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The progress of the Assembly's monitoring procedure (September 2015-December 2016) and the periodic review of the honouring of obligations by Austria, the Czech Republic, Denmark, Finland, France and Germany

Periodic review report: Austria

Report[1]
Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee)
Rapporteur: Mr Cezar Florin PREDA, Romania, Group of the European People's Party

Summary

All member States of the Council of Europe that are not under a monitoring procedure *sensu stricto*, or engaged in a post-monitoring dialogue, are the subject of a regular periodic review by the Monitoring Committee of the honouring of their membership obligations to the Council of Europe. In this report, the committee presents the periodic review on Austria. The committee concluded that Austria is globally fulfilling its membership obligations to the Council of Europe and, overall, its democratic institutions function in line with the standards of the Council of Europe. However, a number of concerns were raised, and recommendations made in that respect, that deserve the prompt attention of the authorities.

1. See also Doc. 14213 Part 1, Part 3, Part 4, Part 5, Part 6 and Part 7.

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Explanatory memorandum by Mr Cezar Florin Preda, rapporteur

1. Introduction

1. Austria regained its full sovereignty after the Second World War in 1955 and joined the Council of Europe in 1956. It became a member of the European Union in 1995 and is a member of the eurozone and the Schengen Area since 1997. Austria has a population of 8.5 million, 98% of whom speak German.[2]

2. The Austrian Constitution states that Austria is a parliamentary democracy with nine independent federal States (*Länder*)[3] with their own governments. In law and in practice, the federal and State levels are closely interlinked. The constitutional powers are shared between a directly elected President and the bicameral parliament (Federal Assembly) composed of the National Council (*Nationalrat*) and the Upper House of Parliament, or Federal Council (*Bundesrat*), which adopts the federal legislation. The Austrian President, who has extensive powers granted by the Austrian Constitution,[4] plays the role of an impartial mediator. In practice, since 1945, the role of the President has been rather ceremonial, acting mostly upon the request of the government. On 22 May 2016, Dr Alexander van der Bellen, a former member and Chair of the Green Party, was elected as the new federal President with 50.3% of the votes. The Freedom Party candidate, Norbert Hofer, lost by just 30 863 votes. His party challenged the result, arguing that postal votes had been illegally and improperly handled. On 1 July 2016, the Constitutional Court of Austria ruled in favour of this complaint and annulled the result of the second round of the presidential election. In the re-run of the second round held on 4 December 2016, Alexander van der Bellen was elected President of the Republic with 53% of the votes.

3. The 183 members of the National Council are elected for a five-year mandate, through direct elections organised in nine constituencies (from seven to 36 seats each, based on population) corresponding to the country's federal States (*Länder*), which are divided into a total of 43 regional constituencies. There is a closed party-list system with proportional representation applying the Hare method to the regional and provincial constituencies, and the D'Hondt method at the federal level.[5] The electoral threshold to enter parliament is 4%, although a party that fails to reach this mark may still gain representation if it wins at least one seat in a regional election. Women represent 30.6% of the current parliament.

4. The Federal Council (*Bundesrat*) currently has 61 members, indirectly elected at the level of the federal States (*Länder*): it is up to the President of the Republic to determine the total number of members in the Federal Council as well as the allocation of seats to each of the nine federal States. Depending on the ratio between each federal State and the one with the largest population (based on the last census), each State elects at least three representatives and at most 12. The term of office of councillors varies from five to six years, depending on the State they represent; they are partially renewed after the federal State elections. The seats are divided between the parties according to the number of seats they hold in the federal State assemblies, which are determined on the basis of proportional representation. The proportion of women in the Federal Council is currently 29.51%.[6]

5. The last elections for the National Council took place on 29 September 2013. Since then, the country has been ruled by a grand coalition government formed by the centre-left Social Democratic Party of Austria (SPÖ) (52 seats) and the centre-right Austrian People's Party (ÖVP) (47 seats). On 16 December 2013, the federal President, Heinz Fischer, appointed Werner Faymann (SPÖ) Chancellor and entrusted him with the formation of a new government, which was reshuffled in September 2014 after the resignation of ÖVP Finance Minister Vice Chancellor Michael Spindelegger due to a disagreement with his party. Werner Faymann (SPÖ) resigned on 9 May 2016 from his position of Chancellor, and SPÖ leader, after the results of

2. 74% are Roman Catholic and 5% are Protestant; www.austria.info/us/basic-facts/about-austria/government-people.
3. Burgenland, Carinthia, Lower Austria, Upper Austria, Salzburg, Styria, Tirol, Vorarlberg and Vienna.
4. For example, the President appoints the members of the Constitutional Court and numerous other public officials, represents the Republic in international relations, accredits foreign ambassadors, and acts as the nominal commander in chief of Austria's armed forces. See powers here: www.bundespraesident.at/en/functions/rights-and-responsibilities/powers-in-detail/ and www.legislationline.org/documents/section/constitutions.
5. Seat allocation proceeds in three stages. First, regional seats are allocated (D'Hondt method). Second, provincial seat allocations are calculated, the sums of parties' regional seats within each federal State are subtracted from these totals, and seats are allocated accordingly (D'Hondt method). Thirdly, this process is repeated at the national level (Hare method), where party lists are closed. Parties must win at least one seat each in a regional constituency to qualify for seats at the State and national levels. www.electionguide.org/elections/id/2147/.
6. www.ipu.org/parline-e/reports/2018_A.htm.

the presidential elections and the loss of support of his party, which was split, notably over the migration issue. Christian Kern was sworn in as the new Austrian Chancellor on 17 May 2016 and reshuffled the government with three new ministers and a new State Secretary.

6. The 2013 elections saw the consolidation of the (far right) Freedom Party (FPÖ), which gained 40 seats. The party had campaigned to leave the European Stability Mechanism bailout fund for ailing eurozone members. Two new parties entered parliament: the Team Stronach for Austria (FRANK), led by Austro-Canadian businessman Frank Stronach (11 seats), which called for a flat-rate tax, and the Neos-New Austria (NEOS), led by Matthias Strolz (9 seats). The Stronach political faction currently has six members, after five members of the original Team Stronach joined the ÖVP faction.

7. The migration crisis and the surge in asylum seekers sparked tensions in the ruling coalition of Social Democrats and the People's Party, in particular about the country's largest refugee "reception centre" in Traiskirchen which had exceeded its capacity, leading Interior Minister Johanna Mikl-Leitner (People's Party) to build tents as temporary accommodation and to negotiate a deal with the neighbouring Slovak Republic to take up to 500 refugees. To alleviate the crisis, the then Chancellor Fayman proposed a geographical distribution of refugees across Austria. This step has however been fiercely opposed by the People's Party and their State governors (currently heading six of the country's nine federal States): they rejected the idea of a quota for further distribution of refugees or opening more reception centres.[7] I shall elaborate on the issue of refugees later in this report (see section 4.2).

8. This periodic report was drafted in line with Resolution 2018 (2014) and the explanatory memorandum approved by the Monitoring Committee on 17 March 2015.[8] It will review the challenges faced by Austria in the field of the rule of law, democracy and human rights, based on the most recent findings of the monitoring mechanisms of the main Council of Europe conventions, the findings of the Parliamentary Assembly and the Council of Europe Commissioner for Human Rights and, when relevant, the reports prepared by other international instances and representatives of civil society and non-governmental organisations (NGOs). I should underline that Austria is a well-established and vivid democracy, based on a federal system, with a high level of protection of human rights and, overall, well-functioning democratic institutions. In the light of the conclusions of the Council of Europe monitoring mechanisms, I believe that some issues could be debated and further improved in the field of democracy, the rule of law and human rights.

2. Democracy

9. Austria is a federal State composed of 9 *Länder* and 2 357 municipalities, i.e. 15 cities with their own historical statutes (*Statutarstädte*), 198 towns (*Stadtgemeinden*), 759 municipalities (*Marktgemeinden*) and 1 385 villages (*Ortsgemeinden*). Austria ratified the European Charter on Local Self-Government (ETS No. 122) on 23 September 1987. In its Recommendation 302 (2011) on local and regional democracy in Austria, the Council of Europe Congress of Local and Regional Authorities highlighted the existence of a "co-operative federalism", which is a key element of the Austrian federal system, implying that all changes to the powers of local governments are carried out through both formal and informal consultation mechanisms between municipalities, federated States (*Länder*) and the federation.

10. Nevertheless, the Congress urged Austria to consider an overall institutional reform of its federal system in order to ensure its continuing efficiency and acceptance by the population. It recommended that reforms should concentrate, *inter alia*, on modifying the composition and functions of the Federal Council in order to make it better suited to representing *Länder* interests; transforming the system of indirect federal administration to direct *Land* administration; introducing regional administrative courts and modifying the division of powers; allowing municipalities to participate in agreements between the federation and the *Länd*er as foreseen by Article 15a of the Federal Constitution; and taking concrete measures to encourage better representation of women at local and regional level.[9]

11. The Austrian Parliament adopted, in June 2012, a reform of the administrative court system in Austria (which entered into effect in 2014), establishing a federal administrative court as well as an administrative court *(Landesverwaltungsgericht)* in each of the federal States. Complaints against decisions of public authorities at the State or federal levels can now be brought before these administrative courts, with a possibility of appeal to the Supreme Administrative Court or the Constitutional Court.[10]

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7. http://presidential-power.com/?cat=10, July 22, 2015 by Philipp Köker.
8. AS/Mon (2015) 12.
9. Ibid.
10. AS/Mon (2016) 18, p. 3.

12. In the view of the Congress, Austria should also clarify the competences of each level of government (municipalities, federated States and the federation), in order to grant municipalities and *Länd*er larger tax autonomy allowing them to raise an increasing amount of own-source taxes, and make sure that when their competences are extended, this is followed by the allocation of the necessary financial resources.[11]

13. Austria has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207), although Article 117.8 of the Federal Constitution determines that the legislation of the *Länder* can foresee the direct participation of the citizens. The Austrian authorities are encouraged to sign and ratify this additional protocol.

3. Rule of law

3.1. Fight against corruption and money laundering

14. Austria has faced a series of corruption scandals in recent years and suspicions of bribery, even at the level of Austria's central bank. Former Interior Minister and Austrian MEP, Ernst Strasser, was sentenced to a four-year prison term for bribery in 2013 after being caught on camera offering to amend European legislation in return for cash.[12] Three former Telekom Austria managers were sentenced to jail in February for share-price manipulation.[13] In addition, the former Minister of Finance, Karl-Heinz Grasser, is currently the subject of a dozen investigation procedures, including the Hypo Alpe-Adria-Bank case and concerning the privatisation of State-owned companies. According to the 2013 Special Eurobarometer on corruption, 66% of Austrians agree that corruption is widespread in their country. Almost one third of respondents stated that they found it acceptable to do a favour or give a gift in exchange for a public service, which is the only country in western Europe were such a relatively large proportion of the population holds such an opinion.[14] According to the same report, 38% of business representatives think that corruption is an obstacle to doing business, and 41% of them think nepotism and patronage is also problematic in this context.[15]

15. I was informed by the delegation that following the adoption of the Act on the Establishment of an Account Register and the Access to Account, an account register should be operational in October 2016 to facilitate access to bank information for tax purposes and for criminal investigations. Amendments to the Code of Criminal Procedure were adopted in 2016[16] which allow the public prosecutor access to the account register – without a court order. This law also provides for additional possibilities to trace and detect accounts in order to execute fines or implement confiscation decisions stemming from criminal proceedings.[17]

16. In order to comply with the recommendations of the Organisation for Economic Co-operation and Development (OECD) and the Group of States against Corruption (GRECO), new legislation was adopted. In 2012, Austria adopted a new Party Funding Act, revised the tasks of the Audit Office in supervising party accounts, adopted legislation on lobbies (in force since 2013) introducing a compulsory register of lobbying and interest associations and access to this database on the internet, and amended its Criminal Code and Criminal Procedure Code. These changes introduced the crime of *Anfüttern* – the offence of offering, promising or granting an advantage that is not related to a specific official act, such as granting small favours to "sweeten" a relationship with a public official.[18] In the 2015 Transparency International Corruption Perceptions Index, Austria ranks 16 out of 168 countries, with a score of 76/100,[19] compared to 25th in 2012, indicating that the legislative changes are bearing results.

