

Comments by the Austrian Government on the report by  
Nils Muižnieks,  
Council of Europe Commissioner for Human Rights,  
following his visit to Austria

The Austrian Government takes note with interest of the Commissioner for Human Rights' report following his visit to Austria from 4 to 6 June and wishes to assure that it will give careful consideration to his report. Austria would also like to avail itself of this opportunity to thank the Commissioner for the close cooperation during and after his visit.

The report focuses on five major issues, on which Austria wishes to comment as follows:

**National system for promoting and protecting human rights**

**Para 1 of the summary, 7, 8, 33 and 58:**

After a review by the International Coordination Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) in May 2011, the Austrian Ombudsman Board (AOB) was granted again the "B" status.

The AOB is carrying out the essential tasks of a national human rights institute within the meaning of the Paris Principles. Its mandate has been expanded on 1 July 2012 with an amendment to the Austrian Constitution. Since then the AOB and its newly established independent commissions are acting as National Preventive Mechanism to monitor human rights guarantees and international standards, to which the Republic of Austria has committed itself with the ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD) and in view of ratifying the Optional Protocol of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

The constitutional amendment also clarified the mandate of the AOB insofar as its competence to examine alleged human rights violations, which the AOB had already exercised in the past, was explicitly laid down in the Austrian Constitution.

**Para 6 and 57:**

Austria has developed action plans covering the following topics, which are constantly being evaluated, further elaborated and reported on:

- Gender Equality in the Labour Market
- Combating of Human Trafficking
- Implementation of UN-SC Resolution 1325 (2000)
- Integration

- Disability

While a general national action plan should not replace the existing thematic action plans, Austria has taken up the Commissioner's recommendation, which he had already expressed during his visit, to start an exchange among the interested services to explore how an overarching national action plan could complement the existing action plans and thus benefit Austria's national system for the promotion and protection of human rights.

**Para 1 of the summary, 9 and 59:**

Austria acknowledges that Protocol No. 12 to the ECHR can complement the domestic protection against discrimination. In the light of Austria's legal practice, the scope of application of Protocol No. 12 requires further clarification. Upon availability of further case law of the ECtHR or any other information clarifying the scope of application of Protocol No. 12, Austria would reconsider its current position.

**Para 9, 12 and 61:**

The Ombud for Equal Treatment is part of the Federal Chancellery, directly related to the Federal Minister for Women and the Civil Service. The officers of the Ombud are employees of the Federal Chancellery.

The Federal Act on the Equal Treatment Commission and the Ombud for Equal Treatment has always provided for the independence of the members of the Ombud for Equal Treatment in pursuit of their mandate. With its most recent amendment, which entered into force on 1 March 2011, the members of the Ombud for Equal Treatment were also guaranteed freedom from any instructions.

Currently negotiations are held with a view to further amend the Equal Treatment Act and the Act on the Equal Treatment Commission and the Ombud for Equal Treatment. The current draft provides for an extension of the scope of protection across the different discrimination grounds in the area of goods and services.

Austria is regularly reviewing its legal anti-discrimination framework. Therefore, also the Equal Treatment Act has been amended several times during the last years. The federal legislator has consolidated, to the furthest extent possible, all provisions regarding equal treatment in the Equal Treatment Act and the Federal Equal Treatment Act.

The Equal Treatment Act and the Federal Act on the Equal Treatment Commission as well as the Ombud for Equal Treatment are subject to a permanent evaluation process. Furthermore, the ministries in charge are obliged to submit a report on the implementation of the Equal Treatment Act every two years. This report and a consultation process with relevant NGOs allows to critically assess the equal treatment legislation and to identify opportunities for its improvement.

The Ombud for Equal Treatment is also in regular exchange with other Equality Bodies and NGOs in order to guarantee that persons feeling discriminated against are referred to the competent institutions.

Since 2008 Austria provides a comprehensive set of statistical data on the composition of the Austrian population in the statistical part of the Austrian Integration Report, which is based on a sample census by the Statistics Austria. Therefore, Austrian authorities dispose of an up-to-date overview on the number and age of people originating from foreign countries who live in Austria as well as other relevant information. The Ombud for Equal Treatment also collects data on each individual case, which is referred to it. It is therefore capable of identifying the proportion of cases of ethnic discrimination to other cases of discrimination. However, in the light of Article 3 para 1 of the Framework Convention for the Protection of National Minorities as well as for historical reasons, Austria still refrains from surveying its national minorities.

