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Consideration of reports submitted by States parties under article 19 of the Convention pursuant to the optional reporting procedure

Sixth periodic reports of States parties due in 2014

Austria* ** ***

[Date received: 22 July 2014]

* The fourth and fifth periodic reports of Austria is contained in document CAT/C/AUT/4-5; it was considered by the Committee at its 940th and 942nd meetings, held on 5 and 6 May 2010 (CAT/C/SR.940 and 942). For its consideration, see the Committee's concluding observations (CAT/C/AUT/CO/4-5).

** The present document is being issued without formal editing.

*** Annexes to the present document may be consulted in the files of the Secretariat.

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Response of Austria to the list of issues adopted by the Committee at its forty-ninth session (29 October–23 November 2012) with regard to the consideration of the sixth periodic report under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

I. Specific information on the implementation of articles 1 to 16 of the Convention

Articles 1 and 4

With reference to the Committee's previous concluding observations[1] *(para. 8), please provide information on the status of the amendment to the Criminal Code that would incorporate into domestic law the crime of torture. Please indicate whether a definition of torture that covers all the elements contained in article 1 of the Convention has been adopted and if these offences are punishable by appropriate penalties which take into account their grave nature, as set out in article 4, paragraph 2 of the Convention.*

1. Implementing the recommendations made by the Committee against Torture, a new criminal provision — section 312a of the Criminal Code (*Strafgesetzbuch*) — was created which expressly prohibits torture and which is in line with the terms of article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The penalty for the basic crime is one to ten years' prison; if the aggrieved party was killed even life-long imprisonment is possible.

Article 2

*In light of the Committee's previous concluding observations (para. 9), and the State party's follow-up replies, please provide an update on the introduction of any legal and administrative safeguards to ensure that suspects are guaranteed confidential access to lawyers and legal aid from the moment of arrest, regardless of the nature of the alleged crime. Please indicate whether the State party has reconsidered its position on amending para. 24 of Internal Instruction (*Erlass*) Ref. BMI-EE1500/0007-II/2/a/2009 issued by the Federal Ministry of Interior on 30 January 2009 in light of the Committee's concern that its wording suggests that police are not obliged to delay questioning to allow lawyers to arrive at a place of interrogation. Also, please provide updated information on any measures taken by the State party to extend the use of audio and video equipment to all places of deprivation of liberty.*

2. Pursuant to the Federal Act amending the Code of Criminal Procedure 1975 (*Strafprozessordnung*), the Criminal Records Act 1968 (*Strafregistergesetz*) and the Security Police Act (*Sicherheitspolizeigesetz*) — Criminal Procedure Reform Act 2013 — which entered into force on 1 January 2014, the provisions concerning instruction of suspects upon arrest have been amended. The amendment of section 171 (4) of the Code of

[1] Paragraph numbers in brackets refer to the previous concluding observations adopted by the Committee, published under symbol CAT/C/AUT/CO/4-5.

Criminal Procedure (and in conjunction therewith the amendment of paragraph 3 leg. cit.) prescribes that suspects should immediately upon their arrest or immediately thereafter be informed about their general rights as suspects, as well as about their right to inspect the files on their case, to inform their consular representation and to have access to urgent medical treatment. For that matter, the general rights of suspects also include the right to select a defence counsel, to be provided with a legal aid lawyer (section 49 (2) of the Code of Criminal Procedure) and the right to have access to a lawyer during interrogation (section 49 (5) of the Code of Criminal Procedure). Section 171 (4) of the Code of Criminal Procedure clarifies that information about legal rights must be provided in a manner understandable to the suspects, and in a language they are familiar with. Such information must, in principle, be in writing. If information is provided orally, a written version has to be provided later. Further important new features are cost-free interpreting services which have to be provided not only for contacts with the legal aid lawyer in a direct context when collecting evidence or with other procedural activities, but also for contacts with a selected or assigned defence counsel.

3. In order to efficiently implement the right of arrested suspects to have early access to a lawyer, stand-by lawyer services were agreed with the Austrian Bar Association as of 1 July 2008. Under this agreement, Austrian Bar Association runs a nation-wide stand-by telephone line (Hotline: 0800 376 386), which operates on a 24/7 basis and which provides immediate contact with a defence counsel. Counselling in the framework of the stand-by lawyer services includes counsel by telephone, if need be also a personal counselling session, and if necessary a lawyer's presence during interrogation pursuant to section 164 of the Code of Criminal Procedure, and other activities relevant to the defence process (such as a request to obtain a legal aid lawyer). The defendant must already be informed about the stand-by services by the criminal police (inter alia through a form available in various languages, if need be by providing an interpreter). The first telephone counselling by a lawyer is free of charge, all other stand-by lawyer services are subject to a charge as a matter of principle (100 euros plus VAT per hour), with the cost preliminarily being taken over by the Federal Ministry of Justice if the court grants legal aid.

4. The internal instruction by the Federal Ministry of the Interior mentioned was replaced by internal instruction BMI-EE1500/0102/II/2/a/2012 of 20 September 2012. As the law strikes a clear balance between the right to personal freedom or brief arrest time and the right of an arrested person to have access to a lawyer, the internal instruction has narrow boundaries. Arrested persons have to be interrogated immediately concerning the crime, the suspicion and the reason for their arrest. This is to guarantee that suspects can be released immediately, if no reason for their detention exists any longer. With juveniles, interrogation has to be postponed until a lawyer or a person of trust has arrived, as long as such a postponement is compatible with the objectives of the interrogation, and unless this would lead to an inappropriate prolongation of detention.

5. Concerning the extended use of audio and video equipment, there is a trial run at present with the objective of nation-wide deployment of such equipment by the end of 2014.

With reference to the Committee's previous concluding observations (para. 11), please provide updated information on the establishment of a full-fledged and properly funded system of legal aid and on measures taken to provide effective free legal aid for indigent criminal suspects.

Legal Aid

6. Should defendants be unable to bear the cost of defence counsel in criminal court proceedings, without impairing the livelihood necessary for a simple life-style for

themselves and for the family for whose maintenance they are responsible, the court shall, upon application by the defendants, decide to provide them with legal aid lawyers, whose cost they do not or do only partially bear. These legal aid lawyers shall be provided, if this should be necessary in the interest of jurisdiction, and particularly in the interest of an adequate defence (section 61 (2) of the Code of Criminal Procedure).

7. In proceedings before administrative authorities there is no obligation to appoint a lawyer. Defendants are free to represent themselves or to appoint a lawyer. In principle, legal aid is not foreseen in such a phase of proceedings. Only if defendants are juveniles (i.e. pursuant to section 4 (2) of the Administrative Penal Act 1991 (*Verwaltungsstrafgesetz*) persons between the age of 14 and 18), they may obtain a defence counsel ex officio, if their legal representatives had participated in the criminal act, or if due to the low mental development of the defendants such a course would seem necessary and appropriate, and they cannot be defended by their legal representatives for any reason whatsoever. Any official of the authority or any other suitable persons may be appointed as defence counsel (section 61 of the Administrative Penal Act). For general information on the reorganisation of the Austrian legal protection mechanisms against individual decisions of administrative authorities (Administrative Jurisdiction Amendment Act 2012, *Verwaltungsgerichtsbarkeitsnovelle*) see paragraph 29.

8. In administrative proceedings before an administrative court and in financial criminal proceedings there is no obligation to appoint a lawyer, either. Anyhow, defendants who would like to be represented by a lawyer have the right to be assigned a lawyer under certain circumstances. In complaint proceedings — against judgements or decisions by administrative courts — raised with the Supreme Constitutional Court or the Administrative Court representation by lawyers is mandatory. Parties have the option, though, to obtain legal aid for all or part of the costs of the proceedings. The conditions for any gratuitous assignment of a lawyer in administrative or financial criminal proceedings, or for obtaining legal aid in proceedings before the Supreme Constitutional or Administrative Courts are, in principle, in line with the above-mentioned requirements for legal aid in criminal proceedings before an orderly court of law (compare section 77 (3) of the Finance Penal Act (*Finanzstrafgesetz*), Section 40 (1) of the Administrative Court Proceedings Act (*Verwaltungsgerichtsverfahrensgesetz*), as well as section 63 of the Code of Civil Procedure (*Zivilprozessordnung*) in conjunction with section 61 of the Administrative Court Act *(Verwaltungsgerichtshofsgesetz)* and section 35 of the Constitutional Court Act (*Verfassungsgerichtshofsgesetz*). Each defendant has to file an appropriate application. If the conditions are met, a legal aid lawyer has to be appointed or legal aid has to be granted.

9. As a rule, legal aid lawyers are paid by the State; if such lawyers should incur above-average expenses, they are entitled to appropriate compensation by the Bar Association (section 16 (4) of the Order on Lawyers (*Rechtsanwaltsordnung*)). Every year, the Federal Ministry of Justice pays a lump sum to the Bar Association in compensation of the legal aid provided (section 16 (3) of the Order on Lawyers). According to the annual report of the Austrian Bar Association, a total of 22,975 legal aid services were provided in 2013, among them 15,642 in criminal cases.

Support for Crime Victims

10. Crime victims are offered legal and psycho-social process support. Section 70 of the Code of Criminal Procedure provides that victims in the meaning of section 65 (1) (a) and (b) of the Code of Criminal Procedure shall be informed about the option of process support before their first interrogation at the latest. The majority of persons enjoying such process support are women.

11. The Federal Ministry of Justice fully funds psycho-social and legal process support services for victims. Since 2011, the psycho-social and legal process support has developed as follows:

	2011	*2012*	*2013*
Persons supported	6,137	6,524	6,866
Expenses (in million €)	4.54	4.88	5.28

12. The victim protection organisations providing process support play a very important role. Since the Criminal Procedure Reform Act entered into force, experience has shown that mutual understanding and cooperation between victim protection organisations and criminal prosecution authorities have been enhanced enormously, which also facilitated enforcement of victims' rights in criminal proceedings.

Legal Process Support

13. Legal process support also includes legal counselling and representation by a lawyer and aims at enforcing the rights victims are entitled to in criminal proceedings. This is necessary especially if, due to special circumstances, there is a danger that the victim's rights in the proceedings will not be respected in an appropriate manner. The lawyer may demand compensation, if the victim suffered pain and injury from the criminal act, for instance damages for the victim's pain and suffering (private participation) (section 66 (2) of the Code of Criminal Procedure).

Psycho-social Process Support

14. Psycho-social process support includes preparing the persons concerned for the proceedings and the resulting emotional stress, as well as accompanying them to interrogations during investigative proceedings and main trial (section 66 (2) of the Code of Criminal Procedure). Victims and their families are also supported in the process of coping with their experiences (apprehensions, desolation, mourning or fury). The Sexual Criminal Law Amendment 2013, which entered into force on 1 January 2014, has improved the protection of under-age victims whose sexual integrity could have been violated, by introducing mandatory provision of psycho-social process support (section 66 (2) of the Code of Criminal Procedure).

In light of the Committee's previous concluding observations (para. 12), please provide information on efforts made by the State party to diversify the composition of its police force and detention services by extending the recruitment of women and members of ethnic minority communities, including statistical information on the composition of the police force and detention system staff throughout the country.

15. The enclosed evaluation of headcounts on the first day of each month of the year 2013 (see annex 1) shows an average percentage of female officers in the penal system of 12.6% in 2013. The police service of the Federal Ministry of the Interior shows a percentage of female officers of 14.53% at the end of 2013 (total officers 27,786, thereof female 4,038). Any data concerning ethnic origin or possible migrant background are inadmissible also on data protection grounds and are therefore not collected.

16. Austrian citizenship is a hiring condition for training in the executive branch, equally valid for all applicants. The earlier project "Vienna Needs You", run by the Regional Police Directorate Vienna, has in the meantime been adopted in Vienna as a regular policy. Its aim is to search for applicants with a migrant background for the security police. Within all initiatives to recruit persons for the executive police service, special

efforts are taken to generate interest for these jobs also with women and persons with a migrant background.

17. In the penal service system, a survey concerning "Women among Prison Personnel" — a Survey on Equal Opportunities for Women as Prison Guards — among others shall examine the question, which progress has been achieved concerning equal opportunities and equal jobs for women among prison personnel. In this connection, the survey shall examine:

- Access for women to the job of prison guard and attractiveness of such jobs;
- Working conditions for women as prison guards; and
- Their chances of promotion and career.

The results of the survey shall be available in the first half of 2015.

With reference to the Committee's previous concluding observations (para. 10), please provide an update on measures taken to bring the functioning of the juvenile justice system in line with international standards, and in particular by guaranteeing that minors are always interrogated in the presence of legal counsel and/or a trusted person, in accordance with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules).

18. Section 37 of the Juvenile Court Act (*Jugendgerichtsgesetz*) guarantees, that interrogation of minors, unless they are represented by a lawyer anyway, shall take place in the presence of a person of trust upon their request. Minors have to be expressly instructed about this possibility. Moreover, they are not permitted to waive the presence of a lawyer, which under certain circumstances would be possible in proceedings against adults (section 164 (2), third sentence of the Code of Criminal Procedure). Minors have to be informed about this right during legal instructions and in the summons, but at the latest before the start of any interrogation. If necessary, the interrogation must be postponed until a lawyer or a person of trust has arrived, as long as such postponement is compatible with the objective of the interrogation and unless this would lead to an inappropriate prolongation of detention.

19. The proposal of the European Commission concerning a Directive on procedural safeguards for children suspected or accused in criminal proceedings ("Children's Criminal Prosecution Directive") provides that minors shall be provided with a legal aid lawyer during the entire criminal proceedings (including diversional measures, paragraph 2). This, again, is a right which they cannot waive. The implementation of this Directive — which is still under discussion at present — and its integration into national law will further improve the legal status of minors.

With reference to the Committee's previous concluding observations (para. 23), please provide information on efforts taken by the State party to prevent and combat trafficking in women and children, on measures to strengthen cooperation with countries of origin, transit and destination. Please provide information on any measures taken to prevent sex tourism with impunity in countries of origin.

20. On 20 March 2012, the Austrian Federal Government adopted the third National Action Plan to combat human trafficking for the time period 2012-2014. The national action plans are based on a comprehensive approach including national coordination, prevention, victim protection, criminal prosecution and international cooperation. In 2004, the Government decided to establish a Task Force on Human Trafficking, and in 2009 the head of the Legal and Consular Department in the Federal Ministry for Europe, Integration and Foreign Affairs, Ambassador Dr. Tichy-Fisslberger, was appointed to become the

National Coordinator for combating human trafficking. The Task Force draws on the close cooperation of representatives from all competent Ministries, from Federal Provinces and from non-government organisations. Among the major missions of the Task Force and its three sub-working groups (child trafficking, prostitution and labour exploitation) are the preparation and implementation of the respective national action plan and the submission of regular reports to the Federal Government, the National Council and the EU Commission. Moreover, every October a special event on the occasion of the EU Anti-Trafficking Day which enjoys wide publicity is organised by the Task Force. Austria is a state party to all relevant international legal instruments, in particular to the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime as well as to the Convention of the Council of Europe on Action against Trafficking in Human Beings. In 2010/2011, Austria, as one of the first signatories, was subjected to the monitoring mechanism of the Council of Europe GRETA (*Le Groupe d'experts sur la lutte contre la traite des êtres humains*) with essentially positive results. As per 1 August 2013, Austria has implemented the EU Directive 2011/36 on preventing and combating trafficking in human beings and protecting its victims. In the course of its implementation, the Sexual Criminal Law Amendment 2013 increased the basic threat of punishment for human trafficking (section 104a of the Criminal Code) to up to five years in prison, and the threat of punishment in cases of minor victims (between 14 and 18 years of age) to up to 10 years in prison. The list of forms of exploitation was expanded to include exploitation by begging and exploitation by committing punishable acts.