17. Austria ratified the Civil Law Convention on Corruption (ETS No. 174) in 2006, and the Criminal Law Convention on Corruption (ETS No. 173) in 2012 and its Additional Protocol (ETS No. 191) in 2013. In June 2012, GRECO published its Addendum to the Compliance Report that terminated the First and Second

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11. Ibid.
12. This first sentence was later quashed in appeal and the case sent back to the court of first instance for a retrial.
13. www.reuters.com/article/us-austria-corruption-idUSBRE95D0KL20130614.
14. http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index_en.htm.
15. 2013 Eurobarometer Business Survey, in: Annex Austria to the EU Anti-Corruption Report, 3 February 2014, COM(2014)38 final, Annex 20, p. 3.
16. The Criminal Proceedings Law Amendment Act I 2016 (*Strafprozessrechtsänderungsgesetz* I 2016) published in the *Official Law Gazette* I No. 26/2016.
17. AS/Mon (2016) 18, p. 3.
18. COM(2014)38 final, Annex 20, pp. 3 and 5.
19. https://www.transparency.org/country/#AUT. In 2005, Austria ranked 10th in 2005, and 25th in 2012 and 23rd in 2014.

Evaluation Round compliance procedure in respect of Austria.[20] In this addendum, GRECO concluded that 16 of its 24 recommendations to Austria had been implemented satisfactorily or dealt with in a satisfactory manner.

18. GRECO noted that Austria had made further important progress in several areas, such as the establishment of the "Public Prosecution Office for Economic Crime and Corruption", the introduction of a new regulatory framework at federal level for the protection of whistle-blowers and for the movement of federal staff to the private sector, as well as legal amendments aimed at enhancing transparency of stock corporations and foundations. While several improvements mainly concern the federal level and needed to be followed by corresponding measures at the level of federal States, GRECO noted that the federal States had been invited to take action themselves, as recommended, and are currently engaged in a promising reform process.

19. However, GRECO regretted that in several areas the progress achieved so far, if any, is only partial and more determined action is needed to carry through the reforms planned or initiated – for example, the Co-ordinating Body on Combating Corruption, which still lacks a precise mandate and adequate resources, the economic crime units of the police are in need of increased human resources and the regime of parliamentary immunity needs to be changed (see below). GRECO also awaits further developments with regard to the implementation of its remaining recommendations pertaining, *inter alia*, to: the involvement of the *Länder* and the private sector in the overall anti-corruption efforts; the adoption of guidelines related to acts connected to the official functions of a parliamentarians, to their immunity and the conditions to lift it; access to information;[21] regulations on acceptance of gifts by officials (including elected officials, judges and prosecutors), including at the level of *Länder*; adoption of a framework to deal with moves of federal employees to the private sector; the introduction, when necessary, of measures and appropriate mechanisms to prevent conflicts of interest; and stronger control of the declarations of assets and interests to be submitted by parliamentarians and senior members of the executive.[22]

20. The issue of party funding has been hotly debated in Austria. The European Commission noted that the recent discussions on corruption in the context of politics had focused on (alleged) bribery of high-ranking political office-holders and on illegal party funding. Criticism generated by a number of cases of illegal funding of political parties, such as the case of a prominent elected public official who was found guilty of unjust enrichment relating to political interference in exchange for a donation to his party, led to a series of reform acts.[23]

21. In February 2015, GRECO published its Third Evaluation Round Compliance Report on Austria related to Incriminations and Transparency of Party Funding.[24] GRECO concluded at that time that Austria had implemented satisfactorily 12 of the 21 recommendations, and implemented 7 partially. Two recommendations had not been implemented. In March 2016, GRECO adopted its Second Compliance Report on Austria, which was published on 21 October 2016. GRECO concluded that Austria has now implemented satisfactorily or dealt with in a satisfactory manner 16 of the 21 recommendations contained in the Third Round Evaluation Report. Four further recommendations remain partly implemented and one has not yet been implemented.[25]

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20. Joint First and Second Evaluation Round Addendum to the Compliance Report on Austria, adopted by GRECO at its 56th Plenary Meeting (Strasbourg, 20-22 June 2012), Greco RC-I/II(2010)1E addendum.

21. While legal provisions and jurisprudence provide possibilities for the Austrian authorities to obtain data protected by banking secrecy, 38 requests by public prosecutors and law enforcement were subject to restrictive conditions that allow financial institutions to decline to supply information. COM(2014) 38 final, Annex 20, p. 7.

22. Members of the federal and the *Länder* governments, including secretaries of State, have to declare all their assets to the President of the Board of Audit after taking office, every two years while in office, and three months after leaving the government. However, the obligation to submit such declarations is not coupled with a review mechanism to verify the accuracy of the data provided and consequently no sanctions are applied in case of inaccurate data. COM(2014)38 final, Annex 20, p. 9.

23. COM(2014)38 final, Annex 20, p. 4.

24. Third evaluation round: compliance report on Austria: "Incriminations (ETS 173 and 191, GPC 2)", "Transparency of party funding" adopted by GRECO at its 63rd plenary meeting, Strasbourg, 24-28 March 2014, published in February 2015, www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2013)26_Austria_EN.pdf.

25. Third Evaluation Round – Second Compliance Report on Austria, "Incriminations (ETS 173 and 191, GPC 2)" and "Transparency of Party Funding" adopted by GRECO at its 71st Plenary Meeting (Strasbourg, 14-18 March 2016) and published on 21 October 2016, GrecoRC3(2016)1. The Second Compliance report has terminated the Third Evaluation cycle.

22. Further to the ratification of the Criminal Law Convention on Corruption in 2012 and its additional Protocol in 2013, GRECO welcomed a number of amendments to align national criminal legislation with these legal instruments, including, *inter alia*, the incriminations of active and passive bribery involving a public official or a member of an elected assembly and the increase in the level of sanctions for private sector bribery, as well as the recent amendments to Article 153 of the Penal Code narrowing the scope of the offence of breach of trust.[26] GRECO also encouraged the authorities to provide adequate guidance to practitioners on how to deal with instances involving non-material advantages or advantages whose value is difficult to evaluate.

23. With regard to political financing, GRECO welcomed the progress made with the adoption, in 2012, of a new Political Parties Act that became fully effective in 2013. GRECO considered that Austria now has country-wide rules which regulate the sources of income of political parties and (other) campaign participants, which require the disclosure of financial statements and the subsequent supervision by the Austrian Court of Audit, with possibilities to impose penalties in case of a breach of the rules. In addition, the public will have access to these statements since they will be made available on the parties' and the Court of Audit's websites. However, in its March 2016 report, GRECO regretted that the immediate disclosure duty only applies to donations *sensu* stricto and thus does not capture other important forms of support such as sponsoring and advertising.[27]

24. At the same time, a majority of recommendations have received only partial follow-up, for instance concerning the applicable accounting and book-keeping standards, the consolidation of accounts, the availability of financial information to the general public in a timely manner and the range of penalties applicable in case of infringements. Of particular importance is the new control mechanism, which raises several questions as to its consistency and effectiveness, in particular due to the absence of real control powers granted to the Court of Audit. These shortcomings were also pinpointed by the President of the Court of Audit[28] and the opposition, which highlighted that a variety of loopholes still allow political parties to avoid penalties, and to correct false data at any time or even not to submit any financial statements at all without facing penalties. The Court of Audit has to rely on external auditors, appointed by the parties themselves, to assess financial documents.

25. The representative of the parliamentary opposition regretted that no sanctions are in place in case of violation of the law on party funding. He thus considers that further amendments to the Political Parties Act are long overdue.[29] In its March 2016 report, GRECO "very much regretted the absence of any further progress" concerning its recommendation about the need for future legislation (at the level of the Federation and the *Länder*) on the financing of political parties and election campaigns "that provides for adequate accounting standards".[30] Notwithstanding the overall positive results already achieved by Austria in the reform process, GRECO urges the authorities to continue this process and to eliminate the remaining gaps", which is important for the credibility of the financing of political life.

26. Concerning the fight against money laundering, Austria ratified the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 (ETS No. 141) in 1997. It signed the revised Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198) in 2005 but has not ratified it. Austria recently signed an agreement with Switzerland and Liechtenstein to recover taxes generated by properties owned by Austrians and invested in these countries. Austria is not a member of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL).

3.2. Judgments of the European Court of Human Rights

27. At 31 December 2015, 135 applications concerning Austria were pending before a judicial formation.

28. In 2015, the European Court of Human Rights ("the Court") dealt with 248 applications concerning Austria, of which 241 were declared inadmissible or struck out. It delivered eight judgments (concerning seven applications), five of which found at least one violation of the European Convention on Human Rights (ETS No. 5, "the Convention"),[31] which concerned the length of procedure (two violations), the right to a fair trial (one), the right to liberty and security (one), the right to an effective remedy (one) and the right to respect for private and family life (one).[32]

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26. GrecoRC3(2016)1, paragraph 54. The Criminal Law Amendment Act 2015 that entered into force on 1 January 2016.
27. GrecoRC3(2016)1, paragraph 33.
28. See, for example: http://diepresse.com/home/politik/innenpolitik/4925651/Moser_Parteien-machen-ungestraft-unrichtige-Angaben or www.nachrichten.at/nachrichten/politik/innenpolitik/Rechnungshof-Praesident-kritisiert-intransparente-Bilanzen-der-Parteien;art385,1902096.
29. AS/Mon (2016) 18, p. 4 (comments from the opposition).
30. GrecoRC3(2016)1, paragraphs 17-20.

29. There are currently no pending cases under enhanced supervision, while 21 lead cases are being monitored by the Committee of Ministers.[33] Almost half of them relate to violations of Article 6.1 of the Convention (excessive length of procedure). In a welcome development, structural changes to the legal system have been made to address the excessive length of civil or criminal administrative proceedings that was found to be a violation of Article 6.1 of the Convention in *Rambauske v. Austria* and 29 other cases.[34] In the information provided on 1 October 2015,[35] Austria indicated that the Austrian administrative court system had been fundamentally reorganised with effect from 1 January 2014 to significantly reduce the workload of the Supreme Administrative Court and the Constitutional Court of Austria, and address the root causes of the underlying systemic problem of the unreasonable length of proceedings.