### **Human rights of asylum-seekers**

#### **Para 2 of the summary, 16 and 63:**

The Alien Employment Act, which is also applicable to asylum seekers, establishes certain conditions under which foreigners are entitled to obtain a work permit. It should be noted that these conditions also serve as a protection for asylum-seekers, like e.g. the requirement of equal treatment with Austrian nationals with respect to the conditions of work and payment or the exclusion from the issuance of work permits to employers who previously have illegally employed or exploited foreigners.

The area of seasonal work, which is open to asylum-seekers, comprises a wide field of activities in the tourism sector as well as in agriculture and forestry. Due to the numerous vacancies available in these sectors, various employment opportunities open up for asylum-seekers.

Another important step towards the inclusion of asylum-seekers in the labour market is the recently enacted admission of juvenile asylum-seekers to professional training and employment in sectors that require additional apprentices. This measure offers young asylum-seekers the opportunity to increase their competitiveness on the labour market.

#### **Para 17 and 63:**

With the introduction of free legal counselling, professional and comprehensive legal counselling, covering the asylum procedure, including the proceedings before the Asylum Court as well as the alien police procedure of first and second instance, was made available in Austria. In conformity with Art. 13 of the EU return directive (2008/115/EC) legal counselling does not include the representation before the competent authorities.

In particular the strict profile, which has to be met by legal counsellors, ensures the high standard of legal counselling in Austria. Legal counsellors are required to hold a law degree or at least a four year university degree followed by three years of continuous employment in the field of asylum law or to demonstrate at least five years of continuous employment in the field of asylum law. Furthermore, legal counsellors are independent and free of any instructions and are bound to respect the official secrecy.

With this strong emphasis on high standards, Austria is of the view that the lump-sum payment should not negatively affect the quality of the legal counselling. Therefore the modalities of payment were already made clear to the applicants during the procurement process and it was in particular pointed out that the entire workload as well as translation costs would be covered by a lump-sum. The fee which is currently allocated therefore reflects the NGOs own calculations.

**Para 18 and 64:**

In May 2004, the competence for the entire administration of care and accommodation of asylum seekers was transferred from the Federal Government to the *Länder*. There is no legal basis for the Federal Government to assess the quality of accommodation facilities in the *Länder*. However, regional acts, such as the sanitary regulations, provide for a high standard of accommodation facilities. The implementation of these acts and regulations is subject to the regular Austrian monitoring procedures.

**Para 19 and 65:**

In order to guarantee the best interest of the child, which is a fundamental principle in Austria, the legal counsellor of the minor is also appointed as legal guardian starting with the minor's application for international protection. After the allocation to a regional accommodation facility, the respective public youth welfare authorities in the *Länder* are tasked with representing the minor's interests.

As regards care and accommodation for unaccompanied minors, it should be noted that such minors are usually housed separately from adult asylum-seekers and that male and female minors are also separated. Furthermore, particular attention is paid to the care for unaccompanied minors. Minors receive 24-hours care and psychological counselling. They are taught social skills, including conflict prevention, and are also given the possibility to attend German language and integration courses and to participate in various sports and arts activities.

A current project of the Office for Asylum and the UNHCR entitled UBAUM II, aims at promoting the education and training of legal counsellors and public youth welfare authorities in the *Länder* as well as at developing quality standards for interpreters. The project follows up on its predecessor UBAUM I, which has led to the development of uniform standards for the asylum procedure concerning unaccompanied minors.

**Para 20 and 66:**

In order to grant each asylum-seeker fast access to the asylum procedure in the competent EU member state, the time-limit for an appeal under Dublin II was limited to one week. In Austria each applicant, right at the beginning of the procedure, is provided with information material on the Dublin II regulation and the procedure, including all time-limits as well as legal counselling in a language which the asylum-seeker is able to understand. Therefore, in Austria's view the reduced time-limit does not curtail the legal protection of asylum seekers in a non-objective manner.

The duty of presence, which is limited to 120 hours, merely serves to effectively carry out the first steps of the asylum procedure, such as the medical examination and the identification of the applicant. More importantly, the duty of presence cannot be enforced by the competent authority and violations of the duty do not constitute an administrative offence. Therefore, the security personnel of the reception centres are instructed not to hinder any asylum-seeker from leaving the facilities. A warrant of arrest can only be issued if an asylum-seeker leaves the facilities and as a consequence misses a hearing set by the Office for Asylum and if the absence cannot be justified. It is therefore clear that neither direct or indirect sanctions nor coercive measures are imposed on asylum seekers, who leave the facilities, unless the abovementioned conditions apply.