21. An important part of the Austrian measures aims at improving the situation in the countries of origin, and thus reducing the risk of human trafficking. In this connection, the activities of the Austrian Development Agency (ADA) provide an important contribution. In the reported period, the Federal Ministry for Europe, Integration and Foreign Affairs supported projects of international organisations on human trafficking, such as IOM or UNODC, and contributed to the UN Trust Fund for Victims of Human Trafficking. Moreover, also other Austrian Federal Ministries, above all the Federal Ministry of the Interior, are involved in bilateral and regional projects to strengthen cooperation with neighbouring countries of origin. This international cooperation is being complemented by the deployment of liaison officers of the Federal Ministry of the Interior, located in most of the countries of origin and transit. As from 01 January 2011, the Federal Ministry of the Interior has deployed a liaison officer at the Austrian Embassy in Thailand for a period of four years. The aim is to prolong this deployment for another four years. One of the major tasks is to cooperate with the local security authorities to combat trafficking in women and children. On 9 July 2012, a Memorandum of Understanding was signed with Thailand in this area.

22. In international fora, in particular in those of the United Nations, the Council of Europe, the OSCE, etc., Austria supports strengthening cooperation regarding combating human trafficking. Human trafficking was a focus during the Austrian Presidency in the Council of Europe 2013/2014, and for this reason was the subject matter of a conference of the Council of Europe together with OSCE on 17/18 February 2014 in Vienna. A particular responsibility falls to the Federal Ministry for Europe, Integration and Foreign Affairs in the issue of protecting domestic servants of diplomats or international officials accredited in Austria from human trafficking and exploitation. For this purpose the Federal Ministry for Europe, Integration and Foreign Affairs developed effective control measures (such as written work contract, minimum wage, separate bank account with cash card for the employee, annual interview in Federal Ministry for Europe, Integration and Foreign Affairs, etc.) and has taken a lead role on an international level.

23. Concerning measures to prevent impunity for sex tourism in countries of origin, it should be noted that pursuant to section 64 (1) (4a) of the Criminal Code the following acts

are punishable in Austria, regardless of the laws in the country where they were committed and thus also in case of impunity in the respective country:

24. Human trafficking (section 104a, regarding the latest amendment see the statements above), grave coercion (section 106 (1) (3)), prohibited adoption services (section 194), rape (section 201), sexual coercion (section 202), sexual abuse of a defenceless or mentally impaired person (section 205), serious sexual abuse of under-age children (section 206), sexual abuse of under-age children (section 207), pornographic depiction of minors under section 207a (1) and (2), sexual abuse of juveniles (section 207b), abuse of a relationship of authority under section 212 (1), abetting prostitution and pornographic acts by minors (section 215a) and cross-border trafficking with prostitutes (section 217). For the crime to be punishable in Austria, either the offenders or the victims must be Austrian citizens or having their habitual residence in Austria and the crime must have violated other Austrian interests or the offender was a foreigner at the time of committing the crime, resides in Austria and cannot be extradited.

25. Moreover, the Federal Ministry of Science, Research and Economy is funding various projects aiming at strengthening the protection of children from sexual exploitation by tourists: Semi-annually a round table discussion "Ethics in Tourism" takes place, which serves to exchange information and to coordinate specific measures. Together with Germany and Switzerland, Austria runs the campaign "Protecting Children and Juveniles from Sexual Exploitation in Tourism". In addition to a joint campaign with video clip and information material ("Don't look away!"), also a national hotline was established where Austrian tourists can report cases of child abuse which they have observed abroad. Also the EU project "OFFENDERS BEWARE" focusses on raising consciousness and awareness for the subject of "sexual exploitation of children in tourism". This project also particularly involves training facilities of the tourist industry. Commissioned by the Federal Ministry of Science, Research and Economy, EPCAT (End Child Prostitution, Child Pornography & Trafficking of Children for Sexual Purposes) has additionally prepared appropriate teaching material, thus reaching 60 educational institutions in Austria.

With reference to the Committee's previous concluding observations (para. 24), please provide updated information on measures taken by the State party to ensure the introduction of efficient protection measures to combat and punish acts of violence against women and children, including domestic violence and sexual abuse. Please indicate if there is an institutional mechanism at the governmental level to coordinate, monitor and assess the effectiveness of strategies and actions to prevent and address violence[2] *against women and children. Also, please provide information on specific measures taken to protect children with disabilities from abuse and violence, in particular those in care institutions.*[3]

26. On 11 May 2011 Austria signed the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, and ratified it on 14 November 2013. This Convention, inter alia, foresees measures in the areas of criminal law, civil law, care and support for victims as well as prevention of violence. In implementation of the Council of Europe Convention an inter-ministerial working group was established to prepare a National Action Plan "Protecting Women from Violence". This Action Plan is supposed to complement the already existing National Actions Plans combating Human Trafficking (see paragraph 6) and implementing Resolution 1325 (2000) of the Security Council on Women, Peace and Security. Also relevant NGO's were involved in preparing the NAP. Completion and adoption of the NAP "Protecting Women

[2] CEDAW/C/AUT/CO/6, paragraph 23.
[3] CRC/C/AUT/Q/3-4, paragraph 7.

from Violence" is expected during 2014. Furthermore, in 2011 the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) was ratified.

27. Concerning the substantive implementation of the Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography, the Sexual Criminal Law Amendment 2013 brought some changes, in particular concerning penalties. As a case in point, the minimum penalty for the crime of rape was raised from six months to one year. Penalties for qualified sexual coercion previously amounted from one to ten years, or when the victim had been killed, from five to 15 years; these penalties were now raised to five to 15 years, or to life-long prison respectively when the victim was killed. In the same manner, the penalties for pimping (section 216 of the Criminal Code) and abetting prostitution and pornographic acts by minors (section 215a (1) and (2) of the Criminal Code) were increased. The penalty for sexual abuse of a defenceless or mentally impaired person (section 205 of the Criminal Code) was brought in line with the crime of rape. The age limit for victims of sexual abuse of minors under section 207b (2) of the Criminal Code was raised from 16 to 18 years. Moreover, some criminal offences were added, such as initiation of sexual contacts with under-age minors (section 208a (1a) and (2) of the Criminal Code) when initiating contacts through computer systems. Also the scope of job bans pursuant to section 220b (1) of the Criminal Code was expanded to activities which include intensive contacts with under-age minors.

28. There was a legal tightening of section 38a of the Security Police Act (barring orders) — expanding the scope of barring orders to schools, kindergartens and day care facilities. Administrative sanctioning of violating a barring order pursuant to Section 38a of the Security Police Act is standardised in section 84 of the Security Police Act and also encompasses the expanded scope of protection mentioned above. The Austrian police force deals with these challenges by applying a specific set of anti-violence measures, e.g. by developing a standardised danger assessment tool for cases of violence in a private environment. Furthermore, we would like to point to the establishment of the task force "Child Protection" in June 2012.

29. For victims of domestic violence and/or stalking there is a specific help offer, the so-called violence protection centres (in Vienna it is called intervention centre). Such violence protection centres exist in all Provinces, some Provinces have established additional regional centres. Their central task is to provide active help and support for victims of domestic violence and stalking (both female and male victims), and to protect them from further violence. In spite of the tight financial situation, funds for violence protection centres have been increased since 2010 from 6,384,000 euros in 2010 to 6,765,888 in 2013 (by approx. 6%). Also the number of victims served has increased considerably during this time period, from 14,983 persons in 2009 to 16,299 persons in 2013. An average of 89% of victims served is women. Nation-wide there are 759 places available in women's refuges for victims of domestic violence. Some Provinces (such as Carinthia) are also providing emergency sleeping quarters for women, which offer protection and refuge, as well as other support services for homeless women. Additionally, in August 2013 a central emergency flat for victims of forced marriage was established in Vienna, an offer valid for the whole of Austria. A team of six female counsellors offers counsel and support to girls and young women (16–24 years of age) who are threatened or victimised by forced marriage. Moreover, online counselling is offered regardless of the place of residence and ensuring safe and anonymous counselling wherever the Internet can be accessed.

30. The Ombudsman Board, in its function since 1 July 2012 as National Preventive Mechanism pursuant to article 3 and 4 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and as independent authority pursuant to article 16 (3) of the Convention on the Rights of Persons

with Disabilities (CRPD) regularly visits places of deprivation of liberty (see also paragraph 19). Among the approximately 4,000 public and private institutions which can be randomly visited by the Ombudsman Board and its commissions, are also institutions for persons with disabilities, such as homes for the disabled or schools or boarding schools for pupils with disabilities. Since September 2012 the interdisciplinary expert commissions of the Ombudsman Board have visited 170 senior citizen and care facilities, 109 institutions for persons with disabilities, 121 youth welfare institutions and 87 medical and psychiatric hospitals (status as of 27 June 2014). During those visits, the commissions of the Ombudsman Board closely observe whether children and juveniles with disabilities are accommodated appropriate to their age and needs. If the Ombudsman Board, on the basis of the reports of the visiting commissions, suspects a grievance or interference with human rights, or even a violation of human rights, it will immediately initiate investigative proceedings and contact the relevant authorities to remedy the situation expeditiously.

Article 3

Please provide information about the number of persons, broken down by country of origin, who have been granted asylum or humanitarian protection, and the number of those who have been returned, extradited or deported since the consideration of the previous report. Please provide details of the grounds on which they were sent back, including a list of countries to which individuals were returned.

31. In response to this question we refer to Annex 2. As an explanation, we would like to point out, that statistical data about the number of deportations are not broken down by aliens in general and by aliens for whom asylum proceedings were concluded with negative results. For this reason, the numbers show all aliens who had to depart, and who, in spite of the offers of support, had not decided for a voluntary departure. Data about deportation destinations have only been collected since 2012. Deportations serve to enforce measures of terminated residence and have to be performed, if a monitored departure appears to be necessary for reasons of maintaining public order and security, the obligation of departure has not been met in time and there is, due to certain circumstances, reason to believe that the obligation of departure will not be met, or the aliens have returned to Austria in spite of an entrance or residence ban.

In light of the Committee's previous concluding observations (para. 13), please provide information on measures taken by the State party to ensure that persons under its jurisdiction, including unaccompanied asylum-seeking children, are guaranteed fair treatment at all stages of asylum proceedings that comprises an opportunity for effective, independent and impartial review of decisions on expulsion, return or deportation. Also, please indicate whether denial of asylum on procedural grounds continues to not have automatic suspensive effect. Please provide information on whether the State party has adopted a gender-sensitive approach to refugee status determination in cases when such persons are fleeing conflict and generalised violence.

32. As a result of the administrative reform explained in detail under paragraph 29 (Administrative Jurisdiction Amendment Act 2012), now also decisions of authorities competent to enforce provisions concerning asylum and alien matters are generally subject to a review by either a Provincial or a Federal administrative court. A review of such decisions by independent and impartial institutions is therefore guaranteed.

33. Effectiveness of decisions is ensured through the predetermined decision deadlines. The administrative courts have to pass their decisions in general (unless otherwise determined by Federal or Provincial law) without undue delay, however at the latest within six months (section 34 (1) of the General Administrative Procedure Act). Pursuant to

Section 22 (6) Asylum Act, proceedings concerning applications for international protection have to be heard with top priority, if the asylum seeker is in pre-deportation detention. Such cases have to be decided as soon as possible, but not later than within three months. If an asylum seeker is released during proceedings, but prior to expiry of the decision deadline, proceedings have to be completed no later than within six months (section 34 (1) of the General Administrative Procedure Act).

34. During the reported period also the complaint procedure against measures terminating residence under the Aliens Police Act (*Fremdenpolizeigesetz*) was amended several times. As from 1 July 2011, in the framework of implementing Directive 2008/115/EC (Return Directive) in all proceedings concerning measures terminating residence under the Aliens Police Act also third country nationals can resort to the Independent Administrative Panels (replaced since 1 January 2014 by the Federal administrative courts — see above). EEC citizens, their family members (favoured third country nationals) and family members of Austrian citizens could even earlier raise complaints with the Independent Administrative Panels. During the reported period also free legal counselling for aliens was introduced.

Concerning the question of protection against deportation

35. The principle of non-refoulement, in the meaning of article 3 of the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR), has to be taken into due consideration ex officio in all phases of the proceedings. Pursuant to section 50 of the Aliens Police Act, no persons may be deported to a country where there is a real risk that they are threatened with treatment in violation of article 2 or 3 of the ECHR or the 6th and 12th Additional Protocol, or with prosecution in the meaning of the Geneva Refugee Convention. Against decisions of the Federal Office for Immigration and Asylum asylum seekers can lodge a complaint with the Federal Administrative Court. Such a complaint is free of charge, free legal counsellors are provided. Regarding unaccompanied minors there is, as a rule, a longer complaint deadline of 4 weeks. Decisions of the Federal Administrative Court can be appealed to the Supreme Constitutional Court or the Supreme Administrative Court. In principle, asylum seekers, during their asylum and complaint proceedings to the Federal Administrative Court, enjoy factual protection against deportation, or a right of residence. Only in special circumstances regarding the lodging of consecutive asylum applications do they not enjoy such privilege. In relation to a predetermined date of deportation, factual protection from deportation does not exist or may be denied, depending on the date of the application for asylum. In case of denial of factual protection from deportation, such decision will automatically be reviewed by the Federal Administrative Court. In the case that a factual protection from deportation does not exist ex lege, a decision, nevertheless, has to be issued without preliminary investigation (hereinafter mandate decision) whether such protection should be granted. This provision is aimed at preventing unwarranted delays on the one hand and at maintaining non-refoulement in justified cases on the other hand.

36. The Supreme Constitutional Court, in its decision re G 59/2013-9 of 26 February 2014, established the unconstitutionality of section 12a (1) of the Asylum Act 2005 (*Asylgesetz*), old version, because the provision of paragraph 1 was worded in a too undifferentiated manner, particularly in connection with article 3 of the ECHR. Already prior to this decision, during the most recent amendment of the Asylum Act 2005 (in the framework of the section 27 application of the Aliens Police Amendment Act) this matter was taken care of, and section 12a (1) and (2) of the Asylum Act 2005 was amended in line with the case law of the European Court of Human Rights (hereinafter ECtHR) regarding article 3 of the ECHR.

37. Only in the case of a subsequent application after a decision according to the Dublin Regulation (or if granted asylum in such a State) can factual protection from deportation not be granted. A condition will be, apart from jurisdiction of the other State still existing, that the situation concerning article 3 of the ECHR has not significantly worsened (implementing the case-law of the ECtHR). Should a transfer be against the law, however, obligatory proceedings have to be initiated and conducted in Austria. No suspensive effect applies with a complaint in the following cases: 1) the applicant's asylum application has been dismissed due to jurisdiction of another state on the basis of the Dublin Regulation; 2) jurisdiction of a safe third country has been established; 3) the applicant has been granted asylum in another EU Member State and 4) in cases of decided matters (subsequent applications). Under special circumstances, suspensive effect can also be denied in cases of decisions on the merits. In case that the complaint has no suspensive effect or such effect was denied, the Federal Administrative Court shall grant it, inter alia, when this decision is likely to be in violation of article 3 of the ECHR. For this purpose, enforcement of the decision has to be stalled until final decision, or if a complaint has been raised, until the 7th day from receipt of the complaint at the Federal Administrative Court, so that this court has the option to grant suspensive effect.