30. Another positive development is related to the execution of the European Court of Human Rights' judgment *Frodl v. Austria,*[36] where the Court found the blanket ban on prisoners' voting rights was incompatible with the right to vote enshrined in Article 1 of Protocol No. 3 to the Convention (ETS No. 45). As a consequence, the Austrian Parliament passed the Electoral Law Amendment Act in 2011: no prisoner can now be automatically deprived of the right to vote; a decision on disenfranchisement has to be taken by a judge based on rules set out in law, while taking into account the particular circumstances of the case and having regard to the Convention and the Court's case law.[37]

4. Human rights

4.1. General considerations about the system of protection of human rights

31. Austria has a well-established system for promoting and protecting human rights, as noted by the Council of Europe Commissioner for Human Rights.[38] There have been positive developments with regard to the fight against torture and ill-treatment: Austria ratified the Optional Protocol to the Convention against Torture and Other Inhuman, Cruel or Degrading Treatment or Punishment (OP-CAT) on 4 December 2012, and nominated the Austrian Ombudsman Board as the National Preventive Mechanism against Torture.

32. The Ombudsman Board employs 90 staff members (including representatives of several federal ministries, offices of regional governments and NGOs), with a yearly budget of approximately 1.5 million euros to fund the work of its six regional monitoring commissions (*Besuchskommissionen*) and the Human Rights Advisory Board (*Menschenrechtsbeirat*).[39] The Austrian Ombudsman Board carries out preventive control and inspections of State-run and private institutions where there is, or could be, a restriction of personal liberty, reports on cases of established abuse, makes recommendations and can report to the National Council and the Federal Council.[40]

33. The United Nations Committee on the Elimination of Racial Discrimination raised questions about the independence of the members of the Austrian Ombudsman Board[41] and invited the Austrian authorities to adopt concrete measures to improve their status and ensure that it is fully in line with the Paris Principles (relating to the Status of National Institutions) and to allocate the necessary resources.[42] For the opposition, the compliance of the appointment of the board members with the Paris Principles is a crucial issue.

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31. Extract of Press country profile Austria, January 2016.
32. European Court of Human Rights, 2015 Annual Report, p. 198.
33. See www.coe.int/t/dghl/monitoring/execution/reports/pendingcases_EN.asp?CaseTitleOrNumber=&StateCode=AUT&SectionCode=&HideClones=1.
34. *Rambauske v. Austria*, Application No. 45369/07 and 29 other cases concerning excessive length of administrative proceedings. Final judgment on 28 April 2010.
35. DH-DD(2015)1270, Action report (with appendix) (25 November 2015), Communication from Austria concerning the case of *Rambauske v. Austria*.
36. Application No. 20201/04, judgment of 8 April 2010.
37. See Resolution CM/ResDH(2011)91. https://pace.coe.int/documents/19838/419003/AS-JUR-INF-2016-04-EN.pdf/12d802b0-5f09-463f-8145-b084a095e895.
38. Report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to Austria from 4 to 6 June 2012, CommDH(2012)28, 11 September 2012.
39. CPT/Inf(2015)34, p. 13.
40. ACFC/SR/IV(2016)001 rev, p. 69.
41. Cited in: Austria: Amnesty International Submission to the UN Universal Periodic Review, November 2015, 31 July 2015, EUR 13/2189/2015.
42. https://www.parlament.gv.at/PAKT/VHG/XXV/A/A_01091/imfname_402396.pdf. Mr Scherak (member of the Parliamentary Assembly delegation) from the opposition submitted recently a parliamentary motion to set up a National Human Rights Institute that would serve as Austria's National Preventive Mechanism to fully implement the Paris Principles. See AS/Mon (2016) 18, p. 4 (comments from the opposition).

34. A National Action Plan on Human Rights, which was requested by civil society and international human rights mechanisms, should be adopted by the end of 2016. Its drafting involved the existing networks of human rights co-ordinators of all the federal ministries and the federal States, the Austrian Ombudsman Board, as well as representatives of civil society and the academic community. This action plan should create a general framework for thematic national human rights plans (such as disabilities, integration, violence against women, human trafficking and gender equality in the employment market) and develop measures for the areas that are not yet covered.[43] About 50 projects were also proposed by the "National Action Plan consultation group" covering human rights aspects needing further attention, such as children's rights, the right to education, the fight against racism and xenophobia or business and human rights.[44] There are, however, some concerns that no budget had been allocated for elaborating, implementing and evaluating the plan, and the government has objected to conducting a base-line study.[45] The authorities consider that there is sufficient information about human rights challenges available. They confirmed that no additional resources would be allocated due to financial constraints: the concrete measures proposed in the framework of the National Action Plan will be implemented by the federal ministries and governments of the federal States and funded by their ordinary budgets.[46]

4.2. Refugees and asylum seekers

35. Since 1945, more than two million refugees have come to Austria and more than 700 000 have stayed on.[47] Austria has for the past years figured among the top three European Union countries for asylum applications per capita.[48] In recent months, Austria has been confronted with a massive wave of refugees, asylum seekers and migrants, notably fuelled by the Syrian and other conflicts. The authorities have estimated that, on average, 6 000 persons came to Austria per day. From January to October 2015, more than 60 000 applications for asylum were filed (compared to 28 000 in 2014). In addition, 300 000 refugees that had transited the country were accommodated in temporary facilitates and taken care of by the government during their stay on Austrian territory.[49] Two humanitarian admission programmes launched in August 2013 and April 2014 helped 1 500 Syrian refugees directly from the crisis region, in addition to the regular asylum procedure.

36. Austria does not currently have a general refugee resettlement programme without geographic limitations, as required by the principle of international burden and responsibility-sharing set out in the 1951 Refugee Convention. In its submission to the United Nations Universal Review in 2015, Amnesty International regretted *inter alia* the lengthy asylum procedures and restricted access to the labour market, social benefits and health care. It noted that accommodation for some asylum seekers was poor and unhygienic, in a number of cases amounting to degrading treatment.[50]

37. The authorities indicated that more than 11% of the total number of asylum applications in 2015 were submitted by unaccompanied minors, amounting to 6 100 applications.[51] Access to public schools, free of charge, is guaranteed to refugees and migrants, including unaccompanied migrant and refugee minors, irrespective of their legal status.[52] To promote the integration of refugees, a new form of apprenticeship was under preparation, the so-called "voluntary year of integration".[53] Austria also appointed a school mediator for refugees. The European Commission against Racism and Intolerance (ECRI) suggested that the Austrian principle of integration from the beginning (see below) benefiting the migrants should also be applied to the asylum system.[54] The Secretary General of the Council of Europe also drew attention to the at least 10 000 asylum-seeker minors who have disappeared since the beginning of the crisis,[55] 416 of them in Austria. I note that the Austrian Federal Government adopted a clear and comprehensive "50 Action Points – A Plan for the

43. Presentation by the Austrian authorities at the Human Rights Committee meeting of 21 October 2015.
44. AS/Mon (2016) 18, p. 5.
45. Austria: Amnesty International Submission to the UN Universal Periodic Review, op. cit.
46. AS/Mon (2016) 18, p. 5.
47. www.resettlement.eu/country/austria.
48. AS/Mon (2016) 18, p. 3. See also http://ec.europa.eu/eurostat/documents/2995521/7203832/3-04032016-AP-EN.pdf/
49. Presentation by the Austrian authorities at the Human Rights Committee meeting of 21 October 2015.
50. Austria: Amnesty International Submission to the UN Universal Periodic Review, op. cit.
51. Figures presented by the Austrian authorities at the Human Rights Committee meeting of 21 October 2015.
52. Presentation by the Austrian authorities at the Human Rights Committee meeting of 21 October 2015.
53. This allowed refugees over 17 to enter into an agreement with a non-profit organisation to work in the framework of those organisations to improve their professional and social skills, and at the same time become familiar with Austrian customs, society and values in a structured environment.
54. Austria: Amnesty International Submission to the UN Universal Periodic Review, op. cit.
55. Protecting refugee children: Secretary General calls on member States to take urgent action, press release DC031(2016) of the Secretary General, 3 March 2015.

Integration of Persons entitled to Asylum or Subsidiary Protection in Austria" on 26 January 2016, which should provide for quick and effective integration of refugee children into the Austrian school system. This plan addresses the situation of minor refugees, in many cases unaccompanied minors, who are no longer subject to compulsory education,[56] and calls for the development of conditions to enable this target group to acquire more comprehensive skills.[57]

38. The efforts undertaken by the authorities to cope with the massive arrival of refugees and migrants – which is a real challenge both for the federal State and the federal States – should be lauded. In September 2015, the Austrian Parliament adopted Constitutional Law No. 120 related to the "accommodation and distribution of foreigners in need of help and protection", which allows the State and the *Länder* to require all municipalities to accommodate refugees, thus restricting the Constitution-based principle of local autonomy for a period of three years (1 October 2015 to 31 December 2018).[58] For the time being, 67% of municipalities do not host refugees.

39. The migration crisis will remain an enormous challenge for Austria in the coming months. The country received 660 000 refugees in 2015, among which more than 89 000 filed an application for asylum. The authorities indicated that, from 5 September 2015 to 31 March 2016, 791 826 persons transited through Austria (mainly to reach Germany and seek international protection there), while 48 700 applications for asylum in Austria were made during that period.[59] On 16 September 2015, Austria decided to introduce border controls in accordance with the Schengen Borders Code,[60] after around 50 000 refugees and migrants had entered Austria between 5 and 13 September 2015, without any verification of their identity, and following the introduction of border controls by Germany on 13 September 2015. The authorities added that due to continued structural deficiencies of the external border control management of Greece, on 12 May 2016 the Council of the European Union recommended that Austria maintain border controls at the Austrian-Hungarian and the Austrian-Slovenian land borders (at least).

40. In January 2016, in the light of the continuous flow of refugees, Austria decided – as did some other European countries – to cap the number of applications for asylum so that the number of asylum seekers would not to exceed 2.5% of the population. Austria should accept a maximum of 127 500 asylum seekers in the next four years, including 37 500 refugees in 2016, but this figure is to be seen only as indicative (*Richtwert*).[61] The authorities stated that accepting 90 000 asylum applications per year would clearly overstretch the capacities and resources Austria can offer: police, medical and other staff working at the borders, but also the capacities of the Austrian social security and education systems, not to speak of the labour market, providing for and absorbing a high number of new residents while maintaining social peace and cohesion. The Austrian Government thus decided to introduce in January 2016 a target of 37 500 asylum applications it would accept and process in 2016. In addition, a maximum of 80 asylum applications a day would be accepted at the borders with Italy and Slovenia, and a daily total of 3 200 persons seeking international protection in Austria or Germany would be allowed to enter Austria. The authorities emphasised that up to now, these quotas have never been exceeded and all applications for international protection in Austria have been accepted and duly processed.[62] The question of what would happen in that case remains open.

