minus	Percentage
2002	39 354		
2003	32 359	-6 995	-18
2004	24 634	-7 725	-24
2005	22 461	-2 173	-9
2006	13 349	-9 112	-41
2007	11 921	-1 428	-11
Decline since 2002 by:		-27 433	-70

9. In a European Union-wide comparison, Austria was in seventh place in 2007 when comparing the number of applications for international protection.

Table 2

Comparison of asylum applications in 2007: European Union Member States		
1.	Sweden	36 210
2.	France	29 160
3.	Great Britain	27 900
4.	Greece	25 110
5.	Germany	19 160
6.	Italy	14 050
7.	Austria	11 880
8.	Belgium	11 120
9.	Spain	7 460
10.	Poland	7 120

10. Due to the high number of asylum-seekers, Austria was confronted with huge challenges, necessitating diverse and also novel measures. The review process in asylum procedures has often proved to be extremely time-consuming as each individual case is of a different nature.

11. The new codification of the Austrian Asylum Act (*Aslygesetz*) within the scope of the 2005 amendments of the laws relating to aliens (*Fremdenrechtspaket*) (Federal Law Gazette I No. 100/2005), led to significant changes in Austrian asylum law, effective as from 1 January 2006. Procedural rules have become even more efficient in consideration of the particularities of asylum law and in strict observance of the rule of law. Aliens in need of protection may thus be granted asylum or subsidiary protection expeditiously; similarly, foreigners who do not comply with these standards may be quickly provided with legal certainty to that effect.

12. In Austria, the review of refugee status has so far been the responsibility of the Federal Asylum Agency (Bundesasylamt) in the first instance and/or the Independent Federal Asylum Review Board (Unabhängiger Bundesasylsenat) in the second instance. At the end of 2007, the National Council (Nationalrat) decided to establish an Asylum Court to replace the Independent Federal Asylum Review Board effective as from 1 July 2008.

13. The Asylum Court, as a special administrative court, is basically a court of last instance; its rulings may be subject to a further review only by the Constitutional Court in case of alleged violations of constitutional rights.

14. The Asylum Court is made up of the President, Vice-President, 77 judges, and the necessary administrative staff. Its members are appointed by the Federal President following a proposal made by the Federal Government. All members of the Asylum Court must hold a law degree and must have practised law for at least five years. They are professional judges.

15. Further, the establishment of an Asylum Court and the fact that the decision-makers are qualified judges make an essential contribution towards providing the safeguards stipulated in article 3 of the Convention.

16. The English translation of the 2005 Asylum Act is attached hereto for the sake of completeness.

17. With regard to the prohibition of refoulement of persons at risk of being subjected to torture, as specified under article 3 of the Convention, it should first be pointed out that the provisions of an international treaty are, upon its ratification, deemed to have become part of Austrian law and are therefore self-executing, provided that no special implementation measures are required, which is not the case here.

18. The Austrian Federal Law on Extradition and Mutual Assistance in Criminal Matters (the Extradition and Mutual Assistance Act – *Auslieferungs- und Rechtshilfegesetz*)), Federal Law Gazette No. 529/1979, as amended, specifically takes into consideration the international prohibition of torture (article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights) and article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) in extradition cases. If the individual concerned is entitled to protection under international law (asylum, subsidiary protection against refoulement because of, inter alia, a real risk of violating article 3 of the European Convention on Human Rights), an extradition application may be rejected pursuant to section 28, paragraph 1, of the Extradition and Mutual Assistance Act.

19. Pursuant to section 33 of the Extradition and Mutual Assistance Act, an extradition request must be comprehensively reviewed by the courts of law with regard to all prerequisites for and impediments to extradition existing under Austrian law as well as international law. According to these provisions, the courts are obliged to review not only the applicable provisions under the law of extradition, criminal law, and criminal procedure but also any prohibitions against extradition resulting from the European Convention on Human Rights, its Protocols or any other international treaties (such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). When retrieving the judgments rendered by the European Court of Human Rights, the courts have at their disposal a link in the Intranet Justiz to the website of the European Court of Human Rights and the Austrian Institute for Human Rights, which provides summaries, also available in German, of relevant court decisions regarding fundamental rights. Education and further training seminars are held on a regular basis, dealing with human rights issues, and, in particular, with regard to decisions rendered by the relevant bodies such as the European Court of Human Rights.

20. The issue of whether an individual is actually in danger of being subjected to torture is to be reviewed by the competent court, under section 19 of the Extradition and Mutual Assistance Act. The court must then render a decision whether extradition is permissible or impermissible. Section 19 of the Extradition and Mutual Assistance Act prohibits extradition if there is cause to suspect that (a) the criminal proceedings in the requesting State will not meet, or have not met, the principles enshrined in articles 3 and 6 of the European Convention on Human Rights (para. 1); (b) the punishment or other preventive measure (to be) imposed by the courts in the requesting State would be executed in a manner violating the principles set forth in article 3 of

the European Convention on Human Rights (para. 2); or (c) the person to be extradited is in danger of being persecuted in the requesting State on the grounds of his or her origin, race, religion, belonging to an ethnic or social group, nationality or political beliefs (“extradition asylum”) (para. 3).

21. The Federal Minister of Justice is bound by a decision made by a court of law declaring an extradition impermissible. The Minister may, however, reject an extradition that has been permitted by the court, pursuant to section 34 of the Extradition and Mutual Assistance Act, by taking into consideration the interests and obligations of the Republic of Austria under international law.

22. Legal certainty in extradition proceedings was enhanced on a judicial level under the 2004 Criminal Code Amendment Act (*Strafrechtsänderungsgesetz* 2004), Federal Law Gazette I No. 14/2004, in accordance with the standards set by the decision of the Austrian Constitutional Court dd. 12 December 2002, G 151/02.

23. In its decision, the Constitutional Court ruled that the second sentence of section 33, paragraph 5, of the Extradition and Mutual Assistance Act, Federal Law Gazette No. 529/1979, was unconstitutional. It reads: “The court decision, which must include its underlying reasoning, may not be appealed against.” The Constitutional Court explained its decision, among other things, saying that the rule of law principle of constitutional law calls for legal protection that “entails a certain minimum degree of factual efficiency for the person seeking a judicial remedy”. Moreover, article 13 of the European Convention on Human Rights specifies that anyone whose rights, as set forth in the Convention, are (potentially) violated shall have an effective remedy before a national authority.

24. While the legal situation prior to 1 May 2004 provided only for an uncontested decision of a court of second instance in the extradition matter, the 2004 Criminal Code Amendment Act introduced second instance extradition proceedings. Therefore, an appeal from the decision of the court of first instance may now be filed with the appellate court by the person to be extradited as well as by the public prosecutor. In a further development of the Fundamental Rights Complaint Act (*Grundrechtsbeschwerdegesetz*), the Austrian Supreme Court also exercises the power of comprehensive review in cases of fundamental rights violations if a fundamental rights complaint is filed (cf. decision 13 Os 135/06m, EvBl 2007/154, 832). Only recently, the Supreme Court, in its decision dd. 13 February 2008, affirmed such power of review also in extradition proceedings (13 Os 150/07v). In that matter (extradition request by Croatia), the Supreme Court, by invoking its power as the highest judicial body in criminal matters in the field of the protection of fundamental rights, for the first time – after completing two-tier court proceedings for the review of the impermissibility of extradition – carried out a further Supreme Court review of the claimed fundamental rights violations (specifically articles 2, 3, 6, and 8 of the European Convention on Human Rights). In the case at hand, the Supreme Court, however, rejected the claim of any fundamental rights violation, as the appellant did not demonstrate the existence of a specific risk with regard to articles 2, 3 and 6 of the European Convention on Human Rights. The Court also rejected a violation of article 8 of the European Convention on Human Rights as there was a reasonable chance that the family of the appellant would be easily integrated into the society of the requesting State.