38. According to the case-law of the Supreme Constitutional Court, asylum proceedings do not only fall under the scope of article 3 in conjunction with article 13 of the ECHR (and are therefore subject to the procedural requirements of such guarantees), but also under the scope of European Union law. Thus fundamental rights under the EU Charter of Fundamental Human Rights are also applicable. The proceedings are therefore also subject to the principle of fair trial pursuant to article 47 (2) of the Charter of Fundamental Human Rights (expressly stated in the decision of the Supreme Constitutional Court of 27 February 2014, G 86/2013).

39. Gender-specific aspects have to be considered in the reasons for the application from a legal point of view, and also during proceedings, for that matter: If violation of sexual self-determination has been alleged, the party has a right to be interrogated by a person of the same sex; during legal examination gender-specific reasons have to be addressed and interrogations have to be conducted in a manner thoughtfully adapted to the person concerned.

Please provide an update on the status of free legal counselling for asylum seekers outlined in the 2011 implementing Directive 2008/115/EC of the European Parliament, as referenced in the State party's follow-up replies. Please provide information on the number of asylum seekers to have received free counselling since the directive entered into force and indicate whether such counselling is available in all locations.

40. In compliance with EU law (Return Directive 2008/115/EC and Directive on procedures for granting and withdrawing refugee status 2005/85/EC), asylum seekers and other aliens against which specific rulings are raised are entitled to free legal counselling. All counselling sessions are free of charge for aliens, and support must also be given for translations. In cases of decisions involving intensive interventions legal counsel is provided ex officio. By entrusting legal counselling to three NGO's there is a guarantee that such counselling is performed in an independent, high-quality and consistent manner, and is indeed available to all aliens due to its decentralised distribution and provision, if needed. In the course of the approval procedure of asylum proceedings, if a rejection or withdrawal has to be decided upon, a legal counsellor is provided free of charge. Such counsellor shall advise the asylum seeker prior to any further interrogation, and participate in such interrogation to make sure that the party is heard. During asylum procedures concerning the substance there is the option to contact legal counsellors. Such counsellors are available in each regional directorate, and their services may be used free of charge for support and advice (regarding procedural matters, legal counsellors are available during the admission

procedure). If return decisions, negative asylum decisions (with the exception of inadmissible subsequent applications) or deportation orders have been made, aliens are provided with legal counsellors ex officio who will provide advice and support regarding raising complaints. For that matter, legal counselling is available in cases of decisions involving intensive interventions, providing support in raising complaints with the Federal Administrative Court. The exception for subsequent applications is due to the fact that these persons already enjoyed legal counselling when the first asylum decision was made, and are no longer totally unacquainted with the matter.

The number of instances of legal counselling in the Federal Office for Immigration and Asylum

01.11.-31.12.2011	*430*
2012	4,541
2013	4,784

Articles 5, 7 and 8

Please provide information on whether the State party has rejected, for any reason, requests for extradition by another State of an individual suspected of having committed an offence of torture, and has started prosecution proceedings as a result. Please provide information on any new cases that have reached trial and with what result.

41. Since the last universal periodic review there have been no cases, in which Austria rejected requests for extradition of an individual suspected of having committed an offence of torture. As a result thereof, no prosecution proceedings have been initiated pursuant to section 65 (1) (2) of the Criminal Code.

Article 10

With reference to the Committee's previous concluding observations (para. 15) please provide updated information about training programmes for judges, law enforcement officials and prison officers on the provisions of the Convention and the absolute prohibition of torture as well as on the methodology developed to assess their effectiveness and impact on the reduction of cases of torture and ill-treatment.

42. In the justice area, training and further education events dealing with human rights are constantly on offer. In the training area, a fundamental rights module, developed in cooperation with the Ludwig Boltzmann Institute for Human Rights Vienna, is mandatory for all candidate judges and public prosecutors. This three-day event addresses fundamental rights in everyday court situations, and includes decisions by the ECtHR. During this programme, candidate judges are also made familiar with article 3 of the ECHR. In the course of further education of judges and public prosecutors, the Ministry of Justice offers a wide variety of events dealing with fundamental and human rights. The professional group fundamental rights of the Austrian Judges' Association also organises an annual event dealing with this matter. In addition to seminars on the subject "human trafficking", Austrian candidate judges currently visit the ECtHR in Strasbourg. Moreover, judges and public prosecutors are free to avail themselves of the exchange programme for "study visits" of the European Judicial Training Network (EJTN).

43. The Penal Service Academy in its further education programmes — starting in 2010 — is addressing the universal subject of human rights, also including the provisions of the Convention against Torture. In cooperation with the Federal Ministry of the Interior, a

"train the trainer" programme was developed and adapted to the particular requirements of the penal service system. Selected teachers of the Penal Service Academy were instructed in this field and assigned to familiarise all staff members of the penal service system in specially developed courses with these universal minimum standards. So far, 34 courses for over 400 staff members were held.

44. For this purpose, a specific pool of trainers was appointed, including experts from (inter alia) the following organisations: Amnesty International, Institute for Criminal Law and Criminology, Office of the Human Rights Advisory Board (formerly reporting to the Federal Ministry of the Interior), Caritas Vienna, Organisation NEUSTART, City Journal Falter, Austrian Broadcasting Corporation, Organisation Zara, experts in criminal and fundamental law from the Federal Ministry of Justice and the Federal Ministry of the Interior. In a further step, the trainers of the Penal System Academy were trained in a workshop, developed in cooperation with ETC (European Training and Research Centre for Human Rights and Democracy), in professional and content-based matters and in particularly in rhetorics.

45. For 2014, an evaluation of the training sessions conducted so far is scheduled, as well as the start of an "education offensive about matters of complaints".

46. Absolute torture ban is a fixed element of a one-day human rights training included in the basic training for job beginners and middle management in prisons (executive services). The basic training for civil prison staff also includes human rights — i.e. also absolute torture ban — as a fixed element in the relevant courses. In this connection, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) is dealt with comprehensively.

47. Also for the police force, the obligation to comply with human rights obligations forms the foundation of the strategy INNEN.SICHER [INTERIOR.SAFETY]. The Federal Ministry of the Interior has long years of practical experience in dealing with human rights, which forms the basis of sustainable training courses with active participation of civil society.

48. One of the major objectives in training and further education within the police organisation is to provide on-going development and professionalization of an impact-oriented and comprehensive awareness of the importance of human rights. In this effort, training and further education of staff members play an important role. Human rights education focuses on contents and outlines the fundamental structure in the area of human rights education of the police force. As a consequence of the importance of human rights for the entire organisation of the Federal Ministry of the Interior, the target group comprises all staff members of the Ministry — in particular those who deal with police matters. The training sessions convey the necessary principles to police officers to fulfil the role and responsibilities of police officers under the rule of law and, in addition to a general overview of human rights aspects, cover the various forms of discrimination, the social and cultural action competence in dealing with ethnic, social and physical diversities. The provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) are imparted to the officers and are particularly honed and deepened by disseminators. One further element of police training and further education is taking into consideration all areas of personal and institutional discrimination (ethnic background, gender, disabilities, etc.). The positive experiences have resulted in an expansion of the thematic areas, such as "raising awareness in the use of language" and addressing "hate crime".

Please inform about any specific training of judges, prosecutors, forensic doctors and medical personnel to detect and document cases of torture and ill-treatment based on the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).

49. In line with the directives for police doctors (internal instruction of the Federal Ministry of the Interior, BMI-OA1300/0011-II/1/b/2006 of 20 February 2006) persons who have suffered, or claim to have suffered, physical injuries in the course of a punishable crime, have to be examined by a police doctor for the purposes of criminal justice. The results of such examination have to be documented in a comprehensive expert report. Injuries are documented in detail, and also photographs may be taken for documentation purposes. The expert report establishes: 1) which of the injuries, suffered alone or in conjunction with others, must be deemed as slight, serious or life-threatening injuries at the time of the examination — absolutely or under the specific circumstances of the case; 2) which effects injuries of this kind usually entail; 3) which repercussions have resulted in the specific case; and 4) through which means or tools and in which manner these injuries could have been afflicted.

50. In 2014, two classes concerning preventing and solving incidences of torture have been scheduled in the course of advanced medical education. In these classes, medical personnel working for the Federal Ministry of the Interior will be made aware of how to realise representative surveys and documentations based on the principles of the Istanbul Protocol. Involvement of experts from the Vienna General Hospital is planned. In the new processing centre Vordernberg, where up to 200 persons detained due to police regulations concerning aliens can be accommodated, health care is administered by external medical officers and special awareness is raised on this matter.

51. We would also like to point to the project "*Awareness Raising and Training Measures for the Istanbul Protocol in Europe (ART-IP)*", funded by the European Commission, which included members of the commissions of the National Preventive Mechanism at the Austrian Ombudsman Board.[4]

52. In their definition of educational objectives, training regulations of various health professions expressly take into consideration the imparting of a fundamental attitude of respecting life, dignity and fundamental rights of each human being. These educational objectives — which among others also comply with the objectives of the Istanbul Protocol — are to guarantee that health professionals are made capable of contributing to violence prevention and of recognising victims of violence. Moreover, also the professional principles, which have to be applied in preparing curricula of professional schools for general health and patient care, contain various basic approaches for taking into account the thematic area of violence prevention (compare section 3 of the Regulation for professional school education health and patient care — *Fachhochschulen-Gesundheits- und Krankenpflege-Ausbildungsverordnung*).

Please provide information on any training and awareness-raising campaigns on violence against women and girls provided to judges, lawyers, law enforcement officials and social workers as well as to the public at large.

53. Trainings in the area of "violence against women and girls" are dealt with in the framework of judicial training and further education programmes, mainly through seminars on topics such as "domestic violence", "victim protection" and "child abuse". In the course

[4] Cf. http://www.istanbulprotocol.info/index.php/en/partners, http://www.adam-europe.eu/adam/project/view.htm?prj=9522, http://www.asyl.at/seminare/sem_2013_14.htm.

of the four-year education, various courses on topics like "domestic violence" and "victim protection" are offered in cooperation with government-approved victim protection organisations, participation in which is mandatory for candidates. Moreover, the mandatory education programme includes two weeks of practical field work with a victim protection or welfare organisation, which contributes to raise awareness for the matter. Further education services offered include a number of events dedicated to the topics of "domestic violence" and "treatment and interrogation of victims in court". These seminars are often organised in cooperation with government-approved victim protection organisations and psychologists, which considerably raises their quality. A course for family judges addresses the topic "child welfare/child abuse"; another course addresses "dealing with minor victims of abuse in civil and criminal proceedings". Finally, two-day training seminars have been on offer since 2011, dealing with the topic of "domestic violence", and explicitly directed at psychologists and social workers as well as at psychiatrists in the penal service system. The judiciary uses its best efforts to design further education courses in the area of fundamental and human rights, as well as in the area of "violence" in a diverse and interesting manner, tailored to the requirements of practical work. In this area, there are Networking and discussion meetings on this matter between the Federal Ministry of the Interior and the Federal Ministry of Justice, which are frequently held on all levels in order to achieve consistent exchange of information, mutual training/education and to develop best practice examples.

54. Moreover, the Ministries and Federal Provinces have taken various measures to raise awareness in regard to the prevention of violence. These include co-funding projects of prevention of transcultural violence for teachers and persons with a migrant background, funding the African Women's Organisation combating female genital mutilation (FGM), educational measures (curriculum for raising awareness and dealing with (suspected) cases of sexual, domestic and/or physical violence in the framework of escorting visits) as well as anti-violence trainings and programmes (inter alia, work with perpetrators oriented towards victim protection aimed at establishing anti-violence programmes oriented towards victim protection with uniform nation-wide standards). Also counselling centres/associations which hold programmes and seminars to protect against violent-prone and violent behaviour of male juveniles and adults are funded.

Social area

55. Specific training and further education is a measure of quality assurance, which is performed regularly in the framework of training staff members of women counselling facilities.

Public Relations

56. The website of the Ministry of Women's Affairs provides information about central issues of protection against violence and gives specific advice.[5]

57. For the purpose of documenting acts of violence the App "fem:HELP" was developed. The App was published in September 2013, and, since 2013, it is also available in Bosnian, Croatian, Serbian, Turkish and English. In addition to saving the exact contact date, the App provides the option to document injuries, stalking incidences and violations of access and contact bans.

58. Updating the information brochure "Women are (have) right(s)" in 2013: The information brochure "Women are (have) right(s)" — which was updated in 2013 —

[5] http://www.bmbf.gv.at/frauen/index.xml.

addresses women suffering from violence and counselling facilities providing them with information about legal options as well as support and counselling offers.[6]

59. An information campaign on knockout drops started in summer 2012 and is being continued. During this campaign, which includes information cards, posters and web information, 800 prevention officers of the police were deployed in December 2013. This campaign is aimed at better explaining knockout drops to girls and (young) women.

Examples of relevant activities of Federal Provinces

Burgenland

60. In the framework of "16 days against violence" in 2013, bakers paper bags, filled with information and a cookie, were distributed to women and girls all over Burgenland, printed with the slogan "Violence does not belong in my bag!", and in many townships the anti-violence flag was hoisted. This action was supposed to create media attention for this topic and raise awareness. The Provincial Government provides funding for the women's shelter Burgenland, the social shelter Burgenland, and for anti-violence counselling of women's counselling centres in Burgenland.

Carinthia

61. In the framework of "16 days against violence" the department for women and gender equality of the Carinthian Provincial Government, together with the Vienna organisation "Orient Express", held a special lecture and workshop on the topic of "female genital mutilation, forced marriages and generation conflicts". This initiative served to educate disseminators, members of women's associations and organisations, teachers, social workers, migrant facilities and other institutions working with migrants and supporting them in conflict situations in the context of forced marriage. The objective was to support persons concerned and to further raise public awareness of this topic. Furthermore, a recently published information brochure of the Organisation FGM Help, "Female Genital Mutilation for doctors and midwives" was presented, which mainly addresses health care personnel, to raise their awareness of the topic and to draw attention to health risks of genital mutilation. Furthermore, schools in Carinthia offer self-defence workshops for female pupils. The core message of the project is to show boundaries "Not with me — stop means stop, and no means no!" The Provincial Women's Conference also dealt with the topic of "violence against women and children; training judges and public prosecutors" in its meeting. It recommended that training and further education courses of judges and public prosecutors should include mandatory training in the area of victim protection.

Lower Austria

62. In Lower Austria, in the framework of the advanced education project "domestic violence — the importance of the health care sector", measures to raise awareness for violence against women and girls are being taken. Specifically, training sessions and information events are held for persons working in the health care sector of Lower Austria. So far, a total of about 4,500 medical doctors, nurses, health care and nursing students, midwives, members of social and psychological services and others have been made aware of and have been empowered in their professional activities regarding health care issues relevant to violence against women. The topics include extent, forms and patterns of violence, situations of women and children, severe immediate and long-term health

[6] http://www.frauen.bka.gv.at/DocView.axd?CobId=53128.

consequences, violence as traumatic experience, efficient health-care support and secondary traumatisation of helpers. In particular, these professionals are trained to recognise violence and to speak with victims about intervention options and the importance of documentation and securing of evidence. Moreover, cross-linking of medical doctors in hospitals and primary care will be intensified, and the training programmes offered for victim protection professionals (section 19g, Lower Austrian Hospital Act) will be expanded. In the course of continuous public relation work (lectures, project presentations, participation in professional panels, etc.) a further 4,200 persons from the health sector, the police force and from organisations supporting women were directly involved.

Salzburg

63. On a provincial level, the master plan "Preventing domestic violence" was adopted by the Salzburg Provincial Government on 24 September 2012. The master plan is a fully integrated strategy paper, conceived as an interdisciplinary and interdepartmental planning instrument, to pursue a common anti-violence strategy in the Province of Salzburg. It is aimed at cross-linking and coordinating all services and organisations to prepare action proposals to prevent violence and protect against violence in the Province. Furthermore, special emphasis will be placed in Salzburg on strengthening civil courage of the population of Salzburg and of contact persons working in health care services and in educational facilities for children and juveniles.