41. European countries are currently striving to reduce the number of migrants and refugees reaching the European Union through the so-called Balkan route. After the Austrian Minister for Foreign Affairs, Mr Sebastian Kurz, paid an official visit to Serbia on 10 February 2016 and advised the Balkan countries to

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56. In Austria, every child has to attend school for at least nine years, usually from the age of 6 to 15.
57. See www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Integration/Publikationen/Integrationsplan_final_EN.pdf). Further details of this Plan were provided by the Austrian authorities in AS/Mon (2016) 18, pp. 6-9.
58. Official journal *(Bundesgesetzblatt für die Republik Österreich)*, 28 September 2015, 120. *Bundesverfassungsgesetz "Unterbringung und Aufteilung von hilfs- und schutzbedürftigen Fremden* (237/BNR)".
59. AS/Mon (2016) 18, pp. 6-9.
60. The authorities underlined that "the necessity and proportionality of the introduction of these border controls was confirmed by the European Commission" (see Commission Opinion of 23 October 2015, COM[2015]7100final) "to prevent the disruption of public order and security, only persons fulfilling one of the following conditions, in accordance with the Schengen Borders Code, have been allowed to enter legally in Austria: persons (i) in possession of a valid travel document, visa, residence permit etc.; (ii) filing an asylum application in Austria; (iii) wishing to pass through Austria in order to seek international protection in Germany. In AS/Mon (2016) 18, pp. 6-9.
61. Figures provided by the Austrian delegation to the Parliamentary Assembly.
62. In his comments, Mr Scherak, member of the opposition, regretted that the government instituted this cap, and questioned the compliance of this measure with international standards, based on an advisory opinion provided by two legal experts at the request of the government. He noted that similar concerns had been raised with regard to the recent amendment of the Austrian Asylum Act. AS/Mon (2016) 18, pp. 5/6.

curb the flow of refugees,[63] a "Joint Statement" was issued on 18 February 2016 by the heads of the police services of Austria, Croatia, "the former Yugoslav Republic of Macedonia", Serbia and Slovenia. The authorities indicated that "the main purpose of this statement was to co-ordinate the transportation of refugees and migrants, prevent backlogs between the host countries and ensure that each of the host countries has sovereignty over and knowledge of who enters their territories, in line with their obligations under EU and international law. … It grants the right to enter or pass through the host countries only to persons who are actually seeking international protection. It excludes those who state reasons for such entry that clearly do not reflect the wish to seek international protection (e.g. education, work, avoiding military service) or who have been residing in safe areas/countries for longer periods of time".[64] This statement however aroused the concern of the United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, as this agreement appeared to authorise the profiling of people, and limit "entry on humanitarian grounds", solely on the basis of nationality and possession of identification documents, rather than on an individual assessment of whether or not there was a real need for asylum or some other form of international protection of human rights.[65]

42. I have also been informed that the Austrian Parliament amended the Austrian Asylum Act in May 2016,[66] enabling the Austrian Government, upon approval of the Standing Committee *(Hauptausschuss)* of the Austrian Parliament, to issue a decree according to which further asylum applications may only be accepted if the acceptance is necessary to protect certain fundamental human rights of the applicant concerned, including his/her right i) not to be expelled to a country where the applicant faces a risk of torture or cruel, inhuman or degrading treatment or punishment, or a risk to his/her life; ii) not to be expelled to a country which may violate the principle of *non-refoulement*; and iii) to respect for private and family life with special regard to the best interest of the child. Such a decree may only be issued while Austria exercises border controls, and on the condition that there are substantive grounds that an imminent massive influx of refugees and migrants would pose a threat to public order and security. Each asylum application is processed individually, and an effective remedy is available to each applicant. The authorities vowed that "the use of the above-described decree by the Austrian Government for the purpose of maintaining public order and security is a measure of last resort". The Austrian Government stressed that it thereby intended to satisfy its obligations under European Union and international law, in particular the European Convention on Human Rights and the Geneva Refugee Convention.[67]

4.3. Prison conditions

43. The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)[68] published its most recent report on Austria in 2015. In its previous reports, the CPT raised the issue of overcrowded prisons, juvenile detention, health care and ill-treatment. The CPT welcomed the major changes initiated by the Austrian authorities in recent years to ensure that the overall prison population is kept within manageable levels. A system of house arrest of prisoners under electronic surveillance was for example introduced in 2010. A task force on preventive detention, established by the Federal Minister of Justice, published its final report in January 2015, recommending concrete measures to address the growing number of people in preventive detention, as well as its increasing length and frequent imposition for minor offences.[69]

44. The CPT also welcomed the fact that the authorities have started to carry out a comprehensive reform of the detention of juveniles with a view to reducing resort to imprisonment to a strict minimum[70]. It noted that the number of juveniles in Austrian prisons has decreased significantly in recent years.[71] Several pilot projects have been launched to this end, as a result of which the number of juveniles in prisons significantly decreased in recent years (from 5% to 1% of the total prison population) and the number of juveniles held in pretrial and penal detention has declined considerably since 2004. Amnesty International acknowledged that the gradual implementation of recommendations on the pretrial detention of juveniles issued by the Federal Minister of

63. www.balkaninsight.com/en/article/balkan-countries-readying-for-the-reduction-of-influx-of-refugees-02-09-2016.
64. Details on this agreement are given in AS/Mon (2016) 18, pp. 6-9.
65. http://reliefweb.int/report/austria/europemigration-five-country-police-agreement-exacerbates-crisis-and-puts-vulnerable.
66. See *Federal Law Gazette* I No. 24/2016 of 20 May 2016.
67. AS/Mon (2016) 18, pp. 6-9.
68. The visit report and the government response are public and available on the CPT's website: www.cpt.coe.int.
69. Austria: Amnesty International Submission to the UN Universal Periodic Review, op. cit.
70. It should be recalled that Austria was the first country in Europe to establish, in 1922, youth courts, which it abolished in 2000, before restoring them.
71. CPT/Inf(2015)35, paragraph 57: at the time of the visit, there were 96 juvenile prisoners, a third of them on remand.

Justice in October 2013 has had a positive impact, but regretted that alternatives to pretrial detention were not sufficiently used. Children under the age of 18 are still held in adult prisons, and their specific needs are not adequately met.[72] The authorities explained that efforts were being made to accommodate juvenile prisoners at the juvenile prison in Gerasdorf. If this proved impossible, the accommodation of juvenile prisoners was, without exception, separated from that of adult prisoners. The juvenile department was also organised so as to meet the special needs of minors. The CPT welcomed the substantial improvements in detention conditions for juveniles in recent years, and referred to the varied and purposeful activities, and structured programmes for juvenile detainees, including, for example, school or vocational training, computer classes, sports, escorted group outings, or regular individual and group sessions with a psychologist.[73]

45. Staff shortages in the penitentiary system remain a concern, with the inevitable negative impacts on prisoners' access to out-of-cell activities, prompting the CPT to call on the authorities to carry out a complete overhaul of the staffing situation in Austrian prisons. They also raised concerns about lack of adequate medical and mental health care provided to mentally ill prisoners.[74] The authorities pointed out that 100 additional tenured prison staff positions were allocated in 2015, which considerably alleviated the personnel situation in Austrian prisons and led to an increase in purposeful activities for the inmates. Austria had also initiated a reform of involuntary forensic placement *(Massnahmenvollzug)*, which will introduce substantial changes to the structure of forensic placement in specialised prison departments, with respect to management responsibilities, work distribution, personnel deployment and training programmes for staff members.[75]

4.4. Torture and ill treatment

46. The monitoring commissions of the Ombudsman Office carried out some 400 (mostly unannounced) visits to places of detention.[76] [77] An amendment to the Austrian Penal Code incorporated the crime of torture (as required by the CPT in 2009) and came into force in 2013.[78] In its most recent report on Austria, the CPT noted that the information gathered during the visit suggested that ill-treatment and inter-prisoner violence did not constitute a major problem in any of the establishments visited.[79]

47. However, Amnesty International noted that the structural shortcomings in the penal and preventive detention systems have resulted in cases of ill-treatment and grave neglect of detainees. This has been compounded by the lack of a prompt and effective response to such incidents. The CPT stressed the need for the Austrian authorities to remain vigilant and to pursue their efforts to prevent ill-treatment by the police and to ensure that all complaints of ill-treatment brought before the competent authorities are diligently investigated and, where appropriate, followed by the imposition of a suitable penalty. In this context, the committee expressed some doubts as to whether investigations carried out by investigators of the Federal Bureau of Anti-Corruption (BAK) – and even more so those carried out by criminal police officers of the regional police headquarters – against other police officers could be seen to be fully independent and impartial.

48. The CPT expressed concern about the fact that certain long-standing recommendations regarding fundamental safeguards had still not been implemented, pointing to police questioning of (young) juveniles and their signing statements without the presence of a lawyer or a trusted person; or access to and presence of a lawyer for detained persons who could not afford to pay for a lawyer themselves. The authorities stated that the Austrian Juvenile Court Act stipulates that juveniles, unless represented by a defence counsel, must, upon their request, be interrogated in the presence of a person they trust and that they must be informed about this right beforehand.[80]

49. The CPT also reiterated previous recommendations aimed at guaranteeing the confidentiality of conversations between detained persons and their lawyers and ensuring that the right of detained persons to have a lawyer present during police questioning is never denied.[81] The authorities drew attention to

72. Ibid.
73. CPT/Inf(2015)35, paragraph 74 ff.
74. Ibid.
75. AS/Mon (2016) 18, p. 9.
76. This Office visited, *inter alia*, 89 police establishments, 52 prisons, 63 psychiatric establishments and 106 social welfare institutions.
77. CPT/Inf(2015)34, p. 13
78. Acts of torture are punishable by one to ten years of imprisonment and, if the torture has led to the death of the person concerned, by life imprisonment CPT/Inf(2015)34, p.13.
79. CPT/Inf(2015) 4, p. 7.
80. AS/Mon (2016) 18, p. 9.

amendments made to the Criminal Proceedings Law in 2015,[82] which will remove any possibility to infringe the confidentiality of the communication between a lawyer and detained persons or other suspects. These new provisions and an additional amendment to the Criminal Procedure Code should enter into force in November 2016 and will strengthen the right of all suspects, in particular of those in detention, to have access to a defence lawyer.[83]

50. The CPT noted with satisfaction that major police interventions (such as large-scale raids or the policing of mass demonstrations and deportations) continued to be monitored by members of the monitoring commissions of the Austrian Ombudsman Board.[84] The Board is informed of every death, suicide and suicide attempt in police detention facilities as well as of any allegation of ill-treatment. This reporting to the Ombudsman Board does not however apply to similar allegations in prisons and other places of detention. The CPT invited the Austrian authorities to extend the reporting procedure to prisons and other places of detention.[85]

51. Amnesty International expressed concern about the lack of an independent mechanism to investigate allegations of serious human rights violations by law-enforcement officials, with a view, if violations are found, to initiating disciplinary proceedings and referring cases directly to the judicial authorities. In January 2015, the Federal Minister of the Interior announced plans to equip police officers with body cameras to record sensitive police operations, but rejected the use of a compulsory identification system for police officers, which would help to identify the officers allegedly involved.[86] More efforts by the authorities are required in this respect. The authorities indicated that "pursuant to Article 31(2)(2) of the Security Police Act, police officers are under an obligation to present their identification cards upon request" which specify "their identification number, his/her department and its telephone number. In case of a violation of this obligation, a complaint may be filed at the State administrative court".[87]

4.5. Fight against trafficking in human beings

52. Austria ratified the Convention on Action against Trafficking in Human Beings (CETS No. 197) on 12 October 2006 and underwent two rounds of evaluation carried out by the Group of Experts on Action against Trafficking in Human Beings (GRETA).[88] GRETA identified Austria as a destination and transit country for women, men and children trafficked for the purpose of sexual exploitation (which remains the most frequent form of exploitation), forced begging and forced labour. All the identified victims[89] were foreign nationals originating mainly from eastern Europe, Africa and Asia and, in the case of sexual exploitation, an increasing number of men and transgender persons from Latin America, which is an emerging trend.[90]

53. On 30 November 2015, the Committee of the Parties adopted Recommendation CP(2015)14,[91] which highlighted the progress made by Austria in relation to, *inter alia*, the legal framework for combating trafficking in human beings, improved co-ordination of anti-trafficking efforts between the federal government and the federal States (*Länder*), increased focus on trafficking for the purpose of labour, the setting up of a specialised support structure for male victims of trafficking, better compensation for victims of trafficking and enhanced international police co-operation.