25. Apart from national legal protection, which comprises a review of the prohibition of torture by the court of first instance, in case of an appeal by the competent Higher Provincial Court (Oberlandesgericht) and in case of a fundamental rights complaint by the Supreme Court, the person concerned may also have recourse to the European Court of Human Rights or to the Committee against Torture in case of an imminent violation of article 3 of the European Convention on Human Rights or article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The European Court of Human Rights or the Committee against Torture may, on the applicant's request, decide to impose an interim measure in the interest of a stay of extradition.

26. To date, Austria has never carried out an extradition in such cases unless and until the interim measure imposed was lifted again. In pursuing this policy, Austria has taken into account the jurisdiction of the European Court of Human Rights regarding the binding character under international law of an interim measure under the European Convention on Human Rights (see European Court of Human Rights, judgment of 4 February 2005, *Mamatkulov and Askarov v. Turkey*, application nos. 46827/99 and 46951/99, paras. 103 et seq.).

27. In the interest of reviewing the human rights situation in the countries of origin, courts may access [www.staatendokumentation.at](http://www.staatendokumentation.at), a website hosted by the Federal Asylum Agency pursuant to section 60 of the Asylum Act. This tool provides courts with an excellent foundation for decision-making. By posting reports published by independent international human rights organizations, the Staatendokumentation website, in an exemplary manner, puts into practice the request, repeatedly made by the European Court of Human Rights, to evaluate the situation in the countries of origin when reviewing deportations or extraditions under article 3 of the European Convention on Human Rights (cf. most recently, European Court of Human Rights, judgment of 28 February 2008, *Saadi v. Italy*, application no. 37201/06, para. 131). Pursuant to section 60, paragraph 6, of the Asylum Act, courts have access to this information at no cost. The Staatendokumentation website contains topical information on human rights and safety aspects in numerous countries all over the world. This information originates from reliable and acknowledged sources, such as the United Nations, international human rights organizations, news services and newspapers as well as government agencies. The Federal Ministry of Justice provides the courts and public prosecutors' offices with general information on the basis of decision-making with regard to the standards provided in section 19 of the Extradition and Mutual Assistance Act (cf. Decree issued by the Federal Ministry of Justice of 11 May 2007 on the use of the Staatendokumentation website, BMJ-F413.431/0001-IV 1/2007) and organizes numerous education and training seminars for aspiring judges, serving judges, and public prosecutors in order to encourage an extensive discussion of the human rights that must be taken into consideration in extradition proceedings. Most recently, in May 2007, this issue was at the centre of Judges' Week, which was dedicated to an Austria-wide exchange of opinion.

28. In the past few years, Austria has repeatedly rejected extradition on the grounds of a specific suspicion of a violation of article 3 of the European Convention on Human Rights and/or article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In 2004, Austrian courts refused an extradition to Brazil and one to Uzbekistan; in 2005 two extraditions to Georgia; in 2007 one to Azerbaijan, six to Kazakhstan, two to Belarus; and in 2008 (so far) one extradition to the Russian Federation, one to Serbia, and another to Belarus.



29. Following international human rights standards and judgments handed down by the European Court of Human Rights (most recently European Court of Human Rights, judgment of 28 February 2008, *Saadi v. Italy*, application no. 37201/06, paras. 127 et seq.), the prohibition of torture (art. 3 of the European Convention on Human Rights and art. 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) is absolute. Austria is of the firm opinion that, in cases where there is a risk of a violation of article 3 of the European Convention on Human Rights or article 3 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, an extradition request cannot be granted with a view to section 19 of the Extradition and Mutual Assistance Act. Where courts determine the specific risk of torture or ill-treatment, a petition for extradition must be rejected. The offer of a diplomatic assurance is not acceptable. Austria has never – insofar as can be assessed – ordered an extradition on the basis of a diplomatic assurance for the protection against torture.

30. Moreover, reference is made to article 13 of the Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States in conjunction with article 1, paragraph 3, thereof and their implementation by section 19, paragraph 4, of the Act on Judicial Cooperation in Criminal Matters with the Member States of the European Union (EU-JZG).

### **Article 10**

31. The Federal Ministry of the Interior has taken numerous initiatives regarding the initial and ongoing training of Austrian law enforcement officials in the field of human rights, as well as the fight against prejudices that may lead to racial discrimination. Law enforcement officials are particularly sensitized and trained with regard to these phenomena. In this connection, we would like to mention a structural concept for human rights education, which was prepared in 2003. Racism and xenophobia are covered in the basic education of law enforcement officials by expositions of legal issues and statutory provisions with the objective of establishing a closer legal interface with their actions as law enforcement officials.

32. In the course of the initial and ongoing training of law enforcement officials, the following measures are taken and emphasis placed with respect to racism and xenophobia: education and training curricula cover, in principle, constitutional safeguards and, in particular, within the penal service, fundamental and human rights. In addition, seminars are held in order to achieve further sensitization in the field of human rights. In the initial training of law enforcement officials, these issues are treated in the context of several subjects, as specified below, and further deepened in their training to become a duty or executive officer:

33. “Applied psychology”: here the different views and perspectives with regard to the future career of trainees are expanded, and potential tensions that may arise through our living together are analysed. Officials are to be strengthened in their social decision-making and responsibility for their actions so as to be able to successfully cope with the requirements inherent in their jobs. This subject area also deals with official actions involving different (marginal) groups of people, the personal circumstances of foreigners, and the treatment of foreigners: law enforcement officials should be taught to develop a better understanding and consideration of the living conditions and personal circumstances of the foreigners with whom they are dealing in practice, they should be unbiased in their actions, handle conflicts resulting from cultural diversity

appropriately and with a higher regard for human rights, and develop a better understanding and appreciation of the work done by social institutions, as well as their methods, objectives, and rationale.

34. A better understanding of the cultural background and the living conditions of foreigners serves to create trust and diminish fears, which considerably improves the quality of police work and leads to a substantially better understanding.

35. “Human(s) – Rights” (“Menschen – Rechte”): this seminar deals with human rights and aims to create a stronger awareness and sensitivity with regard to human rights by treating the following issues: the origin and history of human rights, as well as any existing (and potential) forms of human rights violations, a presentation of human rights organizations, a presentation of the legal situation, as well as treatment of individual studies and cases, investigating the causes with regard to a (wrong) self-image and job profile (both externally and internally), motivation, efficient processes and mechanisms that are of relevance, social, psychological, and group-dynamic aspects, in particular in connection with aggression, frustration, prejudices, fellowship, authority and the use of power, and elaborating concepts for the prevention of human rights violations.