Styria

64. Social workers are informed and trained both in training and further education sessions about the topic of domestic violence and violence against women and girls respectively (in the framework of the study course Social Work/Technical College Joanneum, by the Provincial Administrative Academy and by the competent department in the Office of the Styrian Provincial Government). Private institutions also offer information, counselling and further education for social workers in Styria on the topic of "violence against women and girls". The Violence Protection Centre Styria, for example, holds various trainings, and organises lectures on this topic. This centre is funded by the Styrian Department of Social Affairs. In individual cases, the Province of Styria also bears the cost for social workers participating in external theme-specific further education classes.

Vorarlberg

65. The Provincial Government of Vorarlberg is funding a large number of organisations offering counselling and support to victims of domestic violence (approx. 90% women), such as: IfS women's emergency shelter, IfS counselling services, violence protection centre, women's information centre FEMAIL. In addition to counselling on the topic of violence in the IfS counselling centres or in the information centre FEMAIL, awareness-raising measures have been and are being taken through projects such as "Trespassing Boundaries — Setting Boundaries" and "Signal". The brochures, folders and awareness-raising measures prepared in these projects are regularly up-dated and disseminated. The project "Signal" is directed to medical and nursing personnel in municipalities. It is aimed at utilising the prevention and intervention options available in health care services. Special information events aim at raising the awareness of medical and nursing personnel to be able to recognise domestic violence as possible cause of injuries, illnesses and ailments and to offer adequate continued support to the patients concerned or direct them to counselling organisations. During the reported period, the campaign "No means No" against sexual harassment was again run together with the Austrian Trade Union Federation and the Chamber of Labour. In this regard, a folder with important information and contact points was prepared and disseminated. Information and counselling

discussions with women and companies have been considerably increased in number. A total of 3,000 posters and 15,000 flyers were distributed to institutions and work council members in Vorarlberg. Together with Liechtenstein and the Swiss Canton of Grisons, a survey on violence against women in marriage and partnership was conducted in 2009, and measures based on the survey were prepared. As a result, a catalogue of measures was published.

Article 11

In light of the Committee's previous concluding observations (para. 17), please provide updated information on the efforts made by the State party to alleviate overcrowding in prison facilities, in particular in the Josefstadt and Simmering II prisons in Vienna. Also, please provide updated information on the establishment of additional facilities and on any steps taken to apply alternative measures to imprisonment. Please indicate whether staffing levels and the number of female prison officers have increased during the period under review. Please indicate whether the State party has considered relinquishing the use of electro-muscular disruption devices to restrain persons in custody.

66. The penal service administration has taken a number of measures to alleviate overcrowding in Austrian prisons. The electronically monitored home detention ("ankle monitor"), a means of detention for most recently up to 240 prisoners, was introduced in September 2010. This relatively new form of detention is almost exclusively used for prisoners, in rare cases also for remand detainees. Authorisation for the so-called "ankle monitor" for remand detainees cannot be given by the prisons, but must be ordered by a court. Average duration of electronically monitored home detention is 109 days; maximum duration is set to one year at present. Work is on-going to expand maximum duration without risk increase and to achieve increased use in the "backdoor" area (transfer to electronically monitored home detention in the last phase of prison detention as an instrument of social rehabilitation and of gradual adjustment to freedom).

67. Alternative measures to imprisonment, particularly for juvenile delinquents, are being envisaged. For this purpose, a working group was established by the Federal Ministry of Justice in 2013, which in cooperation with external experts from a range of disciplines presented comprehensive recommendations both for restructuring penal service for juveniles and for introducing alternative measures to imprisonment of juveniles ("Task Force — Juvenile Remand Detention"). The proposals included among others that juveniles be increasingly accommodated in supervised shared flats and to expand the option of providing community service along the lines of the Swiss Criminal Code.

68. To alleviate overcrowding in the Vienna-Josefstadt prison, the satellite departments in the Schwarzau prison (for female juveniles) and the Gerasdorf prison (for male juveniles) will be maintained. Also expeditious transfers in the course of change of prison placement (Section 10 of the Penal Service Act — *Strafvollzugsgesetz*) and classifications of inmates (Section 134 of the Penal Service Act) have an alleviating effect. The satellite department of the Vienna-Josefstadt prison in the Vienna-Simmering prison (Department II) — designated "Simmering II" in the question — was closed in 2013. Because there are no longer any remand detainees in the Vienna-Simmering prison, this institution can now again fully serve its original penal service task. In order to alleviate overcrowding in the Vienna-Josefstadt prison and to improve the quality of penal service in Vienna, the construction of a new prison with separate juvenile department is envisaged in the new Government programme. In the area of enforcing special measures pursuant to section 21 of the Criminal Code, occupancy could be stabilised in the past two years, as a balance of incoming and outgoing inmates was achieved. For this purpose a concomitant monitoring system was introduced which is also available to prisons. Due attention is paid to transfer

management (the release interface) and to facilitating more releases by court order by creating additional places for care after prison.

69. The courts are still utilising the option, which exists since 2008, to preliminarily waive imposing a prison sentence or to release foreign offenders early due to an exclusion order pursuant to section 133a of the Penal Service Act — this provision has since been amended on several occasions. After a slight decrease of such release cases in 2009 (335) against the year before (350), an increase of this form of early release to 490 cases was recorded in 2012. Also, the implementation, by an increasing number of EU Member States, of Framework Decision 2008/909/JHA of the Council of the European Union of 27 November 2008, on the execution of prison sentences (in the home country) — which was effected in Austria by the 2011 amendment of Federal Act on judicial cooperation in criminal matters with Member States of the European Union — may markedly ease the burden on the Austrian penal service system in the medium and long term, given that at present 46% of all prisoners are not Austrian citizens; about 20% thereof are "EU-citizens". The penal service administration can most effectively contribute to increasing the number of releases on parole by intensifying release preparations. In this context, the establishment of a working group is planned, to deal with issues of effective release preparation preventing recidivism, in particular as regards long-term prisoners.

70. Concerning the police detention facilities, the Federal Ministry of the Interior strives to continuously adapt the staffing level to the inmate population.

71. The establishment of a staff unit "penal service research, documentation and development" within the Penal Service Directorate is envisaged as additional source of initiatives for Austrian penal service and special measure enforcement, which shall take over the tasks of criminological services in comparable foreign penal service systems. This does not only include cooperating with external institutions of science and research, but also monitoring international developments of detention systems.

72. Concerning the question whether the number of female prison officers has increased in the reported period, reference is made to the explanations set out under paragraph 4, and in the corresponding Annex 1. As a measure to improve the position of female employees in the Austrian penal service and special measure enforcement, a study was commissioned on the topic "Women as Prison Guards" (see also paragraph 4).

73. The low-impulse weapon Taser X26 is being used in Austrian penal service only by specially trained prison guards/operation group members who, in addition to their normal weapons training, have been specially trained in the use of the low-impulse weapon X26. Moreover, this group of persons is specially trained in active conflict resolution and human rights. We would like to stress that the low-impulse weapon Taser X26 is not being used for "restraining purposes", but may only be used in cases of self-defence/emergency help, which means that the conditions of section 105 of the Penal Service Act (weapons and their use) and the justifications for use indicated therein must be met. Moreover, the Austrian penal service has voluntarily undertaken, to not only observe the rules on using weapons when using this device, but also the rules of section 105 (6) of the Penal Service Act, which regulate use of weapons against persons that implies danger to life. The device is always used in a sparing manner, and on very rare occasions, for that matter. The use of the device, in addition to the legal provisions governing its use, is comprehensively regulated by the Federal Ministry of Justice through an internal instruction. Furthermore, each use of the low-impulse weapon Taser X26 in Austria is logged in the weapon in a tamper-proof manner and also recorded by an in-built video camera. Each use is reviewed by the superior authority, focussing on the question of proportionality and lawfulness. The low-impulse weapon Taser X26 has truly proved its worth as an alternative between the use of pepper spray or the handgun as adequate means to prevent injuries. Therefore, there are no plans at present to suspend or relinquish the use of this device.

74. Austrian police forces have 200 TASER service weapons in use at present. The low-impulse weapon TASER X26 was introduced as a service weapon by internal instruction No. BMI-EE1233/0003-II/2/b/2012 of 03 July 2012, after a six-year test run in four special police squads. During the test period, several comprehensive scientific studies were undertaken in cooperation with medical doctors, technical experts (Technical University Graz), lawyers, police tacticians and with the Human Rights Advisory Board formerly attached to the Federal Ministry of the Interior. Thus, use of the TASER by the police is only allowed if less dangerous measures, such as an order to restore the proper legal situation, a threat to use a weapon, pursuit of a fugitive, the use of physical strength or any available more lenient measures are deemed unsuitable or have already proven ineffective. If different weapons are available, only the least dangerous weapon appearing suitable in the specific situation may be used.

75. Any weapon — i.e. also the low-impulse weapon Taser X26 — may be used against humans only with utmost care and only in cases which are clearly defined by law.

76. The use of the low-impulse weapon Taser X26, except in cases of self-defence, is not allowed:

- Against women who are known to be or are noticeably pregnant;
- Against children who are known to be or are noticeably below the age of criminal responsibility;
- Against persons with indications of cardiac damage;
- And simultaneous use of several (minimum two) Tasers X26.

77. Each use of the weapon has to be preceded by a proportionality check. The proportionality check also entails the necessity of checking whether the specific operating situation might involve increased risks. If in or during a specific operating situation due to one or several factors a higher health risk for the person concerned must be considered, it has to be checked whether the Taser use could be life-threatening. In such cases the use of the low-impulse weapon Taser X26 is only permissible if the conditions for the use of weapons implying a danger to life are met.

With reference to the Committee's previous concluding observations (para. 18), please provide information on efforts to prevent suicides and other sudden deaths in all places of detention. In addition, please provide information on independent investigations of cases of suicide and other sudden deaths, including possible liability of prison personnel, as well as on the development of guidelines for suicide prevention. In particular, please provide information on the results of the investigations into the following cases of deaths in custody discussed with the State party during the examination of the previous periodic report, namely: case No. 2 for 2009 (male, born 23 July 1962, detained in Göllersdorf, died on 5 February 2009 as a result of being run over by a train); case No. 5 for 2008 (male, born on 14 May 1924, detained in Josefstadt, died on 4 February 2008 of a shot in the head); case No. 11 for 2007 (female, born 20 September 1948, detained in Schwarzau, died on 5 March 2007 by falling from a window).

Penal Service

78. In the past years, the Penal Service Directorate has used increased efforts to optimise suicide prevention in Austrian penal service. In 2011, a special group for suicide prevention in penal service was established within the Directorate. The main task of this special group is the detailed analysis of suicides occurring in penal service in Austria. Furthermore, the quantitative and qualitative aspects of suicide occurrences are being regularly monitored. Each and every suicide case is analysed for possible lessons to be learned for the penal

service, and the results are reported to the Federal Ministry of Justice and to the management of the Penal Service Directorate respectively. After each suicide case, the members of the special group, together with a member of the supervisory board visit the prison involved, to discuss and process all circumstances of the suicide case together with the prison staff involved. Since 2007, the cell allocation programme VISCI prevents the detention of newly admitted suicidal prisoners in solitary confinement. Since 2013, a specific suicide prevention concept exists for each prison. The members of the special group organise regular advanced training events on the subject of suicide prevention and crisis intervention for prison staff. For newly trained penal service psychologists, a module on suicide prevention has been a permanent element of basic training since 2012.

79. As the special group for suicide prevention was only established in 2011, no specific investigation results exist on the following deaths in custody mentioned in paragraph 16 and discussed during the examination of the previous periodic report. For this reason, only the following basic data of these cases can be provided:

80. Case No. 2 from 2009 (male, date of birth 23 July 1962, detained in Göllersdorf prison, died on 5 February 2009): The prisoner F.S. detained in Göllersdorf prison had been granted a reprieve of detention by the decisions of the Regional Court Korneuburg pursuant to section 166 (2) (b) of the Penal Service Act. He started his reprieve period on 02 February 2009 in the Karl Schubert Home (Society of Social Therapy and Lifestyle) in Mariensee/Aspang, but absconded from there on 5 February 2009 at 1 p.m. On the same day, he committed suicide by lying on the tracks of the Aspang Railway, where he was subsequently overrun by a train. As a result of the investigations conducted by the police station Aspang, any third party negligence could be excluded.

81. Case No. 5 from 2008 (male, date of birth 14 May 1924, detained in Vienna-Josefstadt prison, died on 4 February 2008): J.R., a former remand detainee of the Vienna-Josefstadt prison was arrested on 19 November 2007 and had remained in remand detention from 20 November 2007 to 4 February 2008. Upon his arrest in November 2007, the prisoner was immediately transferred to the hospital SMZ-Ost due to a serious gunshot wound, where on 4 February 2008 he died from his wounds in the operating theatre of the hospital. It is unknown how he had contracted the gunshot wounds.

82. Case No. 11 from 2007 (female, date of birth 20 September 1948, detained in the Schwarzau prison, died on 5 March 2007): The prisoner H.H. absconded on 13 May 2006 from the Schwarzau prison and died ten months later due to a polytrauma as a consequence of falling from a window from the 5th floor of an apartment building. There were no indications of any third party responsibility.

Police Detention Centres

83. Suicide prevention in police detention centres is taken care of comprehensively, in parallel with the continuous improvement of detention conditions in the centres and a resulting improvement of the physical conditions for the detainees, as well as with the general medical attendance. In case of need, psychologists and neurologists, or psychiatrists, are consulted and there is close cooperation with regional hospitals. There is also early recognition and monitoring in the area of preventing drug addiction (e.g. best practice in cooperation with the organisation DIALOG), a comprehensive exploration of medical histories and enquiry into suicide tendencies. The subject matters “suicide and suicide attempts” and crisis intervention, diagnosis and therapy are also continuously and comprehensively discussed in the framework of training and further education of the medical staff, in the framework of a curriculum or during professional meetings. Also in training and further education programmes for the security staff, all aspects of suicidal behaviour are addressed. Voluntary supervision as well as a psychologist of the Federal

Ministry of the Interior are available to the staff for the purpose of psycho-hygienic counselling.

84. The Ombudsman Board has surveyed the health care situation, the general medical care and the interaction with prisoners on hunger strike and/or suicidal prisoners in Austrian prisons on the basis of observations by the commissions. The completion of the first part of the module MED (medical data) of the Integrated Administration of the Penal System (hereinafter IVV) in November 2010 has enabled electronic collection of all medical data and documents. This basic module IVV MED is continually updated to (medical) cutting-edge on the basis of practical experiences. The establishment of the IVV MED module and of the function of chief physician is a measure to guarantee provision of health care for persons deprived of liberty, on the same level as for persons in freedom, as demanded by international bodies. The very traceability of actions causes health care personnel to interact with and treat prisoners with greater care. With regard of medical treatment of suicidal prisoners, or of prisoners who have already attempted suicide, the Ombudsman Board determined that a psychiatric specialist must be consulted as soon as possible, but no later than within 24 hours, who shall provide recommendations as to further detention. In case of grave deterioration of the mental state of the prisoner, a transfer to a hospital must be undertaken.