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81. CPT/Inf(2015)34, Report to the Austrian Government on the visit to Austria carried out by the CPT from 22 September to 1 October 2014, published on 6 November 2015.
82. Amendment Act I 2016 *(Strafprozessrechtsänderungsgesetz* I 2016), published on 20 May 2015 in the *Official Law Gazette* I No. 26/2016).
83. AS/Mon (2016) 18, p. 10.
84. http://volksanwaltschaft.gv.at/en/preventive-human-rights-monitoring.
85. CPT/Inf(2015)34, p. 13.
86. Austria: Amnesty International Submission to the UN Universal Periodic Review, op. cit.
87. AS/Mon (2016) 18, p. 10.
88. All documents can be found at the following link: www.coe.int/t/dghl/monitoring/trafficking/Docs/Profiles/AUSTRIAProfile_en.asp.
89. According to official data, the number of identified victims of trafficking in human beings and transborder prostitution trade amounted 62 in 2010, 70 in 2011, 103 in 2012, 73 in 2013 and 79 in 2014. In GRETA(2015)19, Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria (second evaluation round), published on 12 October 2015, paragraph 14.
90. Until 2013, about 90% of the identified victims were female. In 2014, the number of identified male victims increased (to 26, i.e. 33% of all victims). In GRETA(2015)19, paragraph 14.
91. See Recommendation CP(2015)14 on the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Austria, adopted at the 17th meeting of the Committee of the Parties on 30 November 2015.

54. At the same time the Committee of the Parties encouraged Austria to develop and maintain a comprehensive and coherent statistical system on trafficking in human beings (while ensuring the protection of personal data) and to adopt, as a matter of priority, a national referral mechanism for child victims of trafficking which takes into account the special circumstances and needs of child victims and ensures that child victims of trafficking across the country benefit from the assistance measures provided for under the convention. It also recommended that Austria ensure better access to an effective recovery and reflection period and all the measures of protection and assistance (as foreseen in the convention). The principle of non-punishment of victims of trafficking for their involvement in unlawful activities should also be guaranteed, to the extent that the victims were compelled to do it.

55. The Committee of the Parties invited Austria to further implement the recommendations made by GRETA and to report back on the measures taken to improve the implementation of the convention in the above-mentioned areas by 30 November 2016.

56. The authorities informed me about the ongoing work to improve the collection of statistical data concerning human trafficking, establish a national referral mechanism for child victims of trafficking, ensure a recovery and reflection period for victims of human trafficking (a possible amendment to the Aliens Act is under consideration), implement the non-punishment principle, including the development of an official interpretation of the non-punishment provision and drafting a guideline for public prosecutors concerning the non-punishment principle (see Article 10 of the Criminal Code).[92] I welcome this work in progress and encourage the Austrian authorities to finalise this process in order to address the recommendations made by the Committee of the Parties and GRETA.

4.6. Combating violence against women and promoting gender equality

57. The Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, "Istanbul Convention") was ratified by Austria in 2013. No monitoring report is available yet. According to the first prevalence violence survey carried out in Austria (2011), 85.6% of women experience psychological violence at some point in their life after the age of 16, whether in private or public spheres. Furthermore, 56.8% of women experience physical violence, 74.2% sexual harassment and 29.5% sexual violence. Austria has set up a women's national helpline, 30 women's shelters, nine intervention centres and six centres for women survivors of sexual violence.[93] Mandatory training of judiciary personnel is provided on gender-based violence. Some recent legislative developments are to be noted, including the 2015 amendment to the Criminal Code explicitly prohibiting forced marriage. The inclusion of a provision in the Criminal Code about displacement for the purpose of forced marriage abroad, and the introduction of the crime of "violating sexual self-determination".[94] A National Action Plan against Violence against Women was adopted in 2014 and should be assessed in 2017.

58. To ensure effective policies for gender equality, gender mainstreaming and gender budgeting are promoted in the federal administration. Progress has been achieved in gender equality in relation to family issues, in so far that the rights of fathers not married to the mother of their children were upgraded,[95] and same-sex couples are now entitled to take a maternity/paternity leave within the first three months of the birth or the first day of adoption, if the child is less than two years old.[96]

4.7. Protection of national minorities

59. Due to its history and the legacy of the Austro-Hungarian Empire, minorities remain an important issue in Austria. Six ethnic groups, so-called "autochthonous minorities", enshrined in the Constitution, who have been living in Austria for generations, are officially recognised in Austria: Croatians (in Burgenland), Roma, Slovaks, Slovenians in Carinthia and Styria,[97] Czechs (in Vienna) and Hungarians (in Burgenland), concentrated in the east and south of the country. Minorities are defined as being Austrian nationals, with a

92. AS/Mon (2016) 18, p. 10.
93. www.wave-network.org/sites/default/files/06%20AUSTRIA%20END%20VERSION.pdf.
94. Presentation of the Austrian authorities at the Human Rights Committee meeting of 21 October 2015.
95. Further to the judgment of the European Court of Human Rights in *Sporer v. Austria*, which said that Article 14 of the Convention (prohibition of discrimination) taken together with Article 8 (right to respect for family life) had been violated, the *Child Custody Law, the Law on Names* and the Austrian Civil Code (pursuant to which the mother of a child "born out of wedlock" had sole custody unless the child's best interest was at risk) were amended. These changes entered into force in February 2013. Austrian law now allows for judicial review into whether the interests of the child are better served by awarding sole custody to the father or joint custody. See Resolution CM/ResDH(2015)19 and AS/Jur/Inf (2016) 04, https://pace.coe.int/documents/19838/419003/AS-JUR-INF-2016-04-EN.pdf/12d802b0-5f09-463f-8145-b084a095e895.
96. Presentation by the Austrian authorities at the Human Rights Committee meeting of 21 October 2015.

non-German mother tongue and their own ethnicity, who live in parts of the national territory[98] which they regard as their domicile, and who fall within the scope of application of the 1976 National Minorities Act (*Volksgruppengesetz*).[99] While the Austrian Federal Constitution provides for the respect and promotion of ethnic groups resident in Austria, the rights of the Croatian and Slovenian minorities are also set forth in the State Treaty of Vienna (1955). The issue of the continuous historical presence of Polish speakers in Vienna remains to be clarified.[100] There are no ethnic statistics collected. However, according to the last 2001 census, there are about 82 500 people who declare that they use a national minority language informally, 49 000 of them born in Austria.[101]

60. Austria ratified the Framework Convention for the Protection of national minorities (FCNM) (ETS No. 157) in 1998 and the European Charter for Regional or Minority Languages (ETS No. 148) in 2001. The regional or minority languages covered under the Charter in Austria are Burgenland-Croatian, Czech, Hungarian, Slovak, Slovenian and Romani.

61. Based on the latest report available, in 2011/2012,[102] the Committee of Ministers issued two resolutions.[103] The Austrian authorities provided their last report on the implementation of the Framework Convention in January 2016.[104] The main issues raised by the minorities were topographical signs, education in minority languages,[105] media in minority languages, funding and the role and place of representative organisations (i.e. advisory councils). It would go beyond the mandate of this report to reflect in detail the issues mentioned in these detailed and extensive reports. I would like, however, to look at the latest developments and highlight some recommendations made by the Committee of Ministers which merit closer attention.

62. In June 2012, the Committee of Ministers, in its Resolution CM/Res(2012)7, highlighted that, overall, inter-ethnic tolerance and understanding appeared improved, including in Carinthia, following extensive efforts by the federal authorities and academia, as well as private initiatives. The authorities continued to develop an advanced and successful system of bilingual primary education in Burgenland and Carinthia which is increasingly attractive also to pupils belonging to the majority population. Moreover, some progress had been made with regard to the availability and quality of minority language television and radio broadcasting.

63. The agreement reached on 26 April 2011 in Carinthia on the long-standing issue of the topographical signs should be welcomed. A memorandum was signed by the State Secretary in the Federal Chancellery, the Governor of Carinthia, mayors, local-heritage societies, political parties and representatives of Slovenian speakers in Carinthia that served as a basis for the new legislative provisions.

64. The Austrian Parliament also adopted amendment No. 46/2011 to the National Minorities Act in July 2011. This amendment contains a list, incorporated under constitutional law, of those municipalities in the federal States of Burgenland and Carinthia where bilingual topographical signs and inscriptions must be provided. In practice, there are sometimes even trilingual signs. Moreover, constitutional law provisions ensure that the Croatian, Slovenian or Hungarian languages may be used as an official language, in addition to German.[106] The Constitutional Court stated in many decisions that when 10% of the population speaks

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97. Slovenians in Carinthia and Styria are explicitly mentioned in Article 7 of the State Treaty for the Re-establishment of an Independent and Democratic Austria (Vienna, 15 May 1955), which says that “Austrian nationals of the Slovene and Croat minorities in Carinthia, Burgenland and Styria shall enjoy the same rights on equal terms as all other Austrian nationals, including the right to their own organisations, meetings and press in their own language”.

98. The Austrian legal system requires that the settlement of national minority is of a certain density, with continuous settlement history in a specific territory over a minimum period of three generations. One cannot speak of continuity in settlement if there is a rolling minority, i.e. that there are new inflows time and again, while the earlier arrivals either become assimilated, return home or move on. ACFC/SR/IV(2016)001 rev.

99. *Federal Law Gazette* No. 3 96/1976.

100. CM(2012)142, p. 10. When Polish nationals arrived in Vienna, they were considered as subjects of the Austrian monarchy and not as immigrants. The authorities consider that the overwhelming majority of Polish speakers arrived in Vienna only recently, and that the requirements for setting up an Advisory Council for the Polish minority are therefore not met. Some representatives of the Polish speakers maintained however that there is evidence of a long-standing presence of the Polish language in Vienna.

101. ACFC/SR/IV(2016)001 rev, p. 19.

102. Committee of Experts' evaluation report (3rd cycle) adopted in June 2012, ECRML(2012)7. The next State Periodical Report (4th cycle) was expected in October 2014.

103. Namely CM Resolution (3rd cycle) on the implementation of the Framework Convention, adopted in June 2012, CM/ResCMN(2012)7.