36. “Initial and ongoing training of deportation officers”: numerous organizational units of the Federal Ministry of the Interior have joined forces in organizing training seminars for those officials in charge of performing deportation duties (the European Convention on Human Rights and psychological instruction).

37. “Anti Defamation League”: since 2001, the Federal Ministry of the Interior has cooperated with the Anti-Defamation League and its programme “A World of Difference” to combat prejudices and discrimination. Forty training seminars are held every year for three days of eight hours each. This network of educators in initial and ongoing training is designed to achieve an unbiased attitude on the part of Austrian security police officers. As of the end of 2007, over 4,000 police officers had undergone this training, which is compulsory for all policemen and policewomen entering the service.

38. “Xenophobia and use of language”: the teachers in the various training departments were given the opportunity to participate in this training seminar initiated by the Federal Ministry of Education, Science and Culture, also aimed at creating a higher sensitivity for this topic.

39. Continuation of the study programme “Police actions in a multicultural society”: a study programme that allows officials who, in their jobs, are frequently in contact with migrants, so as to deepen their theoretical and practical knowledge and have it certified.

40. Furthermore, the close cooperation with the Human Rights Advisory Board in the areas of initial and ongoing training must be noted. The recommendations of the Human Rights Advisory Board on the use of language by security police officers have resulted in the incorporation of special input into existing training programmes. It should also be mentioned that the General Administration for Public Security (Generaldirektion für öffentliche Sicherheit) issued a decree entitled “Use of language by law enforcement officers” (Sprachgebrauch in der Exekutive) on 7 August 2002. This decree reiterated the relevant legal framework conditions,

emphasized the role, significance and power of language, and highlighted instances of linguistic discrimination. It goes without saying that the recommendations of the Human Rights Advisory Board are also taken into account in numerous other training programmes.

41. We would also like to mention the project entitled “The police as a human rights organization”. As a result of historical developments, the police and human rights tend to be seen in a problematic/ambivalent reference system in which the police force is often described as being a threat to human rights, and human rights as inhibiting the police. The modern understanding of this reference system, which is gaining a stronger foothold internationally as a change in paradigm, on the contrary assigns the police a more active role in the implementation of human rights. Human rights are not defined as a restriction but rather as the foundation and goal of police work. Consequently, the police are primarily not regarded as a threat to human rights but as a human rights organization equipped with special means in terms of the monopoly on the legitimate use of force, from which a particular responsibility is derived.

42. For several years, the independent Human Rights Advisory Board at the Federal Ministry of the Interior has been dealing with the relationship between the police and human rights on a structural level. In 2006, the Human Rights Advisory Board, in a synoptic overview, set up the working group on “The security police as an organization for the protection of human rights”.

43. In a statement of principles, this working group emphasized certain circumstances inherent in the structure of law-enforcement organizations with regard to the basic understanding of the police as a human rights organization, and it outlined cornerstones for the further development of the programme (focus on the self-image of the police, definition of performance, human resources management, and organizational structures and processes). In a coordinated effort by the Chairperson of the Human Rights Advisory Board and the Federal Minister of the Interior, it was decided not to develop the content of the project within the scope of the working group of the Human Rights Advisory Board for the time being and, presumably following project development over several years, make recommendations to the Federal Minister of the Interior. For reasons of identification, it was resolved to make the development of the project, in terms of content, the responsibility of the Federal Ministry of the Interior (in a yet undecided form), with support from the Human Rights Advisory Board.

44. The objective of the project is a police force that is systematically geared towards securing and defending human rights. An efficient implementation of this fundamental alignment in everyday police work presupposes a critical review and further development of structural circumstances as well as of traditional behaviour and thought patterns.

45. The entire project and its components are subject to the principle of a multidisciplinary and international approach. All project tasks are established by internal, external, and international experts in the field. The implementation of the project is under way. By the end of 2008, the results of the working group “Self-image, definition of performance” will be available, on the basis of which the concepts for all other areas will have to be prepared in three parallel working groups (personnel, organizational structures and operational police work) by the end of 2009.

46. Inclusion of migrants in law enforcement: in this connection it should be noted that a career in law enforcement is open only to Austrian citizens, regardless of the ethnicity of applicants, who have passed strict screening procedures. The share of migrants in the police force is to be increased by consciously recruiting second-generation migrants with Austrian citizenship. Recruiting efforts are targeted at the 18-30 age group. This is seen as a “Chance for more security in Austria”, especially through greater prevention. Promoting police officers with a migrant background is also a means of sending out signals of trust towards migrant residents.

47. In 2007, the Regional Police Command of Vienna, together with the city authorities, initiated a large-scale information campaign entitled “Vienna needs you”, aimed at increasing the percentage of police officers with a migrant background. As of 2006, 31 per cent of Vienna’s population did not have Austrian citizenship and/or were born abroad. The information campaign is targeted at young Austrian citizens who were born in Austria or have lived there since childhood, with intercultural knowledge and a good command of German as well as the language of their parents. The campaign comprises information events organized with over 600 target institutions, mainly migrants’ associations and schools. Its long-term goal is to have at least one police officer with a migrant background in each police station. A count during the ongoing initial training programmes indicated that, as of 1 July 2006, a total of 12 people with a migrant background (e.g. Romania, Bosnia, Turkey, Saudi-Arabia, and Poland) were trained to become police officers.

As mentioned above, a commitment to increase the proportion of persons with a migrant background in the national police force has been incorporated into the programme of the new Federal Government which was sworn in on 2 December 2008.

48. Issues relating to torture are a main theme in fundamental rights seminars which must be taken by judges and public prosecutors in their training. Similar seminars are also offered on a regular basis in further education programmes.

49. Since the beginning of 2008, the curriculum requires trainees to undergo a compulsory three-day module on human rights, where prospective judges and public prosecutors are also trained with regard to article 3 of the European Convention on Human Rights. Moreover, fundamental rights is a subject which is examined in the Bench examination as provided for in section 16 of the Service Regulations for Judges and Public Prosecutors.

50. Every year, further judicial training courses are organized on a regular basis on subjects such as the protection of victims, trafficking in humans, extradition and asylum (in June 2008, for example, a seminar on trafficking in humans was held in Graz). The 2007 Judges’ Week was dedicated to “The judiciary and human rights”, and, at the end of September 2008, a two-day event was held in Innsbruck dealing with “Human rights and criminal justice”.

51. Austrian judges and public prosecutors also take part in international conferences surrounding these issues, such as Organisation for Security and Cooperation in Europe conferences or events organized by the Ludwig Boltzmann Institute of Human Rights.

52. As far as the penal system is concerned, the following can be reported: in the course of a comprehensive reform of the initial training for new prison officers, which took place from 2003 to 2004, the methodology-teaching standards were set out in a uniform curriculum in line with

state-of-the-art adult education. The fundamentals for a new design of the regulations for the vocational education of prison officers in remuneration groups E 2b (for entrants) were also set out.

53. The initial training for prospective prison duty officers was also completely overhauled in 2006 and now sees itself as offering the best possible training for middle management in prisons.