In light of the Committee's previous concluding observations (para. 16), please indicate whether, as recommended by the Committee, the State party has ended the practice of detaining asylum-seekers in police holding centres. Please provide updated information on the detention of asylum-seekers pending deportation and on any measures to provide alternatives to detention as well as material conditions appropriate to their legal status. Also, please indicate whether they enjoy access to appropriate legal support to challenge their detention. In particular, please provide an update on the status of the pre-deportation centre Vordernberg/Styria, the accommodation structure for 12 families at Zinnergasse 29a, as well as on the additional accommodation for some 50 persons in Vienna. In connection with the State party's position, expressed in its follow-up replies, that pre-deportation detention is only used as a last resort, please provide data on the total number of asylum seekers deported by the State party during the reporting period, the number detained pending deportation, and the number to which alternatives to detention were applied. Please indicate whether asylum-seekers in general enjoy adequate reception conditions, including accommodation, health care and social support, throughout their asylum proceedings.

Detention pending Deportation

85. Detention pending deportation is no criminal detention, but the most severe security measure employed to enforce compulsory measures imposed by the aliens' police. It is only imposed against aliens — whether they are asylum seekers or not — if required by law. No pre-deportation detention is ever imposed on aliens in Austria, just because they submitted an application for asylum.

86. Pursuant to section 78 (1) of the Aliens Police Act 2005, detention pending deportation has to be served in a prison cell of the authority (Regional Police Directorate). Prisoners are detained — apart from a few exceptions — in the 17 existing police detention centres for a period of a maximum of seven days. Any further detention takes place exclusively in the police detention centres Vienna and Salzburg, and in particular in the detention centre Vordernberg, which was opened in January 2014 and which represents an important step towards an effective European return policy. Special support for detainees and intensive counselling in favour of voluntary return shall enhance their willingness to return voluntarily and accompanied until they leave Austria.

87. Pre-deportation detention is in principle imposed through a written order. Important elements for the lawfulness of such order are:

- Individual evaluation — individualised features of evaluation;
- Purpose of detention (ensuring presence at proceedings, ensuring departure abroad etc.);
- Need of detention (why is there danger of absconding);
- Detailed justification for the competent Federal administrative court, why no more lenient measures were imposed).

88. In all cases an evaluation of the specific situation/circumstances of the alien/asylum seeker is necessary, so that the security purpose of the detention can be explained in the individual case. As a rule, detention orders pending deportation are to be issued as mandate decision, unless the alien has been in detention for some time for a different reason — then a normal decision has to be issued. Detention pending deportation is absolutely inadmissible for the following persons: underage minors (= persons under the age of 14), persons granted asylum or subsidiary protection. For minors up to the age of 16, the authority must impose more lenient measures. Detention pending deportation is no coercive detention. Basic conditions for imposing pre-deportation detention are:

- Initiation of procedures to impose a measure terminating residence; or
- Existence of an enforceable order to impose a measure terminating residence; or
- Order of deportation abroad;
- Necessity and proportionality have to be checked, detention pending deportation is "ultima ratio";
- Security concern in terms of a justified suspicion, that the alien would evade proceedings by absconding, or at least make such proceedings significantly more difficult;
- Unwillingness to depart does not constitute a reason for such security concern per se.

89. Proportionality of depriving liberty is one condition for imposing pre-deportation detention which has to be fulfilled for all underlying facts. This is paraphrased in the law by "special circumstances inherent in the person of the asylum seeker". On the one hand, this requires the necessary proportionality check, while at the same time it is made clear that a need for security is an underlying fact as a matter of principle.

Information & Legal Counselling

90. The decision to impose detention pending deportation must contain a verdict and information on legal remedies in a language which the alien understands. The Regional Police Directorate provides aliens with an information sheet (brochure) about detention upon arrest for detention pending deportation. By handing them this information sheet, the pre-deportation detainees are informed about the option of raising a complaint against their detention with the Federal administrative court. This procedure is aimed at informing detainees about the objective of their detention, about their option of voluntary departure and their right to raise a complaint against their detention. If an alien has been arrested on the basis of an arrest order pursuant to section 34 (3) (1) in conjunction with section 40 (1) (1) of the Code of Procedure for the Federal Office for Immigration and Asylum (*Bundesgesetz, mit dem die allgemeinen Bestimmungen über das Verfahren vor dem Bundesamt für Fremdenwesen und Asyl zur Gewährung von internationalem Schutz, Erteilung von Aufenthaltstiteln aus berücksichtigungswürdigen Gründen, Abschiebung,*

Duldung und zur Erlassung von aufenthaltsbeendenden Maßnahmen sowie zur Ausstellung von österreichischen Dokumenten für Fremde geregelt werden, hereinafter BFA-VG) (i.e. conditions for imposing pre-deportation detention are fulfilled and the alien is not brought before the Federal Office for other reasons), he/she must be ex officio provided with free legal counsel by the authorities (section 51 (1) BFA-VG). When ordering pre-deportation detention, the Federal Office for Immigration and Asylum must inform the alien or asylum seeker via a procedural decision that he/she will be ex officio provided with free legal counsel (section 52 (1) BFA-VG).

More Lenient Measures

91. The option to impose so-called more lenient measures against aliens in place of pre-deportation detention is an expression of the principle of proportionality. More lenient measures must now also — like detention pending deportation — be ordered by a mandate decision, unless an alien has been in detention for some time for a different reason when issuing procedures are initiated. The validity of non-enforced decisions pursuant to section 57 of the General Administrative Procedure Act (*Allgemeines Verwaltungsverfahrensgesetz*) expires 14 days after the date of issue. Decisions of the Federal Office for Immigration and Asylum and the Federal administrative court have to contain verdict and information on legal remedies also in a language which the alien understands or in a language which the alien most probably understands (section 12 (1) BFA-VG). More lenient measures are, for instance, an order by the authorities to take residence in certain accommodations determined by the Federal Office for Immigration and Asylum, to report in periodic intervals at a contact point of a Regional Police Directorate or to leave an adequate financial deposit with the Federal Office for Immigration and Asylum. The list of statutory orders is non-exhaustive, and further options are conceivable. More lenient measures do not necessarily mean accommodation in an alternative apartment, but could also mean "just" a reporting obligation without order of accommodation. Statistical data about the individual forms of more lenient measures are being collected since 2014. In practice, periodic reporting obligations and/or accommodation have proven their worth. In each case close contacts are important with the accommodation facility and the contact point of the Regional Police Directorate, where the alien has to report, so that rapid reaction is possible in cases of "absconding". In principle, duration of more lenient measures should be as short as possible. Time restrictions (maximum duration) for more lenient measures is only foreseen for ordered accommodation. Decisions on more lenient measures have to be issued separately. If more lenient measures are imposed pursuant to section 77 (8) of the Aliens Police Act in conjunction with section 57 of the General Administrative Procedure Act by issuing a mandate decision, a legal remedy may be raised within two weeks, i.e. representation to the Federal Office for Immigration and Asylum (no suspensive effect, immediately enforceable when issued). A resulting decision and an original no-mandate decision may be challenged at the Federal administrative court.

Statistics concerning pre-deportation detention and more lenient measures

	2010	*2011*	*2012*	*2013*
Detentions ordered	6,153	5,155	4,566	4,169
thereof asylum seekers	1,027	885	831	598
More lenient measures ordered	1,404	1,012	925	771
thereof asylum seekers	601	634	598	490

92. In regard of statistical data concerning the number of deportations, reference is made to paragraph 8.

Basic Social Services

93. During their asylum procedure, asylum seekers are granted basic social services on the basis of the Agreement on Basic Social Services, concluded between the Federation and the Federal Provinces on the basis of article 15a of the Federal Constitutional Law. They mainly comprise the following services:

- Accommodation in suitable housing, with respect for human dignity and for the unity of the family;
- Monthly pocket money when accommodated in organised housing units;
- Secure health care in terms of the General Social Security Act (*Allgemeines Sozialversicherungsgesetz*), through payment of health insurance contributions and provision of any additional services needed but not covered by health insurance;
- Information, counselling and social support of aliens;
- Covering transportation costs and free transport for pupils;
- Support in structuring the day;
- Clothing support.

94. Due to the services granted, asylum seekers in Austria receive comprehensive and adequate social services during their asylum procedure — also taking into consideration the conditions of the Council Directive for receiving asylum seekers (2003/9/EC).

Family-oriented Accommodation in Vienna 11, Zinnergasse 29a

95. Orderly implementation of aliens policies requires, inter alia, also securing physical presence to facilitate returns or transfers under the Dublin II procedure of families with children. After individual assessment by the Federal Ministry of the Interior (Federal Office for Immigration and Asylum), families and unaccompanied minor aliens are as a matter of principle detained in the family accommodation apartments in Vienna 11, Zinnergasse 29a, with a very low level of security, unless medical reasons or reason inherent in the confined person(s) (aggressive behaviour, readiness to use violence, attempts at absconding, etc.) stand against it.

96. Major importance is attached to maximum mobility within the building, as well as to autonomy of families within their apartments.

Concrete Implementation

97. In Zinnergasse 29a, a housing object was adapted to (simultaneously) accommodate up to 12 families and unaccompanied minor aliens under the age of 16, as well as the necessary infrastructure units for support and monitoring.

98. The concept of Object 11 is oriented along the lines of current international best practices and corresponding recommendations (inter alia, of the European Committee for the Prevention of Torture and the Human Rights Advisory Board formerly reporting to the Federal Ministry of the Interior). The building meets the requirements of the rules of detention and fulfils the necessary conditions for arrests and detentions pending deportation.

- In principle the support personnel in the family accommodation serves in plain clothes (recognisable by lanyards with the inscription “police”);
- Operational adaptation (plain clothes, civil gear);

- Operational planning (pool of officers, consulting experts, medical doctors, psychologists, youth welfare service, appointments, proportionality check);
- Ombudsman office — target group: persons concerned and citizens;
- Involvement of the Human Rights Advisory Board formerly reporting to the Federal Ministry of the Interior;
- Evaluation of the entire subject matter "accommodation of families" in the light of human rights standards;
- Specially selected, psychologically trained personnel,

Detention Centre Vordernberg

99. In January 2014 the new Detention Centre in Vordernberg was opened, which represents an important step towards an effective European return policy. The Return Directive adopted by the European Parliament clearly requires that detention to secure measures terminating residence should be carried out in special facilities. These requirements and all recommendations of the European Committee for the Prevention of Torture have been met in the Detention Centre Vordernberg.

100. The purpose of this new facility is to provide a modern detention centre for up to 200 persons — women, men and families — taking into consideration national and international developments, recommendations of the Human Rights Advisory Board, and thus creating optimum detention standards.

101. Allocation of aliens detained on grounds of alien legislation to the new detention centre shall be made along the lines of predetermined objective criteria:

- Type and duration of the proceedings against the alien;
- On grounds of obvious detention of longer duration;
- According to family situation (e.g. married couples, families), or gender (women).

102. Special attention is paid to persons with the need for special protection, whose pre-deportation detention can only be imposed as a last resort and only for a minimum duration. Moreover, detainees are provided with opportunities for leisure and sporting activities.

103. Room arrangements and functional programmes were closely coordinated with the Human Rights Advisory Board formerly reporting to the Federal Ministry of the Interior.

104. Medical care for detainees is provided in a daytime outpatient clinic, in which a nurse is present 24/7, and a medical doctor from 7 a.m. to 8 p.m.

105. Men and women are accommodated in multi-person rooms; a one-room solution was implemented for the family department. Also a library, and multi-purpose areas are available, and the daily routine can be filled with a variety of activities.

Articles 12 and 13

With reference to the Committee's previous concluding observations (para. 19), please provide statistical data on allegations of torture and ill-treatment, on the results of any investigations undertaken in connection with the allegations, disciplinary and criminal proceedings, convictions and the sanctions applied, as well as on any compensation provided to the victims. Please provide information on the percentage of such allegations that concern foreigners.

Judiciary

106. As regards the reporting of proceedings (investigations by public prosecutors, court trial and convictions) in connection with cases of ill-treatment, domestic or sexual violence, there is the fundamental problem that no evaluation of specific data is available, as statistical data from criminal courts are only collected in relation to offences as defined by the Criminal Code. Due to the broad definition of terms such as ill-treatment, domestic and sexual violence, such crimes cannot be broken down to individual offences, and therefore their representation through criminal court statistics or through judicial process automation which also requires a break-down to individual offences, is not possible as of now. For this reason, information about victim data (such as asylum seeker status, sex, age) cannot be obtained from criminal court statistics, nor from proceedings registers of courts and public prosecutors. Sex, age and nationality of offenders and victims are being recorded in the meantime, but an evaluation is only possible in relation to single offences. In view of these problems, a working group to improve the data basis for judicial criminal statistics was established in the Federal Ministry of the Interior. The aim of their work is the creation of a general statistical data base of judicial settlements, which would record and show all official reactions to law enforcement relevant behaviour in judicial proceedings. In this connection there are also plans to introduce collection of data about criminal phenomena and personal data of victims separated from the actual offence, which would enable to provide statistical data also about criminological phenomena such as crimes motivated by racism and xenophobia or cases of torture and ill-treatment, human trafficking, domestic and sexual violence. But implementation of this objective requires major changes of process recording in the electronic registers of public prosecutors and courts, and therefore can be realised only in the long term.

107. By creating a separate offence definition for torture (section 312a of the Criminal Code; see paragraph 1) it has been possible since 1 January 2013, however, to evaluate incidents and settlements for such criminal proceedings by electronic process automation. In 2013, a total of nine proceedings due to section 312a of the Criminal Code have been initiated by public prosecutors. Proceedings against a total of 11 persons were completed in 2013, of which proceedings against seven persons were terminated.

108. In order to guarantee effective, expeditious and unbiased resolution of accusations of ill-treatment, the Federal Ministry of Justice, together with the Federal Ministry of the Interior, has formed an interministerial working group for the purpose of developing a concerted approach towards suspected ill-treatments. Changes were necessary also because the legal foundations for investigations have been altered by the Criminal Procedure Reform Act, which entered into force on 1 January 2008. As a result of these discussions, the Federal Ministry of Justice on 6 November 2009 published an internal instruction concerning accusations of ill-treatment committed by organs of the security police and employees of the penal service systems (BMJ-L880.014/0010-II 3/2009), in order to guarantee objective conduct of proceedings excluding any semblance of bias. An English language version of this internal instruction is enclosed with this response (see Annex 3). This internal instruction stipulates that criminal police and public prosecutors have to investigate ex officio any suspicion of ill-treatment that comes to their notice (section 2 (1)

of the Code of Criminal Procedure). They are obliged by law to be impartial (section 3 of the Code of Criminal Procedure). With the exception of official acts which cannot be delayed, investigations may only be conducted by officers who are deemed unbiased. If an accusation of ill-treatment is raised, this suspicion must be reported to the public prosecutor by the relevant regional office of criminal investigation, or in Vienna by the Bureau for Special Investigations or else by the Federal Bureau of Anti-Corruption (*Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung*) without delay, but no later than within 24 hours pursuant to section 100 (2) (1) of the Code of Criminal Procedure. In order to speed up the procedure, the internal instruction stipulates that the above-mentioned bodies have to continue investigations as a matter of principle, unless the competent public prosecutor orders otherwise or takes over full or partial responsibility for the investigations. To avoid any semblance of bias the internal instruction emphasizes the option of entrusting courts with (section 101 (2), second sentence of the Code of Criminal Procedure), which ought to be considered mainly in case a higher or senior officer of the criminal police (or public prosecutor) has been accused of such ill-treatment. On the basis of this internal instruction, public prosecutors reported the following cases to the Federal Ministry of Justice:

Accusations of ill-treatment against security police officers and similar cases of suspicion

	2010	*2011*	*2012*
Cases handled by a public prosecutor	710	619	621
thereof new in the reported period	656	609	591
Termination of investigations	652	579	557
thereof under section 190 (1) Code of Criminal Procedure (CCP)	304	358	307
thereof under section 190 (2) CCP	348	213	239
thereof under section 190 (1) and (2) CCP			11
Discontinuation of investigations (section 197 CCP)	1	1	0
Diversional measures	0	0	0
Criminal proceedings/indictment	4	0	1
Charges withdrawn before main trial (section 227 (1) CCP)	2	0	0
Acquittals	2	0	1
Convictions	0	0	0

109. Analysing this chart, it must be taken into account that, according to the reports of public prosecutors, in the majority of reported cases only minor injuries occurred in the course of interventions by officers of the police force, such as during the use of hand-cuffs or pepper stray — partially even without an accusation of ill-treatment being raised against the intervening officer. This explains why a considerable number of investigations was launched, but only very few criminal proceedings were conducted or indictments were raised. This can also be concluded from the number of terminations on legal grounds pursuant to section 190 (1) of the Code of Criminal Procedure, which means that in a large number of the above-mentioned cases no criteria for a punishable deed existed.