104. Last State Report (4th cycle) received in January 2016, ACFC/SR/IV(2016)001 rev.

105. There are minority schools and kindergartens in Burgenland, Carinthia and in Vienna.

106. CM(2012)142, paragraph 25.

Slovenian or Burgenland-Croatian, the language should be considered as official. The new law has increased the threshold to 17%, leading to limitations for the use of Slovenian and Burgenland Croatian in some municipalities.[107] The fact that this agreement has now become constitutional law makes it impossible to challenge it through the Constitutional Court.[108]

65. In 2012, there was an attempt to review and amend the National Minority Act. The authorities intended to give a new definition of a minority (which would no longer be based on ethnicity, but rather on the language and the connected culture) and to modernise the advisory councils, with a view to making them more participative and increasing their autonomy. The draft law also foresaw the creation of a forum of minorities and the appointment of all members of the advisory councils, their presidents and vice-presidents by the Federal Chancellor, which led the representatives of the minorities to fear that such a move would mean a weaker representation of minorities. Also, under this reform, the administrative court would no longer be able to make a judicial review and the advisory councils would only have an advisory function. No agreement could be reached to finalise the draft law.[109]

66. Vienna is not covered by a specific minority law which would allow adequate protection and promotion of these languages, especially in the field of education, where the demand is particularly high. There are no plans to establish a minority school act for the traditional regional or minority languages in Vienna, in particular with respect to the Czech minority.[110]

67. Although it is very rare that acts of discrimination affecting national minority members are reported to official entities, the Austrian authorities have launched, at the levels of the Federation and the federal States, a number of awareness-raising activities, including for the police and the judiciary, that are to be welcomed.[111]

68. Financial support is granted to national minorities at federal and regional level. The funds provided by the Federal Chancellery amount to 3.9 million euros per annum. However this amount has remained the same since 1995, leading to a decrease of 40% in real terms,[112] despite additional yearly project-oriented funding allocated by federal or regional authorities.[113] This has resulted in some advisory councils alleging that the existence of national minorities is threatened in Austria. In this respect, it should be highlighted that collection of reliable data, in full compliance with international standards, as suggested by the Advisory Committee on the Framework Convention for the Protection of National Minorities, would be helpful to prepare a comprehensive policy in this regard.

69. At the same time, the Committee of Ministers expressed some concern about continuously reported racist or xenophobic incidents and statements, including from within the political spectrum, that incite inter-ethnic hostility, while legal remedies against discrimination and criminal law provisions sanctioning racial or ethnically motivated violence are rarely or insufficiently applied.[114]

70. In line with the resolutions of the Committee of Ministers, we encourage Austria to immediately take any action required to engage in comprehensive and effective consultation with national minority representatives and amend the national minority legislation with a view to ensuring consistent and inclusive protection of national minority rights throughout Austria, and to ensure the effective and consistent enjoyment throughout Austria of the linguistic rights of persons belonging to national minorities and introduce due flexibility when applying thresholds in relevant national legislation to avoid arbitrary distinctions being made. In addition, we

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107. For example, in some places where Slovenian could in theory be used according to the law, this was no longer compulsory under constitutional law.
108. CM(2012)142, paragraph 30.
109. Ibid, paragraphs 14-16. For further details on the position of the representatives of the minority and a number of Advisory Councils, refer to the Appendix to the State Report (4th cycle) received in January 2016, ACFC/SR/IV(2016)001 rev.
110. Since the break-up of Czechoslovakia there is only a Slovak School in Vienna and not a Czech one. In addition, representatives of the Burgenland-Croatian speakers pointed to the fact that approximately one third of the speakers actually live in Vienna (commuting). CM(2012)142, paragraph 63.
111. A detailed list of activities, including in the city of Vienna, carried out by the Equal Treatment Commission and the Equal Treatment Ombudspersons Office can be found at ACFC/SR/IV(2016)001 rev, pp. 33-36.
112. Estimation provided by the Slovene minority, in ACFC/SR/IV(2016)001 rev, appendix, p. 138.
113. ACFC/SR/IV(2016)001 rev, p. 49. €600 000 in 2014 granted by the Federal Ministry of Education and Women's Affairs, €100 000 a year by the federal State of Carinthia, almost €600 000 by Burgenland in 2014 and €23 000 granted by Upper Austria for a Roma-Sinti project.
114. See the decision of the Constitutional Court of 13 December 2001 (on bilingual topographical signs in Carinthia) as well as of 4 October 2000 (on the use of the Slovenian language with local authorities).

recommend that the current system for the appointment and composition of the advisory councils for national minorities be reviewed so as to substantially broaden their competencies and ensure that they are effectively consulted on all issues that affect them.

4.8. Roma population

71. It is estimated that only 3 000 to 5 000 Roma belong to the autochthonous Roma minority. The total number of Roma living in Austria, including those originating from the ex-Yugoslav countries who have arrived since the 1960s, has been estimated to be between 20 000 and 100 000, depending on the sources and calculation method.[115]

72. A Roma Strategy was launched in 2012. An advisory council for the Roma minority has been set up as a consultation partner for the federal government concerning issues related to autochthonous Roma. Efforts have been made to provide learning assistance to Roma children in Burgenland and Vienna and Roma school mediators have been set up.[116] Civil society representatives have criticised the fact that, in their view, the Dialogue Platform has no clear goals, is inefficient and is still in the phase of stock-taking and data collection.

73. Despite some notable exceptions, people belonging to the Roma minority continue to face substantial difficulties, particularly as regards access to education and formal employment. ECRI has pointed to the role of traditional media, which often publishes clearly racist content and discloses the ethnic origin of suspects when reporting criminal acts, thus stirring up resentment against Roma and other vulnerable groups.[117]

74. In its June 2012 resolution on the implementation of the Framework Convention of National Minorities,[118] the Committee of Ministers recommended designing, implementing and regularly monitoring, in close consultation and co-operation with Roma representatives, comprehensive long-term programmes to promote the effective equality and participation of people belonging to the Roma minority in all spheres of public life. As Roma are still particularly vulnerable, ECRI has decided to focus its 5th report on this minority. In 2012, Austria introduced into its broader social inclusion policies an integrated set of policy measures focusing on Roma, which target the fields of education, employment, housing and health.[119] A National Roma Contact Point was established at the Federal Chancellery (in addition to the Advisory Council for the Roma Minority, which was established in 1995), which brought together representatives from the Roma community and the federal, regional and local levels to specifically discuss the implementation of the integrated set of policy measures.[120]

4.9. Fighting discrimination, racism and xenophobia

75. Due to its central position in Europe, Austria has a long history of migration: 1.6 million migrants were living in Austria in 2013 (19.4% of the global population), 566 700 persons originating from European Union countries, 533 100 from the former Yugoslavia and 268 400 from Turkey. Integration has only recently become a political priority at the federal level.

76. Despite an elaborate legal and institutional framework, several criminal law provisions only cover national-socialist motivated, and not all racist motivated acts. In addition, the high number of anti-discrimination acts and institutions reportedly undermines their effectiveness. The Equal Treatment Act of the Federation does not contain a clear prohibition of all discrimination, nor does it place public authorities under

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115. The Council of Europe Special Representative for Roma Issues indicated an average estimation of 35 000 (i.e. between 20 000 and 50 000) in 2012 (see www.coe.int/en/web/portal/roma). The Austrian authorities referred to an estimation of between 80 000 and 100 000 in their 4th report on the implementation of the Framework Convention for the Protection of National Minorities of 2016 (see ACFC/SR/IV(2016)001 rev, p. 19), while the European Commission estimated the total number of Roma living in Austria at 50 000 (see Commission Staff Working Document, National Roma Integration Strategies: A First Step in the Implementation of the EU Framework, document SWD(2012)133final, p. 45). AS/Mon (2016) 18, p. 11.

116. ACFC/SR/IV(2016)001 rev, pp. 100-101.

117. In Salzburg, during the 2014 local election campaign, although research had already concluded that it was unlikely that alleged “begging mafia” structures existed, the ongoing discussion resulted in the setting up, in August 2014, of a special police unit to investigate the issue, which concluded that there was no such organisation, CRI(2015)34, paragraph 38.

118. Resolution CM/ResCMN(2012)7 on the implementation of the Framework Convention for the Protection of National Minorities by Austria (adopted by the Committee of Ministers on 13 June 2012 at the 1145th meeting of the Ministers’ Deputies).

119. Further details were provided by the government in its Viewpoint regarding the ECRI Report on Austria (5th Monitoring cycle, 16 June 2015, CRI(2015)34), p. 63.

120. AS/Mon (2016) 18, p. 11.

the duty to promote equality. Outside the field of employment, it only prohibits discrimination on the grounds of gender and ethnicity. As mentioned previously, the Ombudsperson for Equal Treatment is not fully independent and does not have the power to provide legal aid and represent victims in court proceedings.[121] Austria has not ratified Protocol No. 12 to the European Convention on Human Rights (ETS No. 177). The authorities consider however that the independence of the Ombudsperson for Equal Treatment increased after the reform of the Equal Treatment Act in 2011, which included *inter alia* the "explicit exemption from instructions for the Ombudsperson, as well as an exemption from the so-called right to supervision *(Aufsichtsrecht)* of the Federal Chancellor. Thus even as the Ombudsperson remains, from an organisational point of view, part of the Federal Chancellery, it acts as an independent entity, with the Ombudspersons being fully independent in their work". Pursuant to the Equal Treatment Act, people who feel discriminated against have the possibility to obtain advice as to their actions and rights by the Ombudsperson for Equal Treatment. The Ombudsperson may also intervene, as a third party, in support of a plaintiff or defendant in court proceedings.[122]

77. The findings of various monitoring bodies and NGOs concurred to highlight a rise in racism and xenophobia in Austria, which is a worrying trend:

– according to Amnesty International, foreign nationals and members of ethnic minorities appear to be more at risk than Austrian citizens of being suspected by the police of having committed a crime.[19] Austria does not systematically collect and publish comprehensive and coherent statistics on racist incidents or on the government's response to such incidents.[20] Furthermore, there is a significant lack of information on the application in practice of existing reporting and investigation standards for law-enforcement officials, and of legislation to combat racism, hate crime and hate speech, in particular Article 33 (1) lit. 5 and Article 283 of the Austrian Penal Code;[123]

– ECRI noted that antipathy towards migrants has considerably increased in recent times, including in the political environment. A new generation of right-wing extremist organisations has appeared and others have radicalised. There were several cases of racist attacks reportedly carried out by groups of perpetrators. Certain media publish clearly racist content and do not respect the Press Council's decisions;

– the Service for the Protection of the Constitution has reported that a new generation of right-wing extremist organisations has appeared, which present racist views through "more diplomatic propaganda" and aim to recruit young people from universities and student fraternities *(Burschenschaften);*[124]

– hate speech on online forums is not systematically monitored, but generally considered to be on the rise.[125] The number of cases denounced on a police website for reporting Nazi activities rose to 1 900 in 2015 (compared to 338 in 2011). The authorities give three reasons: better information about this reporting, the possibility of anonymous reporting – but also a rise in the number of relevant acts.[126]

78. Allegations of racial profiling and misconduct on the part of police officers towards people with migration backgrounds were also noted. ECRI has recommended that the Austrian Ombudsman Board fully investigate such allegations.[127]

79. The Commissioner for Human Rights has underlined that the gaps in the existing legal and institutional framework to combat discrimination, racism and xenophobia could have been resolved by the ratification of Protocol No. 12 to the European Convention on Human Rights (providing for a general prohibition of discrimination). Austrian anti-discrimination legislation is scattered over numerous federal and State laws and provides for varying degrees of protection for different grounds of discrimination, resulting in confusion, legal uncertainty and potential injustice, in particular in case of multiple discriminations.[128] I was told that the

121. CRI(2015)34, p. 9.
122. AS/Mon (2016) 18, p. 11.
123. Austria: Amnesty International Submission to the UN Universal Periodic Review, op. cit.
124. CRI(2015)34, paragraph 34. ECRI provides further details about the strong ties between student fraternities and right-wing extremists and right-wing politicians (many FPÖ politicians being fraternity members), the ongoing radicalisation among the members of the umbrella organisation German Fraternity (*Deutsche Burschenschaft)*, see paragraph 35.
125. CRI(2015)34, paragraph 51.
126. Ibid., paragraph 36.
127. Ibid., paragraph 77.
128. CommDH(2012)28, p. 5.