54. The curricula in both initial training programmes, which employ modern teaching methods suitable for adults, aim to promote the professional self-image of prison officers and initiate and further develop an improvement in the treatment and care of inmates.

55. Particular attention is paid to the basic teaching skills of educators and their humane attitude for the respect of human dignity. Through the way they organize their classes they become role models and set an example for dealing with people. All education programmes are based on a fundamental attitude aligned towards human dignity. The educational objectives with regard to opinions and values in the E2b initial training programme are as follows:

Prison officers should:

- Have a humane attitude;
- Identify with their work in the penal system;
- Regard their work in public service as that of service providers;
- Be willing to advance personally;
- Be reliable;
- Be tolerant and not provocative;
- Have an overall positive attitude.

56. For example, it should be mentioned that the subject “law” in initial training explicitly deals with human rights, fundamental and liberty rights as well as aspects under international law and European prison rules. Human rights issues, ethical values and attitudes are an implicit part of all subjects with their individual modules where they are calibrated as appropriate for a specific situation. All of these issues are not simply an integral part of the curriculum but are also a cross-cutting issue covering all sections of the individual programmes which form the initial training.

57. In addition, an in-depth discussion with practical exercises takes place, taking into account specifically the following:

- Designing solution- and development-oriented communication;
- Non-violent conflict management;
- Motivation and trust in work relationships;
- Tensions between the objectives and the practice of penal services;
- Management styles and their effects;
- De-escalation in situations of crisis;
- Interconnecting particular duties of care from the perspective of care services;

- Understanding of conducive behaviour relating to the organizational culture and its modifications;
- Coping with social situations involving foreign-language inmates and inmates with a different cultural background;
- Recent developments in contemporary history.

58. Shortly, further personality development programmes such as “Intercultural communication” and “Proper conduct for prison officers” will be added to the E2b initial training, thus expanding the range of actions taken by prison officers by taking into account cultural and/or migration-based factors.

59. In addition to numerous other issues, the training programme offered at the Prison Staff Academy (Strafvollzugsakademie) has been continuously updated in the past few years to meet the following objectives:

- Increase of technical and social skills in dealing with inmates;
- Further development of communication skills;
- Acting in accordance with the rule of law as a guiding principle.

60. Last year:

- 523 persons participated in 38 seminars focusing on inmates;
- 13 seminars focusing on communication, cooperation, and conflict management were attended by 169 participants;
- 6 seminars with 85 participants were organized on law topics.

### **Article 11**

61. Since 1 January 2008, a fundamental reform of criminal procedure has been introduced in Austria. This has already been discussed in the third periodic report submitted by Austria.

62. The Criminal Procedure Reform Act (*Strafprozessreformgesetz*), adopted in 2004, entered into force as of 1 January 2008 together with the Criminal Procedure Reform Accompanying Acts (*Strafprozessreformbegleitgesetze*), adopted in 2007, the latter being primarily concerned with adjustments in additional provisions of criminal law. This reform has as its main objective modern and efficient preliminary investigation proceedings, headed by the public prosecutor’s office and conducted in cooperation with the criminal investigation department. The courts are granted comprehensive protection of fundamental rights and legal control vis-à-vis the actions taken by the criminal investigation department and the public prosecutor’s office.

63. A core element of the reform is the enhanced legal position of defendants and victims whose rights of defence and rights to join the proceedings have been strengthened. The defendant may now exercise his or her rights during the investigation process without the proceedings having been initiated formally. Therefore, the defendant has the right to inspect his or her files during police investigations (extension of the right to inspect files). The

defendant expressly has the right not to make any statement in the matter and to contact and talk to a defence counsel prior to the interrogation. She or he also has the right to call in a person of his or her confidence for the interrogation. Defendants who do not have sufficient command of the German language have the right to the assistance of an interpreter. The defendant must be informed of all of these rights on the initiation of preliminary investigations, and in any case before his or her first interrogation.

64. The defendant's legal protection is guaranteed by granting him or her the right to raise an objection with the court on grounds of a violation of a right or denial of procedural rights (such as the right to inspect files) by the criminal investigation department or the public prosecutor's office during preliminary investigations. The defendant may also file an appeal from the permission (granted by a court) of means of coercion with the higher court. The interrogation of the defendant is to be postponed for an adequate time in order to give him or her the opportunity to exercise these rights if necessary and possible.

65. Starting with the commencement of preliminary investigations, an arrested defendant is given the right to contact a defence counsel, to give him or her a power of attorney and to speak with him or her prior to his or her interrogation. Prior to the defendant's confinement to a prison (not longer than 48 hours after his or her arrest) his or her contact with his or her defence counsel may be put under surveillance and be restricted to the granting of a power of attorney and a short and general legal consultation, provided that this seems necessary, in order to prevent interference in ongoing investigations or corruption of evidence.

66. The defendant is, as a rule, entitled to consult with his or her counsel out of earshot of third persons. The public prosecutor's office may impose surveillance measures if it is deemed that there is a risk of collusion by the defendant and if, due to aggravating circumstances, it is believed that the defendant's conversation with his or her counsel may result in the corruption of evidence. Prior to the defendant's confinement to a prison, these measures may be ordered by the criminal investigation department. Such surveillance may not last longer than two months after the defendant's arrest or, if charges were brought earlier, up to such time. The defendant and his or her defence counsel must be informed of the surveillance. Important reasons for restricting the defendant's contact to his or her counsel, exist, for example, if the defendant is suspected of being a member of a criminal organization the other members of which have not yet been interrogated. This flexible arrangement takes into account special consideration being given to each individual case, as called for by the European Court of Human Rights.

67. During his or her interrogation, the defendant has the right to call in a defence counsel, who may not participate in the interrogation itself in any manner but, after the end of the interrogation, has the right to ask the defendant supplementary questions. During the interrogation, the defendant may not consult with his or her counsel on how to answer individual questions. If necessary, the defendant may be refused permission to call in his or her counsel in order to prevent interference in ongoing investigations or corruption of evidence. In such a case, an audio or visual recording of the interrogation must be made if possible (sect. 164, para. 2, of the Code of Criminal Procedure ). This may only be used in special cases. In the cases mentioned above, any such instructions/orders given may be appealed against to the competent court. A direct court order would not be feasible due to the

procedure, but the legal protection mentioned ensures that each denial of a defendant's contact with his or her counsel may already be appealed against to a court of law in preliminary proceedings.

68. Austria is also committed to ensuring that all defendants, regardless of their financial means, are able to enjoy legal representation by a defence counsel. For this reason, section 61, paragraph 2, of the Code of Criminal Procedure – like the relevant earlier provisions – provides that a legal aid lawyer will be provided, at State cost, on certain conditions for defendants who are unable to afford legal representation, but this becomes mandatory if the defendant is on remand. It is up to the court to decide whether an appointment of a legal aid lawyer is appropriate, but the competent bar association selects the actual attorney. For the short time immediately following a defendant's arrest, a new service is designed to make sure that the defendant obtains access to a professional defence counsel regardless of whether she or he already has and/or knows a counsel or has the necessary financial means to afford legal representation.