110. The decrease in the number of proceedings in 2011 in comparison to previous years in terms of the above-mentioned reasons might be the result of stricter distinctions between cases reporting the use of coercive measures and cases of actual accusations of ill-treatment in the area of coercive interventions, and therefore fewer cases resulted in an initiation of criminal proceedings. This trend continued in 2012.

Proceedings under section 297 of the Criminal Code (defamation) due to accusations of ill-treatment raised against law enforcement officers

	2010	*2011*	*2012*
Cases handled by a public prosecutor	15	29	20
thereof new in the reported period	14	28	14
Termination of investigations	7	23	8
thereof under section 190 (1) CCP	7	8	3
thereof under section 190 (2) CCP	0	13	5
Diversional measures	0	0	0
Criminal proceedings/indictment	5	3	7
Charges withdrawn before main trial (section 227 (1) CCP)	1	0	0
Acquittals	2	0	7
Convictions	5	1	0

111. The Criminal Procedure Reform Act defines the same reasons for bias for criminal police officers and public prosecutors (section 47 of the Code of Criminal Procedure). If an officer biased pursuant to section 47 of the Code of Criminal Procedure has participated in the investigations, a protest may be raised for violating the rights pursuant to section 106 (1) of the Code of Criminal Procedure; such complaint will be decided by the court. If the protest is accepted, public prosecutor and criminal police have to establish the previous legal status (section 107 (4) of the Code of Criminal Procedure); which means that collection of evidence has to be carried out again. The Code of Criminal Procedure and the more detailed guidelines provided in the internal instruction mentioned are a guarantee for expeditious, objective and unbiased investigations concerning accusations of ill-treatment.

Penal Service System

112. Criminal or disciplinary measures were imposed against employees of the penal service system in three cases due to accusations of ill-treatment in 2012.

- Case 1: Incident on 4 May 2012 in the Suben prison: For ill-treatment of the prisoner F.A. (born in Kosovo), the criminal case against patrol officer A. M. was settled out of court, and a fine was imposed on him as a disciplinary measure.
- Case 2: Incident on 5 July 2012 in the Graz-Jakomini prison: Investigations by the public prosecutor against district officer G. I. for ill-treatment of the prisoner A. H. (Austrian citizen, born in Bosnia) were terminated, and he received a disciplinary reprimand from his superior.
- Case 3: Incident on 5 August 2012 in Feldkirch prison: Officer E. P. was fined 3,600 euros for ill-treatment of the prisoners S.W. (Austrian citizen) and H. D. (Austrian citizen, born in Turkey) by a not yet final court decision. Disciplinary proceedings are still interrupted.

113. In 2013, all investigations due to accusations of ill-treatment of prisoners against prison officers were ultimately terminated by the prosecution authorities. Investigations in only one case are not yet concluded.

114. No information can be provided about statistics on compensation payments to victims, or on ethnic origin of victims.

Police Forces

115. In the period 2010 to 2013, a total of 1394 accusations of torture or ill-treatment against police officers were raised in Austria. Investigations in this area resulted in two convictions and two acquittals, 23 proceedings are still pending with courts. Concerning disciplinary sanctions it can be mentioned, that after evaluation of all incidents, in no case administrative or disciplinary sanctions had to be imposed. At this time, four cases are still pending with the disciplinary commission of the Federal Ministry of the Interior. There are no statistical data concerning the percentage of accusations raised by aliens, as a distinction between "aliens" and "Austrians" is irrelevant for investigation purposes, and subsequently for any indictment.

116. Public liability: Under the Public Liability Act (*Amtshaftungsgesetz*), the state is liable for financial losses and personal injuries caused by state organs in an unlawful and culpable manner in enforcing laws (such as the Security Police Act or the Asylum Act). A person having suffered such losses or injuries may obtain compensation payments from the state. Such claim may ultimately be enforced by raising action before an ordinary court of law. (See also the statement concerning para. 24).

Please provide updated information on the amendments to the mandate of the Austrian Ombudsman Board and on the steps taken to bring it in accordance with the Paris Principles. Please provide data on any complaints of torture or ill-treatment received by the Ombudsman Board and investigations into such allegations it has undertaken to date, and provide information on the resources allocated to the Board for this purpose. With reference to the State party's follow-up replies, please provide an update concerning the State party's ratification of the Optional Protocol to the Convention and the establishment of a national preventive mechanism.

117. The Optional Protocol to the UN Convention against Torture (OPCAT) was signed by Austria in September 2003 and ratified on 4 December 2012. The Optional Protocol entered into force on 3 January 2013. Ratification was preceded by a comprehensive preparatory and implementation process: By the OPCAT Implementing Act of 10 January 2012, the jurisdiction under constitutional law of the Ombudsman Board was expanded to the greatest extent since its establishment in 1977. By this Act, the Austrian Ombudsman Board (*Volksanwaltschaft*), together with its commissions, has been designated as Austrian National Preventive Mechanism (NPM) in accordance with OPCAT. The Austrian Ombudsman Board, or rather its commissions, regularly visit places where persons are deprived of their liberty, including penal institutions, and provide, if necessary, recommendations to the competent superior authority. In human rights matters, the Austrian Ombudsman Board is advised by a Human Rights Advisory Council.

118. The legal foundations of the Ombudsman Board — the 8th Main Chapter of the Federal Constitution Act (*Bundesverfassungsgesetz*) and the Ombudsman Board Act (*Volksanwaltschaftsgesetz*) — were adapted accordingly. In April 2012, the Human Rights Advisory Council was constituted, and in July 2012 the commission heads and members were appointed. By publishing the rules of procedure and allocation of responsibility of the Ombudsman Board, its commissions and of the Human Rights Advisory Council, the legal framework conditions for performing their new tasks were fulfilled. Upon completion of preparatory trainings for the commissions, which were held in cooperation with the Council of Europe, monitoring visits started in September 2012.

119. The supplement of ex-post monitoring of the Ombudsman Board by the preventive mechanism contributes largely to strengthening effectiveness and efficiency of the Ombudsman Board's activities concerning safeguarding human rights. At least once a year, the Ombudsman Board provides a report on its activities to the Austrian National Council (one of the two chambers of the parliament) and to the UN Subcommittee on Prevention of

Torture (SPT). On this occasion, also proposals for legislative amendments are made, and the results of the commissions' monitoring work are presented.

120. In detail, the responsibilities of the Ombudsman Board now apply to Federal administration bodies including their activity as holders of private rights, and in the case of article 148i (1), first sentence of the Federal Constitution Act, also to the administration of the Province in question. These responsibilities entail:

(1) Regularly visiting and examining places of detention according to article 4 of the OPCAT;

(2) Observing and concurrently monitoring the behaviour of organs authorised to issue direct orders and execute coercive measures; and

(3) Regularly visiting and effectively monitoring all facilities and programmes designed to serve persons with disabilities, according to article 16 (3) of the Convention on the Rights of Persons with Disabilities and to prevent the occurrence of all forms of exploitation, violence and abuse.

121. All Provinces, except Vorarlberg, have recognised the Austrian Ombudsman Board and its commissions as competent also for matters falling in the particular Province's competence, in accordance with article 148i of the Federal Constitution Act. Vorarlberg has entrusted its regional Ombudsperson and the commission set up by her with the tasks of visiting institutions falling under the competence of Vorarlberg.

Procedure of the National Preventive Mechanism

122. In order to carry out on-site visits the Austrian Ombudsman Board set up six regional commissions. The commissions comprise of experts from various professional backgrounds and visit facilities selected at random. These visits can be undertaken without prior notice. In case of imminent danger, the commissions can take measures on their own initiative. The commissions have extensive rights with regard to the visits. They have unrestricted access to all places of detention, as well as to institutions and facilities serving persons with disabilities. They are entitled to investigate all relevant details regarding the living conditions for people deprived of their liberty, as well as to examine the adequacy of the living conditions for persons with disabilities. Therefore, they must be given access to all documents and information. At their request, the commissions may speak with detained persons and persons with disabilities. The data collected by the commissions is very sensitive. Therefore, the new legal foundations provide precise rules for handling this information. The Austrian Ombudsman Board is obliged to comply with these rules. The commission report on their visits and observations directly to the Austrian Ombudsman Board. All observations and findings of the commissions are documented in standardised protocols. These are the basis for a subsequent examination and final assessment by the Ombudsman Board. In many cases, it is necessary for the Ombudsman Board to contact the competent supervisory authorities and institution sponsors to identify possible system shortcomings and to prepare common proposals for improvement. If the Austrian Ombudsman Board does not follow the commissions' recommendations or suggestions, the commissions are entitled to add appropriate remarks regarding their respective area of responsibilities to the Austrian Ombudsman Board's report.

123. The Austrian Ombudsman Board obtained 15 additional permanent posts. For 2013, a budget of 2,960,000 euros was allocated for coping with the new tasks. As of now, 90 staff members are working at the Austrian Ombudsman Board. Not included in the staff numbers are the 48 members of the six commissions and the 34 members and substitute members of the Human Rights Advisory Council within the Austrian Ombudsman Board.

Results of preventive activities

124. Since September 2012, the commissions have performed 861 monitoring visits and observations (as of 27 June 2014). They visited 170 homes for senior citizens and nursing homes, 87 medical and psychiatric hospitals, 121 youth welfare institutions, 109 facilities serving persons with disabilities, 78 prisons, 151 police stations and police detention centres and 10 military barracks. Furthermore, the commissions monitored 62 deportations and 73 demonstrations, police raids and large public events. 234 of the 530 commissions' protocols issued in 2013 were finalised by the Austrian Ombudsman Board in the same year. Not all monitoring visits or all observations of police operations cause a complaint to be raised by the commissions during their concluding discussions with the management of the institution or the responsible officers of the police operation. In 171 cases no interventions by the Austrian Ombudsman Board were necessary.

Results of monitoring activities concerning the judiciary

125. In 2013, a total of 19,249 persons approached the Austrian Ombudsman Board with a complaint. Thus, in comparison to the year before, the number of complaints has increased by 23%. The scope of monitoring responsibility of the Austrian Ombudsman Board in the justice area includes the justice administration, the public prosecution offices, unless there is legal court protection against their decisions, examination of procedural delays by actions of public prosecutors or courts, and the penal service system. 935 investigative proceedings were initiated due to complaints against the judiciary. In 2013, the Austrian Ombudsman Board directed 317 "straight" complaints to the Federal Ministry of Justice, which included both individual complaints and general inquiries by the Ombudsman Board. This number does not include submissions by the Ombudsman Board such as notifications and procedures for transmitting court files and diaries. Of these 317 enquiries, 202 involved the penal service system, 46 involved court proceedings and 62 involved investigative proceedings by public prosecutors; these enquiries have to be seen in relation to the total number of proceedings conducted by courts and public prosecutors in 2013 (i.e. a total of 4,000 cases; even excluding penal service).

126. The OPCAT Implementing Act stipulates that the Austrian Ombudsman Board is also responsible for the examination of alleged human rights violations (a violation of human rights representing the most serious offence). The hitherto existing ex-post monitoring was supplemented with a preventive monitoring and control mechanism in order to guarantee that human rights are protected as comprehensively as possible. As a National Preventive Mechanism according to the OPCAT, the Austrian Ombudsman Board exercises the essential functions of a National Human Rights Institution (NHRI). After its reaccreditation, the Austrian Ombudsman Board, as a National Human Rights Institution, is represented at the International Coordinating Committee of National Human Rights Institutions with a B-status. Due to the constitutional amendments made after the last review, the Austrian Ombudsman Board now fulfils the Paris Principles regarding its broad human rights mandate as well as regarding its cooperation with civil society. For instance, non-governmental organisations account for half of the members and deputy members of the Human Rights Advisory Council which serves as an advisory body to the Austrian Ombudsman Board.

127. Therefore, there are no intentions to establish a new national human rights institution since the independent judiciary plays a central role in Austria with regard to the protection of human rights. In addition, Austria has three academic human rights institutes performing numerous tasks as required by the Paris Principles (e.g. creating a greater sense of awareness through information and (further) training; assessments; research orders): The Ludwig-Boltzmann-Institute for Human Rights in Vienna, the European Training and Research Centre for Human Rights and Democracy in Graz and the Austrian Institute for

Human Rights in Salzburg. These institutes are also provided with public support and public contracts.

With reference to the Committee's previous concluding observations (para. 19), please provide updated information on the availability of clear and reliable data on acts of torture and abuse in police custody and other places of detention, including the excessive use of force. Please indicate if mechanisms have been introduced to collect and process data on the ethnicity of victims and allegations of excessive use of force and unlawful conduct of police officers.

128. We refer to the explanation in paragraph 18.

In light of the Committee's previous concluding observations (paras. 19 and 20), please provide information on the mandate of and investigations undertaken by the Federal Bureau of Anti-Corruption into allegations of torture and ill-treatment committed by law enforcement officials, including the number of complaints of torture or ill-treatment it has received and the actions it has taken in response to such complaints. In light of the Committee's previously-expressed concern regarding a high level of impunity in cases of police brutality, please provide updated information on whether aggravating circumstances outlined in section 33 of the Criminal Code have been invoked in the determination of sanctions for cases of torture and ill-treatment during the period under review and, if so, whether the sentences imposed are commensurate with the gravity of the offences. Also, please indicate whether effective remedies and rehabilitation have been provided to victims, including in the case of Mike B., and provide an update on the results of any investigation, prosecutions and convictions relating to this case. Please provide updated information on progress made by the working group established by the Human Rights Advisory Board in elaborating the concept for the creation of an independent body to investigate ill-treatment by police.