Austrian Federal Government has undertaken to make an evaluation of its equal treatment law and instruments as part of its 2013-2018 work programme,[129] which should provide an opportunity to address the shortcomings identified by Council of Europe bodies.

80. Special reference should be made here to the use of racially inflammatory or xenophobic discourse by political parties or their representatives. ECRI deplored that many hate-motivated public statements have been made, in particular during election campaigns. The far-right party FPÖ (Austrian Freedom Party) is openly hostile to historical ethnic, religious and linguistic minorities, migrants, refugees and asylum seekers[130].

81. In 2012, the Committee of Ministers invited the authorities to reinforce ongoing efforts to address racism and xenophobia in society, including by strongly condemning all manifestations of intolerance and populism in the political arena and the media, further raising awareness on the available legal remedies, and strengthening the capacity of the Ombudspersons for Equal Treatment and the Equality Commission in order to more effectively combat discrimination in society.[131]

82. ECRI also considered that the authorities should apply the law in a more vigorous way to curtail the activities of organisations that promote racist ideology and systematically counter and condemn hate speech, in particular during election campaigns.[132] Action also needed to be taken against student fraternities that keep alive such ideology in academia. In addition to applying criminal law vigorously, the public funding of racist organisations, including political parties, should be discontinued.[133] The ratification of the Additional Protocol to the Convention on Cybercrime would considerably improve the Austrian authorities' response to cyber hate speech.[134]

83. Vigorous measures should be taken to eradicate the spreading of racist and xenophobic discourse. In this context, I welcome a number of positive steps that were taken recently to address issues, *inter alia*: the adoption of a new article in the Criminal Code that prohibits incitement to violence and hate speech against ethnic and religious groups; the re-establishment of the Austrian Press Council in response to an ECRI recommendation; the establishment of a task force on diversity by the Ministry of Justice in January 2015, which explicitly seeks to address allegations of institutional and structural racism in the judiciary.[135]

84. The authorities confirmed that the adoption of the "Criminal Law Amendment Act *(Strafrechtsänderungsgesetz)* in 2015, which entered into force on 1 January 2016, improved the possibilities for prosecution of hate speech, thereby implementing recommendations by ECRI, among others. Thus, an amendment to Section 283(1) ensures that incitement to hatred not only against groups but also against a specific person is now a punishable offence. Moreover, incitement to hatred or violence against "foreigners" or "non-Austrians" is now punishable by law. This Act should also pave the way for the ratification of the Additional Protocol to the Convention on Cybercrime, for which legal analysis is now being undertaken.[136]

85. In 2015, the Islamic Law (which actually amended the 1912 Islam law[137]) was adopted and raised some controversy. This law provides for State protection for Islamic holidays, the right of religious societies to provide Islamic spiritual care in public hospitals and other institutions and establishes regular university studies in Islamic theology. At the same time, it bans foreign funding of Islamic religious societies and reportedly provides for the dissolution of a considerable number of associations. It also contains a provision for the mandatory translation of religious texts, which is valid for all religious communities, Islamic and other.[138]

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129. AS/Mon (2016) 18, p. 12.
130. At the time of the preparation of the ECRI report, the Alliance for Austria's Future (BZÖ) was also mentioned by ECRI. This party was created in 2005. It took a liberal turn after its founder and leader Jörg Haider died in a car accident in 2009. It has not played a significant role since then.
131. CM/ResCMN(2012)7.
132. CRI(2015)34, p. 10.
133. Ibid., paragraph 43.
134. Ibid., paragraph 41.
135. Austria: Amnesty International Submission to the UN Universal Periodic Review, op. cit.
136. For more information, see the Response given to the ECRI Response, pp. 52ff. AS/Mon (2016) 08, pp. 11-12.
137. This law was adopted by the Austro-Hungarian Empire after the annexation of Bosnia-Herzegovina in 1908 and provided for the recognition of Islam as an official religion in Austria, allowing Muslims to practice their religion in accordance with the laws of the State.
138. Presentation by the Austrian authorities at the Human Rights Committee meeting of 21 October 2015.

86. In this respect, ECRI recalled that freedom of religion needs to be fully guaranteed (Article 9 of the European Convention on Human Rights) and that the authorities need to ensure that Muslim communities are not discriminated against as to the circumstances in which they organise and practice their religion. The European Commission for Democracy through Law (Venice Commission) has stated that a blanket prohibition on all foreign funding was arguably unreasonable and not necessary in a democratic society. Also, consideration should be given to prescribing a range of sanctions of varying severity, before taking the harsh step of liquidating a religious organisation, which should be a measure of last resort. The authorities should ensure that any restriction and differential treatment with regard to the practice of Islam is in line with the case law of the European Court of Human Rights.[139]

4.10. Discrimination against lesbian, gay, bisexual and transgender (LGBT) persons

87. Even though there are no official statistics on homophobic and transphobic incidents,[140] discrimination on the basis of sexual orientation in access to goods and services, as well as legal inequalities between registered same-sex partnerships and marriages, remain persistent. Recently, progress was recorded in this area: the courts have annulled several discriminatory provisions and preconditions for legal gender recognition of transsexual persons were relaxed. Asylum can be granted for prosecution on the basis of sexual orientation and gender identity and registered partners can benefit from family reunification. Austria created a special regime of registered partnerships for same-sex couples in 2010. In 2015, it legalised the second parent (joint) adoption in same-sex couples (registered or not) without terminating the child's legal bond with his or her biological parent, after amendments made to the Civil Code and the Registered Partnership Act in 2015.[141] In January 2015, the Constitutional Court declared illegal the ban on same-sex couples adopting children. Since 1 January 2016, same-sex couples have the right to adopt non-biological children.[142]

88. In the cases *X and Others v. Austria* and *E.B. and Others v. Austria*, the European Court of Human Rights held that Austria's refusal to delete convictions from gay men's criminal records for homosexual relations with consenting male adolescents violated the Convention.[143] In execution of these cases and other case law of the European Court of Justice, a Federal Law on the Deletion of Verdicts based on several articles of the Criminal Code entered into force on 29 December 2015. This law ensures that all verdicts for homosexual relations possibly discriminating against gay men can be removed from the criminal records.[144] This is a positive example of Austria's execution of the Court judgment.

4.11. Other human rights issues

89. Concerning the situation of disabled persons, the general right to freedom from discrimination on the basis of a disability is set out in Article 7.1 of the Federal Constitution. Austria has ratified the United Nations Convention on the Rights of Persons with Disabilities, including its Optional Protocol. Data obtained in 2008 show that about 20% of people living in private households in Austria reported a limiting illness or disability lasting for more than six months, which amounts to about 1.7 million people. Reportedly, the protection of the human rights of people with disabilities suffers from fragmentation as a result of the shared responsibility for policies in this area between the federal government and the federal States.[145]

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139. CRI(2015)34, paragraphs 69 and 70.
140. Ibid., p. 9.
141. Following the judgment of the European Court of Human Rights in *X. and Others v. Austria* (Application No. 19010/07, judgment of 19 February 2013 (Grand Chamber)) where the Court concluded that there had been a violation of Article 14 of the Convention (prohibition of discrimination) taken in conjunction with Article 8 (right to respect for family life) on account of the difference in treatment of the applicants, two women living in a stable relationship, in comparison with unmarried different-sex couples in which one partner sought to adopt the other partner's child. The women had complained about the Austrian courts' refusal to meaningfully examine one of the partners' requests to adopt her partner's son, because Austrian law did not allow for such a possibility without severing the biological mother's legal ties with the child. On 11 December 2014, the Austrian Constitutional Court annulled the ban on joint adoption for same-sex partners, requiring the parliament to amend the law accordingly by 31 December 2015. Within less than six months of the judgment, the Law amending the Civil Code and the Registered Partnership Act entered into force. Resolution CM/ResDH(2014)159) and https://pace.coe.int/documents/19838/419003/AS-JUR-INF-2016-04-EN.pdf/12d802b0-5f09-463f-8145-b084a095e895.
142. AS/Mon (2016) 18, p. 13.
143. *X and Others v. Austria*, op. cit.; *E.B. and Others v. Austria*, Applications Nos. 31913/07, 38357/07, 48098/07 et al., judgment of 7 November 2013. In: CRI(2015)34, paragraphs 81 and 82.
144. See *Official Law Gazette* I No. 154/2015. AS/Mon (2016) 18, p. 13.
145. CommDH(2012)28, p. 9.

90. The authorities explained that the basic instrument to promote and to implement the Convention on the Rights of Persons with Disabilities in Austria is the "National Action Plan on Disability 2012 to 2020" developed under the responsibly of the Federal Ministry of Labour, Social Affairs and Consumer Protection, in close co-operation with civil society. A supervisory group was established, involving civil society organisations representing people with disabilities, to monitor the progress of implementation. The first interim assessment 2012 to 2015 is currently being drafted.[146]

91. Austria ratified the European Social Charter (ETS No. 35) on 29 October 1969 and the Revised European Social Charter (ETS No. 163) on 20 May 2011, accepting 76 of the revised Charter's 98 paragraphs.[147] Austria has signed, but not yet ratified, the Additional Protocol of 1995 (ETS No. 158) providing for a system of collective complaints.

92. The European Committee for Social Rights has reviewed the conformity of the provisions ratified. The committee found, *inter alia*, that equal treatment with regard to social security rights is not guaranteed to nationals of all other States Parties and that the granting of social assistance benefits to non-EU/EEA nationals legally residing in Austria is subject to an excessive length of residence condition. Moreover, with regard to education, the Committee noted that nationals of other States Parties who are not nationals of the European Economic Area and are lawfully resident or regularly working in Austria are granted access to university education only subject to the availability of places.

93. In addition, with regard to labour rights, the Committee noted, *inter alia*, that it has not been established that the lowest wage paid is sufficient to ensure a decent standard of living and that the period during which protection is granted to a workers' representative beyond his/her mandate is not reasonable.

94. The European Committee for Social Rights has encourage Austria to ratify the Additional Protocol of 1995 providing for a system of collective complaints, which would strengthen the protection of social rights in Austria. The authorities mentioned that the findings of non-conformity by the European Committee for Social Rights will be addressed in the forthcoming reports on the respective provisions of the Charter. The ratification of the Additional Protocol of 1995 providing for a system of collective complaints could prove more difficult, as the Austrian legal system does not provide for class actions. They vowed, however, to monitor developments regarding the Additional Protocol and will duly consider the experience with the collective complaints procedure made by the member States of the Council of Europe.[148]

5. Conclusions and recommendations

95. Overall, the functioning of democratic institutions in Austria complies with Council of Europe standards. Austria globally honours its membership obligations to the Council of Europe. The Monitoring Committee recognises that Austria has recently been facing an unprecedented influx of refugees. It has, in the same period, experienced rising populism with mounting anti-migration and anti-Islam rhetoric, which could challenge its social cohesion. However, Austria has shown its capacity to remain so far a well-established and vivid democracy, based on a federal system, with a high level of protection of human rights and, overall, well-functioning democratic institutions.