69. The Federal Ministry of Justice has already entered into negotiations with the Austrian Bar Association (Österreichischer Rechtsanwaltskammertag) as of 2007 concerning the establishment of a standby legal counselling service (rechtsanwaltlicher Journdienst). This service is to ensure that a defendant is provided with a competent defence counsel, from the time of his or her arrest until his or her confinement to prison and/or until his or her release, for consultation over the telephone and, if required, for legal assistance on the spot. The Federal Ministry of Justice agreed to test this service starting on 1 July 2008 for several months, at the end of which a decision on the continuation of the project is to be made. The costs of the services provided by such a defence counsel basically have to be borne by the defendant (100 euros per hour). If the defendant is granted legal aid in retrospect, she or he does not have to reimburse the costs. The first trial period came to an end on 31 October 2008. The initial feedback has, overall, been rather positive. However, it is surprising that only a few defendants have actually made use of this service. At the end of October 2008, it was agreed with the Austrian Bar Association to continue operating the standby legal counselling service up to 31 January 2009.

70. Under the Fundamental Rights Complaint Act (*Grundrechtsbeschwerdegesetz*) defendants may file a fundamental rights appeal with the Supreme Court on the grounds of a violation of their fundamental right to personal liberty by a decision of a criminal court or other order after having exhausted all stages of appeal. The imposition and enforcement of a prison sentence and preventive measures for reasons of a punishable offence are exempted therefrom. In the course of passing accompanying Acts to the Criminal Procedure Reform Act, consideration was given in 2007 on whether or not to expand the scope of the application of this law, which is currently limited to the fundamental right to personal liberty and appealing against decisions preceding the court decision. These efforts were directed at expanding the role of the Supreme Court as the preserver of fundamental rights in the administration of justice (at first only in criminal law) by assigning it the decision on the violation of all fundamental rights under Austrian constitutional law and, as proposed by some, also with regard to judgments. Ultimately, no political consensus was achieved during the legislative procedure regarding the Criminal Procedure Reform Accompanying Acts which was debated and passed under extreme pressure of time. However, efforts are still



being made towards strengthening the legal institution of a fundamental rights appeal, possibly after a further development of considerations. In its decisions, the Supreme Court has expanded the institution of retrial to all violations under the European Convention on Human Rights, without a formal conviction of Austria by the European Court of Human Rights being required. Thus, the Supreme Court also grants comprehensive legal protection on final decisions of criminal courts.

71. With regard to the use of the Taser X26 stun gun by law enforcement officers, it should be noted that, in mid-March 2008, the Federal Minister of Justice decided, for the time being, to terminate the use of this device. This decision is based on the fact that both in the United States of America and in Canada several people are reported to have died from the use of the Taser X26, on the one hand, and, additionally, the Committee against Torture has pointed out that the application of the Taser X26 stun gun is a “form of torture”.

72. At present, a group of experts at the Federal Ministry of Justice are debating whether, despite the occurrences and/or findings mentioned above, the Taser X26 stun gun could be reintroduced in the penal service. This group of experts will submit the results of their work by making several recommendations to the competent minister.

### **Articles 12 and 13**

73. Decrees issued on 10 November 2000 and 5 March 2003, now replaced by Decree No. BMI-OA1000/0070-II/1/b/2008 of 8 May 2008, guarantee that the public prosecutor’s office and the Office for Internal Affairs (Büro für Innere Angelegenheiten), which has been set up as a separate division of the Federal Ministry of the Interior, will, without delay, be informed of all complaints regarding alleged abuses (primarily assaults against foreigners or members of ethnic minorities) by officers of the public security service in the form of a report (Anfallsbericht). The above Decree of 8 May 2008 also provides that such allegations of ill-treatment are to be notified to the clerk’s office of the Human Rights Advisory Board by sending a copy of this report by e-mail.

74. Awareness of possible xenophobic, racist, or anti-Semitic motives for offences has been raised among law enforcement officers, and it is their obligation, in the performance of their duties, to pay special attention to such offences, regardless of who the perpetrator may be.

75. The responsible Regional Office for the Protection of the Constitution and the Fight against Terrorism (Landesamt für Verfassungsschutz und Terrorismusbekämpfung) must be informed immediately about cases in which there is such a motive behind an offence, or where such a motive is assumed as being likely. This Office is then responsible for communicating its report to the Federal Office for the Protection of the Constitution and the Fight against Terrorism (Bundesamt für Verfassungsschutz und Terrorismusbekämpfung). The decree was based on the definitions set up in document 11768/94 JAI 78 of the Council for Justice and Home Affairs (Rat für Justiz und Inneres) of 3 December 1994, which state that xenophobic, racist, and anti-Semitic offences are offences against persons or groups of persons who, on account of an attitude of intolerance, are denied the right to stay or live in a residential area or the entire country by the co-offenders on grounds of their actual or alleged nationality, ethnic origin, race, colour of skin, religion or origin, or offences that are committed against other persons/institutions/objects,

where the offenders act on account of xenophobic, racist, or anti-Semitic motives. In principle, the Office for Internal Affairs is responsible for accepting and reviewing all accusations and complaints attributable to such misconduct in office (including, without limitation, sects. 302-313 of the Austrian Criminal Code – *Strafgesetzbuch*). The Office for Internal Affairs has to inquire into all suspicions or allegations against officials of the public security service and/or lead the relevant investigations. The taking of exact medical evidence and the preparation of an expert opinion by police surgeons are guaranteed by means of service instructions.

76. Regarding articles 2, 11, and 16 of the Convention, which deal with the general prevention of torture and ill-treatment, it is noted that comprehensive information on the tasks and structures of the Human Rights Advisory Board was already provided in the third periodic report by Austria.

77. The task of the Human Rights Advisory Board is to advise the Federal Minister of the Interior on human rights issues and to encourage the consistent and systematic orientation of the security police officers towards safeguarding human rights by means of observation and regular reviews.

78. The establishment of the Advisory Board also implied that the Ministry of the Interior had opened up to civil society, which is clearly demonstrated by the Board's composition: five members are nominated by the Federal Minister of the Interior on the basis of proposals by non-governmental organizations which are devoted to safeguarding human rights (currently, these are SOS Menschenrechte, Diakonie Österreich, Caritas, Verein Menschenrechte Österreich and Volkshilfe Österreich). One member from each organization is appointed on the proposal of the Federal Chancellor and the Federal Minister of Justice, and the Chairperson and his or her deputy on the proposal of the President of the Austrian Constitutional Court. Only three members are nominated at the exclusive initiative of the Federal Minister of the Interior.

79. The Human Rights Advisory Board performs its tasks through delegations and committees. These are entitled to pay visits to all security police departments and to all places where powers of administrative authority and coercion are exercised by the security police. Currently, six expert committees (three for the administrative district of the Higher Provincial Court of Vienna and one committee composed of seven members each for all other administrative districts of the Austrian Higher Provincial Courts) have been appointed by the Advisory Board, taking account of regional aspects, to regularly check the detention conditions at security police departments. Apart from their area-wide routine visits, the committees also pay visits whenever there is suspicion of ill-treatment. The committees are obliged to report to the Human Rights Advisory Board about every visit made, stating in particular the facts ascertained and the measures and recommendations deemed necessary by the committee.