**Para 62:**

In order to protect the residents of reception centres and to maintain public order, it is not possible to grant general access to them. For this reason, the Austrian regulation governing the access to reception centres provides for a possibility to access them only if a legitimate interest can be demonstrated. This possibility also exists for NGOs.

**Human rights of persons with disabilities**

**Para 3 of the summary, 24, 27, 29, 67:**

As part of the implementation of the CRPD, the Austrian Government adopted in July 2012 the National Action Plan on Disability 2012-2020, which contains guidelines for the Austrian disability policy. The Action Plan was elaborated in a close dialogue with all stakeholders, i.e. civil society organizations. An English version of the plan will be available soon. It will also be published in an easy-to-read version.

In a nutshell, the Austrian National Action Plan on Disability 2012-2020:

- gives an overview of the present situation of persons with disabilities in the various areas of life,
- formulates policy goals, and
- comprises 250 concrete measures with timelines and clearly assigned responsibilities.

While the goals set out in the National Action Plan also have certain implications for the *Länder*, the concrete measures contained therein, due to Austria's federal structure, do not reach beyond the competence of the Federal Government. However, there is a high level of awareness within the competent Regional Governments for the need to guarantee the rights of persons with disabilities as laid down in the Convention. Consequently, some *Länder* have already started to elaborate similar action plans within their sphere of competence. In June 2011, Styria, for example, has initiated the work on a Styrian Action Plan 2014-2020 for the implementation of the CRPD.

### **Para 28:**

The realization of the principle of joint and inclusive education of disabled and non-disabled children to the furthest extent possible, as it is also contained in the National Action Plan on Disability 2012-2020, requires the application of a broad range of instruments to provide enough flexibility to be able to respond to the different individual needs. The public services at the federal, regional and local level are also joining their efforts to develop and broaden the offer of school and education services of certain model regions on a project basis.

A general trend towards a rise in the number of students enrolled in “special schools” was shown through a study commissioned by the Federal Ministry for Education, the Arts and Culture on the projection of school attendance from 2009-2030. Such “special schools” as referred to in the statistics, also encompass integration classes in regular schools, in which students are taught according to the curriculum for special schools.

Among the reasons for the noted rise in the number of children with disabilities attending special schools, the study mentions the expansion of the number of integration classes. This measure has led to an increased availability of places in special schools. Students who until recently would not have had the opportunity to attend school because of their severe disability now have the possibility of being enrolled.

### **Para 73 and 76:**

Austria does its utmost to grant all citizens access to the built environment. One example is the access to services of the judiciary without the help of others. For this purpose since 2005 barrier-free service centres for front-office services (e.g. legalizations, general information concerning the land register and the commercial register) are installed whenever buildings are newly constructed or refurbished. Furthermore, all court houses will successively be made barrier-free. During the planning of major construction projects, local organizations for the rights of persons with disabilities are also always involved.

The Federal Ministry of Justice makes every effort to continually improve the accessibility of the services available on the website [www.justiz.gv.at](http://www.justiz.gv.at). Its relaunch in 2008 put an emphasis on clearer and more comprehensible structures. Particular attention was paid to ensure the accessibility of information and services, which was designed in accordance with the guidelines WCAG 2.0 developed by the Web Accessibility Initiative under the auspices of the World Wide Web Consortium, which aim at enhancing the accessibility of the Internet for everyone, including persons with disabilities.

## **Human rights of women**

### **Para 4 of the summary and 78:**

Austria is taking numerous measures in order to achieve gender equality, including with regard to reducing the gender pay gap. The National Action Plan on Gender

Equality in the Labour Market, coordinated by the Federal Minister for Women and the Civil Service, comprises 55 practical measures which are currently being implemented.

Due to an amendment to the Equal Treatment Act, which entered into force on 1 March 2011, companies over a certain size are now obliged to draw up staff income reports every two years with the aim of reducing discrimination and inequalities by increasing the transparency of payments. According to the graduated plan, all companies with more than 150 employees will have to draw up reports by 2014. In order to facilitate the elaboration of these reports, workshops are offered to the companies and a manual was published.

In addition, employers when advertising vacancies have to indicate the collectively bargained minimum wage and indicate how much more they would be prepared to pay. Violating this rule may lead to a fine of up to € 360.