96. In the light of the findings of the monitoring mechanisms of the main Council of Europe conventions, a certain number of issues should, however, be addressed by the authorities. The committee therefore wishes to make the following recommendations to the Austrian authorities:

97. In the field of combating corruption and money-laundering, the committee welcomes the upgrading of Austria's anti-corruption legal framework, including the ratification of the Criminal Law Convention on Corruption and Additional Protocol in 2013 and the adoption of a variety of laws. In the light of the recommendations issued by the Group of States against Corruption (GRECO), it encourages the Austrian authorities to:

– pursue their efforts to fully fulfil the recommendations issued by GRECO which have not yet been implemented, or only partially implemented; consider in this respect amending the Political Parties Act, in line with the recommendations issued by GRECO, reinforcing the rules governing funding of political parties and election campaigns and strengthening the role and independence of the Austrian Court of Audit;

146. AS/Mon (2016) 18, p. 14.
147. See Country factsheet Austria, Austria and the European Social Charter, March 2016.
148. AS/Mon (2016) 18, p. 14.

– ratify the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised) signed in 2005;

– promote co-operation mechanisms with the federal States to encourage them to develop and strengthen anti-corruption measures and policies.

98. The committee encourages the Austrian authorities to consider becoming a member of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL).

99. Concerning the protection of human rights, the committee welcomes the intention of the Austrian authorities to adopt a National Action Plan on Human Rights in the near future. Based on the evaluation of the human rights mechanism, the Austrian authorities should, in this context:

– consider merging the various anti-discrimination acts and institutions of the federation and the federal States *(Länder)* in order to improve the protection afforded to victims of racism and discrimination;

– ratify the Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

100. Concerning the fight against discrimination and racism, in the light of the finding of the European Committee against Racism and Intolerance (ECRI), the committee welcomes the adoption of the "Criminal Law Amendment Act" in 2015 that should improve the prosecution of hate speech. It encourages the Austrian authorities to:

– strengthen the Austrian Ombudsman Board and ensure that the appointment of its board members complies with the Paris Principles;

– ratify Protocol No. 12 to the European Convention on Human Rights signed in 2000;

– take vigorous action against political parties and organisations that spread xenophobic rhetoric.

101. In the field of combating human trafficking, the committee invites the Austrian authorities to further implement the Convention on Action against Trafficking in Human Beings and Recommendation CP(2015)14 of the Committee of the Parties. It encourages the rapid finalisation of the work in progress to establish a national referral mechanism for child victims of trafficking as a matter of priority, to improve statistical data collection, to ensure a recovery and reflection period for victims of human trafficking, and to implement the non-punishment principle, including by drafting a guideline for public prosecutors.

102. Concerning the protection of national minorities, the committee welcomes the agreement reached in 2011 and the amendment of the National Minorities Act related to bilingual topographical signs and the use of minority languages as an official language. It encourages the Austrian authorities to seek further consensus among national minorities in order to review the National Minorities Act in co-operation with the national minorities' advisory councils, in order to comply with the recommendations of the Committee of Ministers and the Advisory Council of the Framework Convention for the Protection of National Minorities.

103. In the field of local and regional democracy, the Austrian authorities are invited to:

– sign and ratify the Additional Protocol to the European Charter of Local Self-Government, on the right to participate in the affairs of a local authority;

– initiate an overall institutional reform of the federal system in Austria, in line with Recommendation 302 (2011) on Local and regional democracy in Austria;

104. In the field of social rights, the Austrian authorities are invited to consider ratifying the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints signed in 1999, in the light of the best practices developed by Council of Europe member States.

105. The Austrian authorities are also encouraged to work towards Austria becoming a member of the Council of Europe Development Bank.

106. The committee will evaluate the implementation of these recommendations on the occasion of its next periodic evaluation cycle of member States that are not under a monitoring procedure in *sensu stricto* or engaged in a post-monitoring dialogue.

Appendix

Council of Europe conventions signed and/or ratified between 1 October 2013 and 21 October 2016 by Austria

CETS No.	Title		
066	European Convention on the Protection of the Archaeological Heritage		
	Signature: 20/04/1971	Ratification: 27/02/1974	Entry into force: 28/05/1974
		Denunciation: 27/11/2014	
127	Convention on Mutual Administrative Assistance in Tax Matters		
	Signature: 29/05/2013	Ratification: 28/08/2014	Entry into force: 01/12/2014
143	European Convention on the Protection of the Archaeological Heritage (Revised)		
	Signature: 05/06/2014	Ratification: 23/01/2015	Entry into force: 24/07/2015
173	Criminal Law Convention on Corruption		
	Signature: 13/10/2000	Ratification: 25/09/2013	Entry into force: 01/01/2014
191	Additional Protocol to the Criminal Law Convention on Corruption		
	Signature: 13/12/2013	Ratification: 13/12/2013	Entry into force: 01/04/2014
199	Council of Europe Framework Convention on the Value of Cultural Heritage for Society		
	Signature: 05/06/2014	Ratification: 23/01/2015	Entry into force: 01/05/2015
208	Protocol amending the Convention on Mutual Administrative Assistance in Tax Matters		
	Signature: 29/05/2013	Ratification: 28/08/2014	Entry into force: 01/12/2014
209	Third Additional Protocol to the European Convention on Extradition		
	Signature: 10/11/2010	Ratification: 10/04/2015	Entry into force: 01/08/2015
210	Council of Europe Convention on preventing and combating violence against women and domestic violence		
	Signature: 11/05/2011	Ratification: 14/11/2013	Entry into force: 01/08/2014
212	Fourth Additional Protocol to the European Convention on Extradition		
	Signature: 20/09/2012	Ratification: 01/02/2016	Entry into force: 01/06/2016
215	Council of Europe Convention on the Manipulation of Sports Competitions		
	Signature: 02/06/2016		
216	Council of Europe Convention against Trafficking in Human Organs		
	Signature: 25/03/2015		

Recent findings of Council of Europe monitoring mechanisms and other bodies as at 21 October 2016

European Court of Human Rights	European Convention on Human Rights (ETS No. 5) ratified in 1958 Protocol No. 1 (ETS No. 009) ratified in 1958 Protocol No. 2 (ETS No. 044) ratified in 1967 Protocol No. 6 (ETS No. 114) ratified in 1984 Protocol No. 12 (ETS No. 177) **signed in 2000** Protocol No. 13 (ETS No. 187) ratified in 2004 Protocol No. 14 (CETS No. 194) ratified in 2006 Out of a total of 64 850 applications pending before a judicial formation on 31 December 2015, 135 concerned Austria. Resolutions adopted by the Committee of Ministers: 2 in 2013, 4 in 2014, 6 in 2015 and 9 in 2016. See Press country profile Austria
Congress of Local and Regional Authorities	European Charter on Local Self-Government (ETS No. 122) ratified in 1987 Last report and Recommendation on local and regional democracy in Austria adopted in March 2011: CG(20)8 and Recommendation 302 (2011)

Group of States against Corruption (GRECO)	Civil Law Convention on Corruption (ETS No. 174) ratified in 2006 Criminal Law Convention on Corruption (ETS No. 173) and Additional Protocol (ETS No. 191) ratified in 2013 *Joint first and second evaluation round: addendum to the compliance report on Austria* adopted by GRECO at its 56th plenary meeting, Strasbourg, 20-22 June 2012, published in February 2013, Greco RC-I/II(2010)1E addendum *Third evaluation round: compliance report on Austria: "Incriminations (ETS 173 and 191, GPC 2)", "Transparency of party funding"* adopted by GRECO at its 63rd plenary meeting, Strasbourg, 24-28 March 2014, published in February 2015, GRECO RC-III(2013)26E *Third evaluation round: second compliance report on Austria: "Incriminations (ETS 173 and 191, GPC 2)", "Transparency of party funding"* adopted by GRECO at its 71st plenary meeting, Strasbourg, 14-18 March 2016, published in October 2016, GrecoRC3(2016)1 *Fourth evaluation round: corruption prevention in respect of members of parliament, judges and prosecutors: evaluation report: Austria,* adopted by GRECO at its 73rd plenary meeting, Strasbourg, 17-21 October 2016, *confidential*
Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)	Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 1990 (ETS No. 141) ratified in 1997 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (revised) (CETS No. 198) signed in 2005 but **not ratified** Austria is not a member of MONEYVAL.
Commissioner for Human Rights	*Report by the Commissioner for Human Rights, Nils Muižnieks, on his visit to Austria (4-6 June 2012)*, CommDH(2012)28 / 11 September 2012 *Third party intervention by the Council of Europe Commissioner for Human Rights under Article 36, paragraph 3, of the European Convention on Human Rights. Applications No. 44825/15 and No. 44944/15, S.O. v. Austria and A.A. v. Austria*, CommDH(2016)3 / 13 January 2016
European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)	Convention (ETS No. 126) ratified in 1989, Protocols No. 1 (ETS No. 151) and No. 2 (ETS No. 152) ratified in 1996 Last country visit: September – October 2014 Publication of the last report: November 2015, CPT/Inf(2015)34
Group of Experts on Action against Trafficking in Human Beings (GRETA) and Committee of the Parties	Convention (CETS No. 197) ratified in 2006 2nd Evaluation Round: . Evaluation visit in December 2014 · GRETA's Evaluation Report and Government's Comments published in October 2015, GRETA(2015)19 · Recommendation CP(2015)14 of the Committee of the Parties adopted in November 2015
Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) and Committee of the Parties	Convention on preventing and combating violence against women and domestic violence (CETS No. 210) ratified in 2013 1st evaluation procedure: . State report received in September 2016, GREVIO/Inf(2016)2 . Additional information: NGO report received in September 2016
European Commission against Racism and Intolerance (ECRI)	The 5th report on Austria was adopted in June 2015 and made public in October 2015, CRI(2015)34
Venice Commission	No opinion concerning Austria

Other Treaties:

Framework Convention for the Protection of National Minorities	Convention (ETS No. 157) ratified in 1998 . Last State Report (4th cycle) received in January 2016, ACFC/SR/IV(2016)001 . Last Advisory Committee Opinion (4th cycle) adopted in October 2016, *restricted*
European Charter for Regional or Minority Languages	Convention (ETS No. 148) ratified in 2001 . Last State Periodical Report (3rd cycle) submitted in July 2011 . Last Committee of Experts' evaluation report (3rd cycle) adopted in June 2012, ECRML(2012)7 . Last Committee of Ministers' Recommendation (3rd cycle) adopted in November 2012, CM/RecChL(2012)7
European Social Charter	European Social Charter of 1961 (ETS No. 35) ratified in 1969 European Social Charter (revised) (ETS No. 163) ratified in 2011 Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (ETS No. 158) signed in 1999 but **not ratified** See Country factsheet Austria