Table 3

**Number of visits made by the six committees of the Human Rights Advisory Board**

Year	Number of visits to cells (police detention centres and police stations)	Number of observations of use of police force	Number of visits to prisons (persons in custody awaiting deportation)
2003	371		
2004	443	46	
2005	483	56	15
2006	498	38	36
2007	567	113	33

80. Between 2003 and 2008, the Human Rights Advisory Board presented 106 recommendations for improvement to the Federal Minister of the Interior. Some of those recommendations were prepared in mixed working groups following a comprehensive analysis of the relevant topic. The recommendations concerned, for example, the following topics:

- Use of language by security police officials;
- Detention of minors pending deportation;
- Human rights awareness among security police officials;
- Use of means of coercion by the police, taking into consideration minimization of risks in problematic situations. Drawing up a concept for minimum standards for detention conditions;
- Health care during detention pending deportation – report and recommendations of the Human Rights Advisory Board on the death of Yankuba Ceesay at the police detention centre in Linz;
- The way in which State institutions handle allegations of ill-treatment against security police officials. In addition, more specific recommendations were made, for instance regarding the deportation zone at Vienna Airport in Schwechat.

81. The recommendations made by the Human Rights Advisory Board are thoroughly checked regarding their feasibility and then relevant measures are taken or a dialogue with the Human Rights Advisory Board is initiated by the Ministry. Since 2003, 55 of the recommendations have already been fully implemented, 33 have been implemented in part and/or are being implemented. Eighteen recommendations cannot, however, be put into practice in the form suggested. In addition, the detention regulations have been reviewed in cooperation with the Human Rights Advisory Board.

82. Proceedings under section 312, paragraphs 1 and 3, second instance, partly in conjunction with paragraph 12, third instance, of the Austrian Criminal Code were pending before the Vienna Provincial Court for Criminal Matters against four officers of the security police (Sicherheitswache). They were accused of having ill-treated Bakary J., who was in detention pending deportation, in an empty warehouse by kicking and punching him, knocking him over using a vehicle, and repeatedly and severely threatening to kill him. Among other injuries, Bakary J. sustained a non-dislocated fracture between the eye socket and the jaw.

83. On 31 August 2006, all four officers were found guilty as charged. Three of them were sentenced to suspended terms of imprisonment of eight months each, the other to a suspended term of imprisonment of six months (each with three years' probation). The victim was awarded damages for pain and suffering in the amount of €3,000. The judgment became final with immediate effect.

84. With a view to the inadmissibility of awarding damages to the private party joining the proceedings to claim damages – as the claims should have been asserted as public liability claims – the senior public prosecutor's office in Vienna suggested lodging a plea of nullity to uphold the integrity of the law (*Nichtigkeitsbeschwerde zur Wahrung des Gesetzes*). Such plea was lodged with the Supreme Court by the general prosecutor's office on 8 February 2007 and upheld by the Supreme Court on 11 April 2007. The victim's representative initiated the lodging of another plea of nullity to uphold the integrity of the law, citing critically that the officers were charged with the lesser offence of tormenting and neglecting a prisoner and not with intentionally inflicting grievous bodily harm within the meaning of section 87 of the Criminal Code (which is punishable by more severe sentences). However, the general prosecutor's office did not share this view.

85. In addition, disciplinary proceedings were initiated against the officers. In the proceedings, they were found liable and ordered to pay fines (eventually amounting to five months' salary in one case, four months' salary in two cases, and three months' salary in one case). In the initial proceedings before the Disciplinary Commission (Disziplinarcommission) of the Federal Ministry of the Interior, the Disciplinary Ombudsperson (Disziplinaranwalt) was instructed to ask that the four accused officers be dismissed from office. The motion was heard and denied by the Disciplinary Senate. Thereafter, an appeal was filed with the Higher Disciplinary Commission (Disziplinaroberkommission) at the Federal Chancellery (Bundeskanzleramt) after service of a written copy of the decision. The Higher Disciplinary Commission confirmed the fines.

86. The Disciplinary Ombudsman contested this decision (decree) in the Administrative Court, which set the decision aside pursuant to section 42, paragraph 2, subparagraph 1, of the Austrian Administrative Court Act (*Verwaltungsgerichtshofsgesetz*) (No. 2007/09/0320-14) on 18 September 2008. Accordingly, the proceedings have to be resumed before the Higher Disciplinary Commission and the case has to be retried within a time period of six months.

87. So far, Bakary J. has not received any compensation. Under Austrian law, he is entitled to compensation based on official liability (Austrian Liability of Public Bodies' Act (*Amtshaftungsgesetz*), Federal Law Gazette 20/1949 of 1 February 1949; taking into consideration the criteria for redress specified in article 14 of the Convention). However, although discussions have taken place between the specialized division (Fachreferat) of the Federal Ministry of the Interior and the legal counsel, Bakary J. has not yet brought an action, be it through his legal counsel or by himself. Nor has he initiated any other steps in this respect, for instance efforts to reach an out-of-court settlement, to assert his claims. The Federal Ministry of the Interior is actively trying to exhaust all available options to ensure a quick settlement of this case. Meanwhile, the four law enforcement officers involved have been assigned to desk duty.

88. As a consequence of this case, the Federal Ministry of the Interior has commissioned a study particularly focusing on the pressure, in particular, possibly excessive cases, to which law enforcement officers are subjected. In addition, deportation practices were subjected to a comprehensive evaluation. Problematic deportations are now increasingly carried out using aircraft chartered specifically for this purpose (joint return operations).

89. In order to take the pressure off and/or rotate the long-serving escort teams, new escort officers are being trained. In addition, the Human Rights Advisory Board will be informed in advance of all problematic and charter deportations so that members of the commissions of the Human Rights Advisory Board can participate in the preparatory contact meetings and/or accompany the deportees on their way to the airport.

90. The Criminal Procedure Reform Act has brought about an improvement of the status of victims at several levels. According to section 195 of the Austrian Code of Criminal Procedure, victims are entitled to move for a reinstatement of criminal proceedings which were discontinued by the public prosecutor's office, provided that the requirements for discontinuing the proceedings were not met or new facts or evidence which are likely to lead to a conviction of the accused are presented. The public prosecutor's office may either process this motion itself or refer it to the Higher Provincial Court for a decision. If the Higher Provincial Court grants the motion, it also orders that the proceedings be continued. The Higher Provincial Court itself may not initiate the bringing of an action – among other reasons with a view to the separation of powers. In addition, a victim who has joined the proceedings as a private party to claim damages has the option of lodging an appeal on the merits against the judgment and, to a limited extent, also to file a plea of nullity. The private party is entitled to lodge a plea of nullity if the accused was acquitted and the private party was asked to assert his or her claims before the civil courts, provided that the dismissal of a motion filed by the private party concerned during the trial might have a detrimental influence on the assertion of the private party's civil law claims. In addition, the private party is also entitled to appeal against the decision on the civil law claims. This was, however, also possible before the reform.