129. The Federal Bureau of Anti-Corruption (*Bundesamt zur Korruptionsprävention und Korruptionsbekämpfung,* hereinafter BAK) is an organisational unit of the Federal Ministry of the Interior which has been established outside the General Directorate for Public Safety (*Generaldirektion für die öffentliche Sicherheit)*. The BAK derives its legal basis from the Federal Act on the Establishment and Organisation of the Federal Bureau of Anti-Corruption (*Bundesgesetz über die Einrichtung und Organisation des Bundesamts zur Korruptionsprävention und Korruptionsbekämpfung,* hereinafter BAK-G). The tasks and responsibilities of the BAK are regulated in section 4 of the BAK-G, the BAK's core responsibility being prevention and fight against corruption on a national level. Therefore, investigations conducted by BAK focus on the area of "official malpractice". Furthermore, the BAK, pursuant to section 4 (1) (15) of the BAK-G, has nation-wide jurisdiction for punishable acts under the Criminal Code, and under criminal by-laws committed by officials of the Federal Ministry of the Interior, so far as they are to be prosecuted by the BAK on the basis of a written order of a court or of a public prosecutor (so-called "expanded jurisdiction"). In order to perform jurisdiction in such cases, section 5 of the BAK-G stipulates that all police authorities and stations which have obtained knowledge of a punishable act in the meaning of section 4 (1) (1) to (15) leg. cit. (which includes, among others, accusations of ill-treatment committed by staff members in the area of responsibility of the Ministry) must notify the BAK in writing without delay, regardless of their obligations to notify pursuant to the Code of Criminal Procedure. This obligation to notify the BAK which is specified by law, is set forth in detail in internal instructions (see internal instruction of 13 June 2013, File Nr.: BMI-OA1300/0017-IV/BAK/2013 and internal instruction of 23 April 2010, File Nr.: BMI-OA1000/0047-II/1/b/2010). An additional obligation to notify the Human Rights Advisory Council or the Austrian Ombudsman Board must be mentioned. The number of total accusations of ill-treatment received by

BAK is recorded and published in the BAK's Annual Report. The numbers from the BAK Annual Report are as follows: for 2010, 434; for 2011, 365; and for 2012, 357 notifications. The Annual Report of 2013 is in preparation. We would like to expressly point out that the numbers provided include only those accusations which were reported to the BAK, and that they also cover other persons than police officers. The majority of investigations relate to accusations of ill-treatment investigated by subordinate police stations, particularly because of their immediate local responsibility. In such cases, reports are requested by the BAK pursuant to section 100 of the Code of Criminal Procedure. In individual cases of accusations of ill-treatment — inasmuch they have to be prosecuted by the BAK by written order of a court or a public prosecutor — the BAK will conduct investigations. In objectively justified cases — e.g. in alleged cases of ill-treatment with grave consequential injuries or in cases in which also organisational impartiality seems necessary, investigations will be directly initiated by the BAK, and the competent public prosecutor will be provided with a relevant incidence report with the request that they be entrusted with the task pursuant to section 4 (1) (15) of the BAK-G.

130. It is not for the Austrian Government to assess the commensurability of sentences imposed by an independent judiciary. So far — in spite of existing obligations to notify in cases where aggravating circumstances pursuant to section 33 (5) of the Criminal Code were applied — there were only a few reports, so that (still) no representative statement can be made about application of aggravating circumstances.

131. Concerning the case of Mike B.: During an operation by the Vienna Federal police on 11 February 2009 in the underground station "Spittelau", police officers made an unfortunate error of mistaking the Afro-American teacher Mike B. for a male person suspected of drug trafficking. Coercive measures were taken by using physical strength as the most lenient measure in terms of the Use of Weapons Act (*Waffengebrauchsgesetz*), because Mr. B. did not comply with the clear instruction to be subjected to an official act, i.e. to provide his identification. In the course of the operation, Mr. B. sustained fractures, bruises and a pulled muscle. On 11 January 2011, the intervening police officer was sentenced to pay a fine for negligently causing grievous bodily harm by final verdict of a criminal court. At present, a civil law action against the Republic of Austria under section 8 Public Liability Act for damages in the amount of 102,463.00 euros is pending. The employing authority saw no reason to initiate disciplinary proceedings in addition to criminal prosecution.

132. In view of the working group of the former Human Rights Advisory Board at the Federal Ministry of the Interior, the Federal Ministry of the Interior and the Advisory Board agreed to establish a "low threshold", easily accessible entry point for complaints outside the scope of the public security administration. Although the Human Rights Advisory Board at the Federal Ministry of the Interior concluded its activities in the course of implementing OPCAT on 30 June 2012, the results of many years of work are now integrated into the new work of the Austrian Ombudsman Board which, since 1 July 2012, operates as National Preventive Mechanism in accordance with OPCAT. This shall guarantee that the principles elaborated so far will not be lost. The Ombudsman Board may follow-up accusations of ill-treatment by the police as an independent administrative monitoring organ, in the same manner as before the expansion of its mandate. The preventive mandate of the Ombudsman Board, expanded by Constitutional law, in addition to visiting all places of deprivation of liberty, and the tasks of an independent authority pursuant to article 16 (3) of the Convention of the Rights of Persons with Disabilities (CRPD) also cover observing and concurrently monitoring the behaviour of organs authorised to issue direct orders and execute coercive measures (see paragraph 19).

133. Finally, it must be stated, that also the newly established administrative courts (see paragraph 29) are competent in specific cases for complaints against the issuance of direct

orders and the execution of coercive measures. Anybody who claims to have been violated in his/her rights by such measures may raise a complaint. As a result of such complaint, a court may determine the unlawfulness or lawfulness of the relevant act of issuing direct orders and executing coercive measures.

134. For further explanation, see the statement in paragraph 19.

Please provide updated information, disaggregated by age, sex and ethnicity of the victims, on the number of complaints, investigations, prosecutions and on convictions and sentences imposed in human trafficking cases during the period under review. Please comment on the information that over half of the convicted traffickers spend 12 months or less in jail and that one third of convicted traffickers receive no jail time. Please indicate whether victims of human trafficking benefit from victim support and recovery measures, including legal and psychosocial support, as well as the creation of livelihood options, when necessary.

135. Updated statistical data on victims of cases of human trafficking are shown in the enclosed Annexes 4 and 5.

136. We would like to point out here — as already highlighted above in paragraph 21 — that it is not for the Austrian Government to assess the commensurability of sentences imposed by the judiciary. We would like to point, however, to the comprehensive training and further education offers for judges outlined in paragraph 12, which is supposed to enhance consciousness and raise awareness about the topic of "human trafficking".

137. Regarding combating human trafficking, Austria applies an approach which is human rights based and victim-centred. Measures to protect victims, in particular identification of presumable victims and their comprehensive counselling, support and social integration are given high priority. Persons will receive support and care as soon as there are reasonable grounds to assume that they were subjected to human trafficking, regardless of whether they are ready to cooperate with the authority or whether they lawfully reside in Austria. The legal position of victims has been strengthened in the reported period through amended legislation: Since 2011 victims and witnesses of human trafficking are granted easier access to the Austrian labour market (section 4 of the Act Governing the Employment of Foreign Nationals, *Ausländerbeschäftigungsgesetz*). Furthermore, since 2013, victims of human trafficking, who, at the time of commission of the crime, resided unlawfully in Austria, are entitled to receive Government support for crime victims (section 1 of the Victims of Crime Act, *Verbrechensopfergesetz*). Third country nationals, who are witnesses or victims of human trafficking are granted a residence permit "special protection" (section 57 of the Asylum Act) to facilitate criminal prosecution or to enable them to raise claims under civil law.

138. In Austria, the Intervention Agency for Victims of Trafficking of Women (hereinafter LEFÖ-IBF) is the competent support agency for victims of trafficking with woman with nation-wide responsibility. LEFÖ-IBF is funded by the Federal Ministry of the Interior and the Federal Ministry for Education and Women and, on the basis of a partnership agreement, acts on behalf of public authorities pursuant to section 25 of the of the Security Police Act. The work of LEFÖ-IBF centres around supporting mental, physical and social integrity of women and girls. LEFÖ-IBF provides the following services: crisis intervention, psychosocial counselling and support, and medical care. In proceedings against human traffickers, LEFÖ-IBF provides the psychosocial and legal process support foreseen by the law. This service is funded by the Federal Ministry of Justice. In the initial phase, Austria is obligated to allow victims of trafficking at least 30 days "recovery and contemplation time". Since the beginning of 2012, victims from third countries who are taken care of by LEFÖ-IBF can be directly admitted to obtain basic social services in emergency situations. LEFÖ-IBF also organises the return of victims who want to return

home. In spite of the tight budget situation, financial subsidies for LEFÖ-IBF have been increased from 480,000 euros in 2010 to 706,740 euros in 2014, i.e. an increase of around 47%. Case numbers since 2010:

- 2010: 233 victims and 9 supported children;
- 2011: 239 victims and 12 supported children;
- 2012: 232 victims and 10 supported children.

139. An evaluation of the data base for process support calculations launched in 2011 shows that process support activities of LEFÖ-IBF have developed as follows:

	Subsidy	*Victims of human trafficking*		
Year	*in EUR*	*Women*	*Men*	***Total***
2011	90,187	78	1	**79**
2012	99,664	102	1	**103**
2013	166,262	118	5	**123**

140. The institution of the City of Vienna "Drehscheibe" offers comprehensive care for minor victims of human trafficking while ensuring the child's best interests. "Drehscheibe" has developed return models jointly with Romania and Bulgaria, ensuring a safe and supported return of minors into their home countries. Furthermore, "Drehscheibe" holds trainings in countries of origin, particularly in Romania, Bulgaria and Moldova. In 2013, an EU-wide hotline for missing children (116 000) was established and advertised with an information card. The working group "child trafficking" of the Task Force on human trafficking has prepared a folder "Child Trafficking in Austria, background information and 'check list' to identify victims of child trafficking for youth welfare agencies, police, public authorities for aliens, embassies/consulates and for the judiciary", which already had to be reprinted several times. Since January 2014, a specific support programme for male victims of human trafficking exists, which is located at MEN, the Health Centre for Men. This contact point for male victims of human trafficking covers both crisis intervention and psychological support, and musters intercultural and gender-sensitive competence for building trust. MEN also provides interpreting resources, safe accommodation (in cooperation with existing institutions), know-how and funds for individual first-aid packages, and offers cooperation with counselling centres to address job, residence and social security issues and process support (in cooperation with existing institutions). Furthermore, a contact point for workers without documents was established, which shall serve to identify victims of human trafficking for the purpose of work exploitation. In order to better identify victims of human trafficking, the National Action Plan provides for comprehensive training measures for all professionals who might come into contact with victims. These trainings are held in close cooperation with non-governmental organisations, such as LEFÖ-IBF, ECPAT or the Ludwig Boltzmann Institute for Human Rights (BIM). In October 2011, a special department was established at the Regional Court Vienna with special jurisdiction for cases of human trafficking, enabling specialized judges to be assigned to such cases.

Please provide updated information, disaggregated by age and ethnicity of the victims, on the number of complaints investigations, prosecutions, convictions and sentences handed down in cases of gender-based violence during the period under review.

141. Concerning the collection of data about proceedings (investigations by public prosecutors, court prosecution and convictions) in connection with gender-based violence, the same fundamental problem exists, as was already explained in paragraph 18, namely

that a general evaluation of relevant specific data is not available in Austria as statistical data from criminal courts are only collected in relation to offences as defined by the Criminal Code. Due to the broad definition of gender-specific violence, such crimes cannot be broken down to individual offences, and therefore their representation through criminal court statistics or through judicial process automation which also requires a break-down to individual offences is not possible as of now. Anyhow, since 28 September 2011, age, sex and nationality of victims can be recorded in the judicial process automation. Since 1 December 2011, such data are transmitted together with police reports and are directly input into the judicial process automation. Such data can be supplemented or amended in all stages of the proceedings. These data have made it possible for the first time to quantify the number of female victims. The data on victims from the judicial process automation were analysed in the Security Report 2012.

Comparing victims and offenders[7] for all crimes

	Victims	*%*	*Offenders*	*%*
Total	**278,160**		**301,100**	
Gender recorded	222,306	100%	286,384	100%
thereof female	86,875	39.1%	62,065	21.7%
thereof male	135,431	60.9%	224,319	78.3%

142. The data show how many persons were designated as victims in the proceedings carried out in the reported period. These data do not reveal how many cases were involved, as one person could have been victim of multiple crimes in one proceeding. On the other hand, multiple entries are possible, if proceedings against different offenders are conducted separately, with the same crime victim being recorded several times.

143. In proceedings conducted in 2012 for crimes against life and limb (sections 75 to 95 of the Criminal Code), 113,549 persons were designated as victims in the judicial process automation. These are more than 40% of all victims recorded. In this area, more victims were involved in criminal proceedings than defendants (112,608 persons). Of all victims of violent crimes, 68,602 were male and 41,441 were female (for 3,506 victims this information was unknown or was not recorded). By that token, men are the majority among victims of crimes against life and limb (62.3%). But men have an even greater share among offenders (78.1%).

Comparing victims and offenders for crimes against life and limb

	Victims	*%*	*Offenders*	*%*
Total	**113,549**		**112,608**	
Gender recorded	110,043	100%	109,920	100%
thereof female	41,441	37.7%	24,051	21.9%
thereof male	68,602	62.3%	85,869	78.1%

144. In proceedings conducted in 2012 for crimes against sexual integrity (sections 201 to 220b of the Criminal Code), 4,035 persons were designated as victims in the judicial

[7] Offenders accord to the number of defendants in proceedings recorded in the judicial process automation in 2012. The same is true for the two following charts.

process automation. 629 thereof were male and 3,169 were female (for 237 victims this information was unknown or was not recorded). This means, that women are the majority among victims of sexual crimes (83.4%), whereas offenders of crimes of this kind are almost exclusively male (92.7%).

Comparing victims and offenders for crimes against sexual integrity

	Victims	*%*	*Offenders*	*%*
Total	**4,035**		**4,905**	
Gender recorded	3,798	100%	4,696	100%
thereof female	3,169	83,4%	341	7,2%
thereof male	629	16,6%	4,355	92,7%

Article 14

In light of the Committee's previous concluding observations (para. 21), please provide statistical data and examples of cases in which victims of torture or ill-treatment have received adequate redress and compensation, including rehabilitation, since the examination of the previous periodic report. In particular, please provide updated information with regard to compensation in the case of Mr. Bakary Jassay, a Gambian national, including whether he has received the 3,000 Euros awarded to him by the court for the damages resulting from his pain and suffering when he was abused and severely injured by a policeman in Vienna on 7 April 2006.

145. By judgement of the Regional Court for Criminal Matters in Vienna, four police officers were pronounced guilty in the matter "Bakary Jassay" on 31 August 2006, and Bakary Jassay was preliminarily awarded a (symbolic) compensation of 3,000 euros.

146. Due to an appeal for nullity by the General Procurator to uphold the law, the Supreme Court cancelled the compensation of 3,000 euros without substitution, because under Austrian law aggrieved persons may become parties in criminal proceedings against one or several tortfeasors who acted as an official body, but have to be referred to civil courts to pursue their claims which can only be enforced by way of Public Liability Act.

147. In the subsequent proceedings under the Public Liability Act, the person aggrieved has so far received compensation to the amount of 110,000 euros. Court proceedings are still pending.

Article 16

In light of the Committee's previous concluding observations (para. 22), please indicate whether additional medical and clinical staff has been hired by the Vienna Communal Health Office pursuant to the approval for hiring more staff in 2009 and whether medical examinations of registered sex-workers are carried out in an environment which safeguards their privacy and preserves their dignity.

148. Medical examinations of registered sex-workers in the STD outpatient clinic of Municipal Department 15 — Communal Health Office of Vienna have at all times been carried out in an environment which safeguards their privacy and preserves their dignity. The relevant question was already comprehensively answered in a letter to the Chairman of the UN-Committee against Torture dated 19 January 2011, and accusations to the contrary were rectified. Concerning staffing, already in 2011, the Chairman of the UN-Committee

against Torture was informed that more staff was hired, and about the plan to hire even more staff in addition to that. At that time, staffing plans already included 8 (specialist) doctors, 9 medical assistants, 3 bio-medical analysts, 2 office workers and 4 social workers for the STD outpatient clinic. The staffing plan for 2013 included 10 (specialist) doctors, 13 medical assistants, 3 bio-medical analysts, 4 office workers and 5 social workers.