On the eve of the "Equal Pay Day" on 3 October 2011, a Salary Calculator - [www.gehaltsrechner.gv.at](http://www.gehaltsrechner.gv.at) - was made available to the public on the website of the Federal Minister for Women and the Civil Service. This tool allows to compare the user's salary with an average salary in a specific sector.

With an amendment to the Federal Equal Treatment Act, which entered into force on 1 January 2012, the women's quota set forth in the provisions governing affirmative action for women was raised from 45 to 50%. A new women's quota was also introduced for supervisory bodies of companies in which the state has a share of 50% or more. In accordance with the respective graduated plan, the quota of women in supervisory boards has to be raised to 25% by 2013 and to 35% by 2018.

The federal incentive system for the comprehensive development of child care facilities has been continued and extended. On 27 September 2011, the Council of Ministers adopted an agreement to improve public childcare with a targeted contribution of the Federal Government of € 10 million in 2011 and another € 15 million annually in 2012, 2013 and 2014. This way, increased expenditures at the regional and local level will be partially covered. The agreement also seeks to set incentives to improve and extend opening hours of child care facilities.

Since 1 July 2011 family members of migrant workers, regardless of their gender, are granted full access to the labour market, starting with the first day of their legal residence in Austria. There is no domestic legislation limiting the access to the labour market of family members of migrant workers. Therefore domestic legislation governing the access to the labour market does not cause low salaries and hence is not an obstacle to family reunion in a migration context. Rather, as the Commissioner has noted in his report, female migrants often stay at home due to their child care obligations and therefore face difficulties upon entering the labour market, thus resulting in low salaries.

Efforts are presently under way to prepare for a speedy ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence signed in May 2011.

#### **Para 40:**

Austria is constantly taking efforts to close potential remaining gaps in the protection of women against violence. In Vienna, e.g. a MARAC (Multi-Agency Risk Assessment Conference) project aiming at the improvement of the protection of high risk victims of violence has been successfully implemented since 2011.

The Federal Ministry of Justice is constantly improving its electronic register of court proceedings, which contains data collected by the courts and the public prosecutors. Since the end of 2011, age, gender and nationality of victims as well as the type of offence are collected in every criminal proceeding. The data which is currently collected will make it possible to answer specific questions related to age, gender and nationality of victims as of 2012.

#### **Para 44 and 45:**

Austria's policy is based on the understanding that a clear concept for dealing with the voluntary performance of sexual services allows not only to positively influence working conditions, but also to provide better information, health protection, and support to sex workers as well as to apply control measures. Against this background the identification of possible victims of trafficking is also made easier. For this purpose the Task Force on Combating Human Trafficking set up a Working Group on Prostitution in May 2007, which was commissioned to develop comprehensive policies for the improvement of the situation of sex workers in Austria. While the Working Group's focus lay on measures within the competence of the Federal Government, a second Working Group was established in March 2009, which dealt with measures within the competence of the *Länder*.

In order to improve the identification of victims of trafficking, training of all professionals concerned with this issue is constantly taking place in Austria. The NGO LEFÖ/IBF together with the Federal Criminal Police Office has developed indicators to identify victims of trafficking, which are taught during the training sessions. Furthermore, the "Criminalistic Guidelines", which contain checklists for the identification of victims of trafficking, are available online for the staff of the executive branch.

Another important aspect is the international cooperation with the victims' countries of origin. Austria is currently running projects with Bulgaria, Romania and Moldova, which focus on the identification of victims and which also aim at promoting the collaboration between the competent authorities in these countries.

In the context of the EU Anti-Trafficking Day on 18 October, the Austrian Federal Ministry for European and International Affairs organized public events on this issue in the years 2009, 2010 and 2011. These events were opened by members of the Austrian Federal Government and supported by international organisations such as the UN, OSCE and IOM as well as national and international NGOs. In the context of an initiative led by the Federal Ministry for European and International Affairs, experts of the Austrian Task Force on Combating Human Trafficking also designed the travelling exhibition "Human Trafficking – Slavery of the 21st Century" directed at Austrian students, pupils and teachers. In order to increase public awareness among



young people in Austria, the Federal Ministry for Education, the Arts and Culture also organizes guided tours together with the Federal Criminal Police Office.

In 2010 the Federal Ministry of the Interior established a “Human Trafficking Hotline”. The Hotline is available 24 hours a day and offers citizens the opportunity to anonymously report alleged cases of human trafficking.

Vienna,

3 September 2012