#### **Article 14**

91. According to the Austrian Code of Criminal Procedure, victims, irrespective of their status as private parties joining the proceedings to claim damages, have a special legal standing in criminal proceedings. They are entitled to receive comprehensive information about the proceedings and their legal status; they are granted special party rights and may demand the reinstatement of proceedings stayed by the public prosecutor's office. In addition, persons who are victims of violence or whose sexual integrity has been violated on the one hand, or dependants of a person whose death might have been caused by a criminal offence on the other, are entitled to psychosocial and legal assistance during the proceedings (*Prozessbegleitung*).

92. Every victim is, furthermore, entitled to join the criminal proceedings (joining of criminal proceedings as a private party to claim damages) and to claim compensation for the damage suffered as a result of the criminal offence. Apart from enjoying the rights conferred on victims, private parties who join the proceedings are also entitled to demand that evidence

be taken or to lodge an appeal against decisions concerning their civil law claims. Unless they are entitled to assistance during the proceedings, they are to be granted legal aid (Verfahrenshilfe) to be provided by an attorney if they are not able to pay for their legal costs themselves, given their financial and social situation. If the proceedings lead to a conviction, the court, in its judgment, is obliged to make a decision on the merits regarding the claims of the private party, provided that the findings obtained during the criminal proceedings form a sufficient basis to do so.

93. In addition to joining the proceedings as a private party to claim damages, victims are, of course, also free to assert their claims in civil proceedings. Furthermore, persons who have sustained bodily harm or damage to their health as a consequence of an unlawful and intentional act punishable by a term of imprisonment of more than six months or as innocent bystanders in connection with such an offence may receive support payments from the State under the provisions of the Austrian Crime Victims Act (*Verbrechensopfergesetz*). Surviving dependants of persons who died as a consequence of such an act may also receive support payments under the said Act. Compensation may be paid for lost salary or maintenance payments or for medical costs (e.g. therapeutic care, orthopaedic care or rehabilitation). The Crime Victims Act does not, however, provide for the payment of damages for pain and suffering or for compensation for damage to property. Applications under the Crime Victims Act may be made irrespective of the status of the police investigations or the criminal proceedings. It is not necessary to take any civil law steps against the perpetrator before filing an application. However, damages payable by the perpetrator are to be taken into consideration when determining the amount of support payments to be awarded.

94. In order to help victims quickly and in a non-bureaucratic and effective manner, the Federal Ministry of Justice has been operating the free hotline 0800 112 112 in cooperation with the association Weißer Ring since 1 July 2007. Under this “emergency hotline for crime victims” competent social workers can be reached 365 days a year so that professional advice from trained experts and strict anonymity are guaranteed. The aim is to provide callers with a first, free consultation and information as to which institutions specializing in help for victims they should contact.

95. Apart from the association Weißer Ring, the Federal Ministry of Justice also supports an additional 46 associations dedicated to the assistance of crime victims.

### **Article 15**

96. Since the enactment of the Criminal Procedure Reform Act, section 166 of the Act on Criminal Procedure has provided for an express prohibition to enter into evidence statements obtained (inter alia) through torture. Even before the reform, statements obtained through torture were inadmissible evidence according to the established practice of the courts. The relevant provision reads as follows:

## Inadmissibility of evidence

“Section 166

(1) Statements made by the accused as well as statements made by a witness or a co-accused shall not be used as evidence to the detriment of the accused – except against a person accused of a violation of the law in connection with an interrogation – if such statements:

1. Were obtained through torture (article 7 of the International Covenant on Civil and Political Rights, Federal Law Gazette No. 591/1978, article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Federal Law Gazette No. 210/1958, and articles 1, paragraph 1, and 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Federal Law Gazette No. 492/1987); or
2. Were obtained through any other unauthorized influence on the person’s freedom to decide and to manifest his/her will or by means of inadmissible methods of interrogation, to the extent they violate fundamental procedural principles, and if their exclusion is indispensable for remedying this violation.

(2) Statements obtained or gained in the manner described under paragraph 1 are void.”

97. This means that such statements are not only inadmissible evidence, they are also void. There is, therefore, an absolute prohibition to use such statements as evidence. In the cases specified under subparagraph 1 (torture), this applies in an absolute manner, meaning that no consideration is given whatsoever. A severe violation of human rights such as torture is such a serious offence that sanctioning the criminal law enforcement officers alone does not seem to be sufficient for the State to distance itself from the human rights violation committed. Furthermore, the value of the evidence obtained from such a statement is severely compromised as it cannot be ruled out with certainty that the accused made a false confession out of fear of being tortured and/or to put an end to being tortured. In the cases specified under paragraph 1, subparagraph 2, i.e. less serious violations, it is assessed whether the exclusion of the statements as evidence is indispensable for remedying the violation of the procedural principles.

### **Article 16**

98. Cell allocation programme: it has been demonstrated from suicide prevention research that solitary confinement is the most important factor facilitating suicide. For this reason, a cell allocation module was instituted at all (but two) prisons. This programme has been created to assist a prison officer admitting a person at large in assessing each individual situation (solitary confinement or sharing a cell with others) by checking for criteria objectively favouring suicide. On 19 September 2006, three Austrian prisons started to test the programme. After the test phase, the cell allocation programme was introduced at all (but

two) prisons with effect from 4 December 2007. The results of this system provide for cell allocation guidelines following the traffic light system.

- “Green” means that there are no objective circumstances preventing solitary confinement;
- “Yellow” also means that there is no special need for action. However, if possible, the prisoner should not be allocated a one-person cell. Should this not be possible, the reasons have to be given in the data field provided for this purpose. In such case, the prisoner is to be introduced to the specialized prison personnel in the course of regular operations;
- “Red” means that the prisoner must not be allocated a one-person cell. The prisoner is to be referred to an expert (psychologist, psychiatrist or general/emergency physician) as soon as possible given the resources of the prison.

99. In 2006, 14 prisoners committed suicide, in 2007 the suicide rate was 12 and in 2008, up to 30 April 2008, only one suicide was recorded in Austrian prisons. It is still too early to link this development to the newly introduced programme, but the cell allocation programme in Austrian prisons continues to be evaluated.

100. Visits according to section 93, paragraph 2, of the Austrian Execution of Sentences Act (*Strafvollzugsgesetz*) – extended visits: creating the possibilities for visits according to section 93, paragraph 2, of the Execution of Sentences Act (family visits without supervision) has been strongly promoted at Austrian prisons since 2005. This type of visit has been implemented to help prevent the detrimental effects of imprisonment, especially estrangement (for instance from (common law) spouses, children, relatives, and other persons close to the inmate). Efforts to continue the implementation of this programme are therefore justified. The most difficult factor is to find adequate premises for these visits. Therefore, the creation of facilities for extended visits has been included in the current prison renovation and conversion plans. So far, extended visits have been made possible at three prisons. Further prisons will complete the creation of suitable premises in the course of 2008.

101. Small Business Starter (SBS) project: a qualification initiative of the Suben prison for convicts from sub-Saharan Africa. The prisoners are being given the opportunity, through theoretical and practical training, to learn about professional activities and to acquire basic knowledge which they may later improve on their own initiative. The aim is to encourage the convicts to run small businesses, according to their skills, in their home countries in order to earn their living. The number of participants in these 10-month courses is limited to 10. The intention is not to create an apprenticeship-like relationship but rather to encourage the inmates’ interest in one or the other activity. The main idea behind this initiative is to provide the participants with skills they can use to earn a living in their countries of origin in the future. In addition to the practical training, a course programme composed of four modules is offered. Upon completion of the training programme, the participants will have acquired the following skills: work experience in five skilled trades, knowledge of German, accounting, computer skills and civics.