In light of the Committee's previous concluding observations (para. 25), please indicate whether the use of net beds as a measure of restraint in psychiatric and social welfare establishments has ceased since the consideration of the previous periodic report. In addition, please provide an update on any measures taken to create a central register in all psychiatric institutions containing detailed information on each instance of recourse to physical and chemical means of restraint which indicates the type of restraint used, reasons for use and its duration.

149. Since the National Preventive Mechanism was established in July 2012, the Austrian Ombudsman Board and the integrated Human Rights Advisory Council have intensively addressed the issue of net beds and cage-like latticed bedsteads. The Austrian Ombudsman Board and the Human Rights Advisory Council have recommended immediately launching an effective programme, in line with international standards, to discontinue the use of net beds and other cage-like beds in the whole of Austria. This recommendation is at present being implemented by Austrian authorities in cooperation with international experts.

150. The recommendation to establish a register in psychiatric hospitals, showing detailed information on each instance of recourse to physical means of restraint as well as indicating the reason for use and its duration was conveyed to all psychiatric hospitals involved in enforcing the Hospitalization of Mentally Ill Persons Act (*Unterbringungsgesetz*), with the request to adapt their documentation systems accordingly. The recommendation was also conveyed to sponsors of institutions subject to the Nursing Home Residence Act (*Heimaufenthaltsgesetz*).

Despite its prohibition in law, please provide information on any measures taken by the State party to eradicate corporal punishment in all settings and on any safeguards and mechanisms available to children in practice. Also, please provide information regarding legislation which prohibits corporal punishment as a disciplinary measure in penal institutions.

151. As a matter of principle, any abuse of a person which causes this person to suffer an injury or health hazard — even if only by negligence — is to be punished pursuant to section 83 (2) of the Criminal Code. This provision also stipulates punishment to anybody who intentionally inflicts physical injury on, or harms the health of, a person. The penalty for the basic crime amounts to up to one year in prison. In a qualified case, e.g. if the crime entailed serious injuries, the range of penalty would be considerably higher. If abuse does not cause any injury, penalty for insult pursuant to section 115 of the Criminal Code could be imposed, it the abuse was exercised in public or in front of several people. These criminal provisions are valid for all persons and professional groups.

152. In addition to these general provisions, section 312 of the Criminal Code contains a special crime definition concerning torturing or neglecting a prisoner by an officer, with penalties of up to two years in prison (in cases of qualified crime commission also higher penalties are possible).

153. In penal service, section 109 of the Penal Service Act (*Strafvollzugsgesetz*) defines penalties for infringements in penal institutions. As disciplinary measure, this provision envisages admonitions, deprivation of benefits and rights, fines and house arrest. Corporeal punishment is not foreseen as a disciplinary measure, and therefore prohibited.

154. Since 2008, the project "Weisse Feder — together for fairness and against violence", an initiative of the Federal Ministry for Education and Women for fairness and against violence in schools has been implemented nation-wide. Core element of the initiative is raising awareness of, and qualifying, teachers, parents and pupils. The education programmes of the Austrian Teachers' College in the area of violence prevention are continuously expanded. In the school year 2012/13, 16,228 teachers took the relevant courses. For the purpose of increasing the pupils' competence in coping with violence and aggression, programmes for preventing violence are implemented in schools. School psychologists with a work focus on violence prevention accompany and counsel pupils and teachers. More information is available from the interim report of the initiative at www.weissefeder.at.

II. Other issues

Please provide updated information on the measures taken by the State party to respond to any threats of terrorism and please describe if, and how, these anti-terrorism measures have affected human rights safeguards in law and practice and how it has ensured that those measures comply with all its obligations under international law, especially the Convention, in accordance with relevant Security Council resolutions, in particular resolution 1624 (2005)[8]*. Please describe the relevant training available given to law enforcement officers; the number of persons convicted under such legislation; the legal safeguards and remedies available to persons subjected to anti-terrorist measures in law and in practice; whether there are complaints of non-observance of international standards; and the outcome of these complaints.*

155. In implementation of international guidelines, Austria has taken legislative measures in the fight against terrorism over the last few years. So, training for terrorist purposes (section 278e of the Criminal Code) — key word "terrorist camps" — was made punishable. In the framework of the Prevention of Terrorism Act 2010 (*Terrorismuspräventionsgesetz 2010*), instruction to commit a terrorist act (Section 278f Criminal Code), instigation to commit terrorist acts and approval of terrorist acts (section 282a of the Criminal Code) — key word "hate preachers" — were newly introduced as statutory offences. In this context also the resolution of the Austrian Parliament of 19 January 2012 concerning safeguarding human rights in combating terrorism should be noted. This resolution requests the Federal Government to continue striving for safeguarding and promoting human rights in the implementation of anti-terrorist strategies.

156. Yet, in Austria there is no special criminal law concerning the fight against terrorism in terms of special exceptions from general principles of criminal law. The statutory offences specifically directed against terrorist activities, such as financing of terrorism, follow international guidelines. A special provision is contained in section 278 (3) of the Criminal Code. According to this provision any acts shall not be considered terrorist acts, which are aimed at establishing or re-establishing democratic conditions and rule of law, or at exercising or respecting human rights. Also in the field of criminal procedure there is no specific anti-terrorist law or similar special legislation. Criminal proceedings concerning terrorist acts are always governed by the Code of Criminal Procedure. Persons accused of terrorist acts are therefore entitled to use the comprehensive means of legal protection contained in the Code of Criminal Procedure, including all procedural guarantees, legal remedies and legal tools.

[8] S/2001/1313; S/2002/1086; S/2003/912; S/2004/876; S/2006/215.

157. Police work to prevent terrorism was facilitated by the amendment to the Security Police Act 2011 (*Sicherheitspolizeigesetz-Novelle 2011*), as expanded danger investigation was extended to the surveillance of individuals (section 21 (3) (1) of the Security Police Act); however, such surveillance is allowed only on the basis of a relevant authorisation by the Officer of Legal Protection pursuant to section 91c (3) of the Security Police Act. Furthermore, authorisation for collecting and processing data to analyse and evaluate information concerning a hazard for constitutional institutions and their capacity to act was defined (section 53 (1) (7) Security Police Act).

158. For police officers, there is an option to attend seminars held by the Security Academy. The Academy offers seminars dealing with terrorism and human rights. The basic trainings of police officers are also organised and held by the Academy. During the "special training on the protection of the Constitution" students are trained in the areas of responsibility of the Federal Office for Protection of the Constitution and Counterterrorism, including the task of fighting terrorism. This, however, does not include any operational training. Operational training of police officers of the Federal Ministry of the Interior is organised by Department II/2 of the Ministry and is held for employees of Federal Office for Protection of the Constitution and Counterterrorism by the Regional Police Directorate Vienna. Relevant training programmes are also offered by MEPA (Central European Police Academy) and CEPOL (European Police College).

III. General information on the national human rights situation, including new measures and developments relating to the implementation of the Convention

Please provide detailed information on the relevant new developments on the legal and institutional framework within which human rights are promoted and protected at the national level, that have occurred since the previous report, including any relevant jurisprudential decisions.

159. Upon entry into force of the OPCAT Implementation Act, the Ombudsman Board was entrusted through an amendment to the Federal Constitution to exercise its new function "to protect and promote human rights". It was made clear in this way that grievances to be examined by the Ombudsman Board can also involve violations of human rights. A violation of human rights constitutes the most serious shortcoming in administration. Reference is made to the further explanations in relation to expanding the mandate of the Ombudsman Board and its function as National Preventive Mechanism (see paragraph 19).

160. Following a comprehensive reform process, the Administrative Jurisdiction Amendment Act 2012 entered into force on 1 January 2014 and fundamentally reorganises the Austrian legal protection mechanisms against individual decisions of administrative authorities. The existing complex structure was replaced by a "slim" two-stage system of administrative court reviews. Among others, the former Independent Administrative Panels and the Asylum Court were replaced by the new administrative courts. The task of these courts is to rule on the alleged unlawfulness of decisions issued by administrative authorities. Administrative courts of first instance enjoy full jurisdiction in matters of law and facts. The (existing) Supreme Administrative Court is still serving as a court of last resort. Judges with the administrative courts of first instance enjoy the same constitutional guarantees as judges with ordinary courts. They are independent and subject to a legal retirement age (65 years) but may otherwise not be removed from office or transferred against their will. The new system makes it easier for potential applicants to pursue their rights before courts and the average duration of proceedings is expected to be reduced significantly.

161. In regard of the establishment of a new criminal law provision concerning the absolute prohibition of torture see paragraph 1.

162. Legal protection in relation to violations of the European Convention on the Protection of Human Rights (ECHR) in court proceedings was expanded by a judgement of the Supreme Court. Pursuant to section 363a of the Code of Criminal Procedure, criminal proceedings have to be renewed upon petition, if a judgement of the ECtHR has ascertained a violation of the ECHR or one of its Optional Protocols by a decision or order made by a criminal court, and such violation could have had a negative effect on the content of the criminal court's decision. According to the case law of the Supreme Court (starting with OGH 1.8.2007, 13 Os 135/06m) such a petition can also be submitted without a judgement of the ECtHR. Violations of fundamental rights under the ECHR that occur in the course of criminal proceedings can therefore be pleaded against directly with the Supreme Court (and without a "detour" via the ECtHR in Strasbourg). Thus, in case of a violation of fundamental rights in the course of criminal proceedings, relief will be provided without delay.

163. In the area of administrative law, protection of fundamental rights was further improved by a judgement of the Constitutional Court. According to this judgement, in cases involving the application of European Union law, the Constitutional Court shall examine whether individuals have been impaired in their rights enshrined in the Charter of Fundamental Rights of the European Union or whether national laws are in violation of these rights (VfSlg. 19.632/2012). The Constitutional Court assumes that the scope of application of European Union law usually applies regularly in asylum procedures. Thus, fundamental rights under the Charter of Fundamental Rights of the European Union make part of the legal provisions applied by the Constitutional Court, whose case-law has hitherto already taken into consideration the ECHR and the related case-law of the ECtHR in Strasbourg.

164. As of 1 January 2015, it will become possible in proceedings pending before a regular court of law to raise a so-called complaint ratione legis with the Constitutional Court, to complain about the unlawfulness of prejudicial regulations or the unconstitutionality of prejudicial laws and to demand their abolition.

165. Furthermore, we refer to the expansion of translation services through the Federal Act amending the Code of Criminal Procedure 1975, the Criminal Records Act 1968 and the Security Police Act (Criminal Procedure *Reform Act 2013 — Strafprozessrechtsänderungsgesetz 2013*), which entered into force on 1 January 2014. Section 56 (1) of the Code of Criminal Procedure now generally grants "the right to interpreting services" to all suspects who do not speak or understand the language of the proceedings. The purpose is to avoid any disadvantage for suspects who do not speak the court's language. The essential new feature consists in translation support no longer being provided only orally, but also in written form as far as important documents of the file are concerned (this includes in any case arrest warrants, indictments and judgements). Thus, defendants are also entitled to a receive within an adequate time frame written translations of important documents from the file, inasmuch as such translations are required to safeguard their right of defence and ensure a fair trial. A further new feature is the provision of cost-free interpreting services, which have to be provided not only for contacts with the legal aid lawyer in a direct context with collecting evidence or with other procedural activities, but also for contacts with a selected or assigned defence counsel. By adding the sentence in section 164 (1) of the Code of Criminal Procedure ("Prior to any interrogation it must be checked whether translation services pursuant to section 56 are required (…)"), a fair trial shall be guaranteed, which ensures unimpaired communication with the defendant.

Penal Service

166. Special importance is attached to matters of human rights not only in the practice of penal service, but also in the basic training and further education of staff members of all professional groups. For this purpose, human rights training was expanded in 2013 for all lecturers, trainers, and inspectors in the field of basic training and further education. This training will be continued and shall in the future also be provided for the middle management level in prisons. In November 2013, a conference on the general topic of "complaint management" was held with prison managers. On that occasion, the decision was taken to issue a guideline for prisons, over and above existing rules, to comprehensively govern the handling of complaints, submissions, etc. Moreover, a basic internal instruction shall contain a "preamble", which addresses human rights aspects and sets of values. There are further plans to establish an electronically supported "complaints register" which shall log all complaints received in prisons, in the Penal Service Directorate and in Federal Ministry of Justice. This instrument shall not only serve for purposes of statistical evaluation, but also be employed for organisational development and quality control (analysis and evaluation of complaints as a resource for information and decision-taking for possible interventions and modifications in prisons). There are specific deliberations ongoing to attach additional special importance to the topic of human rights in the framework of the current basic training programmes (e.g. mandatory teaching and test element, establishing specific course elements/modules in the framework of executive training, etc.). For basic training of operational prison staff a manual on "Fundamental and Human Rights — Equal Treatment and Anti-Discrimination" was introduced. This document is also used when training beginners among prison guards.

Please provide detailed relevant information on the new political, administrative or other measures taken to promote and protect human rights at the national level, that have occurred since the previous report, including on any national human rights plans or programmes, and the resources allocated to it, its means, objectives and results.

167. In its Chapter 05 "Austria in Europe and in the World", the Work Programme of the Austrian Federal Government for the legislation period no. XXV envisages the establishment of a National Action Plan on Human Rights, which will provide a common framework for all existing sectoral action plans in the human rights area and contain supplements and additions specific to the subject matter. The preparatory work for the development of the National Action Plan on Human Rights has been started.

Please provide any other information on new measures and developments undertaken to implement the Convention and the Committee's recommendations since the consideration of the previous report, including the necessary statistical data, as well as on any event that occurred in the State party and are relevant under the Convention.

Information concerning compliance by Austrian armed forces deployed abroad with their obligations under the Convention (as requested in paragraph 27 of the Concluding Observations of the Committee against Torture of 20 May 2010)

168. On 23 November 2011, section 6a was inserted into the Federal Act on Deploying Soldiers on Assistance Missions Abroad (Act on Deployment Abroad 2001 — *Auslandseinsatzgesetz*). Whereas regulations under international law, such as the mandate, confirmed in detail by the international deployment instructions, provide the relevant basis for powers assigned to any deployment abroad, until 2011 a specific national implementation for such powers was missing. For reasons of legal security, a national legal basis for such powers which may interfere with the rights of third parties was therefore created with section 6a of the Act on Deployment Abroad. In consideration of the constitutionally enshrined principle of legality (article 18 (1) of the Federal Constitutional

Act), it was stipulated, that in all cases of deployment abroad the powers and intended means of enforcement must be selected and ordered from an exhaustive list contained in section 6a (2) of the Act on Deployment Abroad.

169. Section 6a of the Act on Deployment Abroad is valid for all persons who are deployed abroad within the scope of competence of the Federal Minister of Defence and Sports pursuant to section 1 (1) (a) to (c) of the Federal Constitutional Act on cooperation and solidarity when deploying units or individuals abroad (*Bundesverfassungsgesetz über Kooperation und Solidarität bei der Entsendung von Einheiten und Einzelpersonen in das Ausland*).

170. Pursuant to section 64 (1) (2) of the Criminal Code, all crimes committed by an Austrian public servant or Austrian functionary abroad are punishable in Austria, irrespective of the criminal laws of the country where the crime was committed. Thereby, Austrian criminal law concentrates on the function, and especially on the actual activity, and not on the employment status of the person concerned (section 74 (1) (4) and (4a) of the Criminal Code).

171. Persons deployed abroad may therefore also be made criminally liable in Austria for their actions. This is true both for a general misuse of powers, the definition of which was established in an ordinance issued pursuant to section 6a of the Act on Deployment Abroad for each specific deployment abroad, and also, in particular, for the crime of torture (section 312a of the Criminal Code).

172. In conclusion, we would like to point out, that in the long years of actual deployment abroad of members of the Austrian armed forces, not a single incident of torture has been recorded.