102. In the course of the implementation of section 133a of the Execution of Sentences Act (preliminary staying of the execution of the sentence due to residence ban) it is intended to expand this project to further prisons.

103. Act on the Protection of Personal Freedom of Home Residents: The Federal Act on the Protection of the Personal Freedom of Residents of Homes and other Nursing and Care Facilities (*Bundesgesetz über den Schutz der persönlichen Freiheit während des Aufenthalts in Heimen und anderen Pflege- und Betreuungseinrichtungen (Heimaufenthaltsgesetz)*), Federal Law Gazette I No. 11/2004, which entered into force on 1 July 2005, provided for the first statutory regulation of the protection of the personal freedom of mentally ill or mentally disabled persons during their stay at old people's homes, nursing homes, homes for the disabled and other facilities. While the Act on the Hospitalization of Mentally Ill Persons (*Unterbringungsgesetz*) has provided for checks regarding restrictions of freedom of mentally ill patients at psychiatric hospitals and departments since 1990, there was no comparable legal protection applying to homes for the disabled, old people's and nursing homes until the Act on the Protection of Personal Freedom of Home Residents entered into force. A home resident's freedom is restricted if she or /he is prevented from moving about against or without his or her will, and if physical means are used or threatened to be used, for instance by fixing bars to the resident's bed or by removing the resident's walking aid. If the resident is able to understand and judge and agrees to being prevented from moving about, this is no restriction of freedom. A resident's freedom may be restricted only if certain criteria are met. One of these criteria is that without such measure the life or health of the resident or the life or health of others would be seriously and severely at risk. Restrictions of freedom may be carried out exclusively upon the instruction of an authorized person such as, for instance, the head physician of the home. All restrictions of freedom must be carried out in observance of professional standards, always attempting to harm the resident as little as possible. As soon as the statutory requirements are no longer met, the measure restricting the resident's freedom must be discontinued immediately. The resident may appoint a close relative, a lawyer, or a notary public to represent him or her in the safeguarding of his or her right to personal freedom.

104. In addition, the residents of a home are also represented statutorily by so-called residents' representatives (*Bewohnervertreter*). These persons have received training regarding the special conditions in care and nursing from specialized associations. Every representative of a resident is, in particular, entitled to visit the home without prior announcement to get a personal impression of the resident's state, to discuss whether the criteria requiring a restriction of freedom are met with the person authorized to order such measure and with other home personnel, and, if necessary, to inspect relevant documents. Certain persons (including the resident himself or herself and his or her representative) are entitled to apply that a court reviews the measure restricting the resident's personal freedom. In such case, the court is obliged to obtain a personal impression of the resident in the facility within seven days. It has to inform the resident of the reason and purpose of the proceedings, hear the resident on these issues and inspect the documents. The court may also consult an expert. The objective of the proceedings is to make a decision as to whether or not the restriction of freedom is admissible. If the court finds that the measure restricting the resident's freedom is impermissible, it must be discontinued without delay. The costs of the proceedings are borne by the Federal Government.

### **III. Additional information requested by the Committee**

105. Regarding the conclusions and recommendations of the Committee against Torture of 15 December 2005, in addition to Austria's response of 24 November 2006, the Ministry reports as follows.

106. With regard to paragraph 6 (arts. 1 and 4, Definition of torture): Austria confirms its conviction that all acts that may be referred to as torture within the meaning of article 1 of the Convention were already punishable under the Austrian Criminal Code before Austria ratified the Convention, and that adequate sentences, taking into consideration the severity of the offence, were provided for. The Austrian Criminal Code defines specific elements of offences that cover all acts committed with intent that are described as torture under article 1, paragraph 1, of the Convention. Such acts may constitute the offences of murder (sect. 75), bodily harm (sects. 83-87), or tormenting or neglecting a prisoner by an officer, including negligent acts which could cause damage to the prisoner's health by omitting to give necessary assistance as required or failing to exercise a proper duty of care, (sect. 312). Except in the cases of sections 75 and 312, the sentence to be awarded by the court is 50 per cent higher than the normal statutory range of punishment if such offence is committed by an officer in the course of his or her official duty.

107. As already explained in the third report, the punishment provided for under the Austrian Criminal Code is even more encompassing since some of the elements of the definition of torture to be met under the Convention do not have to be fulfilled under the Criminal Code. Nevertheless, Austria has taken seriously the recommendation expressed in the third report (CAT/C/AUT/CO/3, para. 6) to include into national law a statutory definition of torture within the meaning of the Convention. Therefore, Austria is planning to add to the Criminal Code a new provision laying down the elements that have to be met to commit the offence of torture. As mentioned above, this commitment has been incorporated into the programme of the new Government. The new provision has not yet been drafted.

108. Regarding paragraph 10 (b) (art. 12, the death of Cheibani Wague): on 9 November 2005 the Vienna Provincial Court for Criminal Matters found an emergency physician of the municipality of Vienna and a police officer guilty of the offence of involuntary manslaughter according to section 80 of the Criminal Code. Both were given a suspended sentence of seven months. The other eight police officers charged were acquitted. The facts of the case arise out of a police intervention on 15 July 2003 in which the victim, Cheibani Wague, was handcuffed and restrained on the ground for several minutes, thus causing his death.

109. In its judgment of 15 March 2007, the Vienna Higher Provincial Court granted only the appeal against the sentence filed by the sentenced police officer and reduced the (suspended) sentence to four months. The other legal remedies lodged by the Vienna public prosecutor's office, the sentenced emergency physician, and the private party who had joined the proceedings to claim damages were denied in their entirety. In addition, the court also denied the convicted police officer's appeal as regards nullity and culpability.

110. With regard to paragraph 18, (art. 12, criminal proceedings against a CIVPOL officer): a member of the security police, who was assigned to the United Nations police authorities in Kosovo, was under suspicion of ill-treatment of a remand prisoner and of having coerced him to dig his own grave on 25 February 2002. During the criminal proceedings before the International Court of Justice in Kosovo, the officer was repatriated to Austria, at the instruction of the Federal Ministry of the Interior, for health reasons. On 7 March 2002, proceedings under sections 83, 92, 107 of the Criminal Code (bodily harm, tormenting or neglecting a minor, younger, or defenceless person and dangerous threat) were instituted against him before the Vienna Provincial Court for Criminal Cases. On 4 July 2002, the international public prosecutor's office of Prizren, Kosovo, brought charges against the officer on grounds of the facts described above. By a judgment of 7 October 2003, the local court of Orahovac, Kosovo, found him guilty, in his absence, of bodily harm, coercing a statement, ill-treatment while on official duty and abuse of official power. He was sentenced to a term of imprisonment of three years. The convicted officer lodged an appeal against this judgment. The summons to the appellate hearing on 13 December 2005 could not, however, be served on him in a timely manner. It has not yet been possible to close the proceedings pending in Austria as not all of the letters rogatory have been answered.

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