

**“List of issues” in connection with the
3rd and 4th Report by the Republic of Austria
according to Articles 16 and 17 of the International Covenant on Economic,
Social and Cultural Rights (CESCR)**

Replies provided by the Republic of Austria

I. GENERAL FRAMEWORK WITHIN WHICH THE COVENANT IS IMPLEMENTED

1. What will be the place of economic, social and cultural rights in the current deliberations on a revision of the Federal Constitution?

Committee IV of the Austrian Convention, which deals with the topic of fundamental rights, has reached the conclusion that the renewed Austrian Federal Constitution should contain guarantees by the welfare state. However, it was not possible to reach consensus on the question in what form (fundamental rights, basic-policy clauses of the constitution, etc.) these welfare-state guarantees should be incorporated in the Constitution.

A separate committee has been set up in the National Council to discuss the report of the Austrian Convention. One must therefore wait for the outcome of the deliberations in this committee with regard to the incorporation of economic, social and cultural rights in the (new) Federal Constitution.

2. Please provide an explanation on the statement in the periodic report regarding direct applicability of the articles of the Covenant, which do not correspond to the opinions of the Committee as stipulated in its General Comment No. 9 and in paragraph 10 of its previous concluding observations on the second periodic report of Austria.

The guarantees contained in the International Covenant on Economic, Social and Cultural Rights have been fully implemented in Austria on the level of simple-majority legislation. The Republic of Austria explained this at great length in its comprehensive 3rd and 4th Report according to Articles 16 and 17 of the Covenant. On the basis of the principle of interpreting domestic law in conformity with international law, it has also been ensured that the simple-majority legislation is also

interpreted pursuant to the Covenant. Thus, if individual persons invoke their rights guaranteed by simple-majority legislation, the courts and/or the authorities are also obliged to take account of the provisions of the Covenant on Economic, Social and Cultural Rights when interpreting the relevant provisions.

3. Please provide more information on the case law of the Constitutional Court pertaining to social rights as referred to in paragraph 8 of the report. Please cite, if possible, cases in which the Austrian courts have referred to articles of the Covenant.

The Constitutional Court has developed its case law on the protection of confidence in connection with fiscal law. As a result, the statutory provisions, which are linked to fiscal stipulations that are based on previously implemented sets of facts and thus put taxpayers at a disadvantage regarding their legal status, having effect for the past, lead to the same result – in opposition to equality – if the persons required to comply with the regulation were disappointed in their justified confidence in the statutory situation by an intervention of considerable impact, and whenever it is not special circumstances that require such a retro-active effect (see Collection of Constitutional-Court Decisions, VfSlg. 12.1867/1989). As a further consequence, the Constitutional Court has applied this principle also to social law, among other things. Restrictions of duly acquired rights (e.g. old-age pensions) with impact on the future are held to be contrary to the Constitution, whenever these are far-reaching and suddenly emerging interferences in legal situations on which the persons affected were able to rely for good reasons (see Collection of Constitutional-Court Decisions, VfSlg. 11.309/1987; see also Öhlinger: *Verfassungsrecht*⁵/*Constitutional Law*, p. 342).

It was therefore held to be contrary to the Constitution to revoke the quarterly special payments of 50% of the monthly educational amount to legal trainees without any transitional arrangements, especially since a sudden reduction of income by more than 14%, in connection with a low income, by comparison, is not immaterial and, in addition, because it is not fair to place a considerably bigger burden on the small and economically weak group of legal trainees (see Collection of Constitutional-Court Decisions, VfSlg. 15.936/2000). The elimination with retro-active effect of a provision in the social-security law for farmers, referring to an entitlement to early retirement for reasons of permanent incapacity to work, was therefore lifted for being contrary to the Constitution, since such a sudden and intensive interference in acquired legal positions could not be justified by facts (see Collection of Constitutional-Court Decisions, VfSlg. 16.689/2002). The “raid-like” introduction of an income-tax

obligation on current receipts of a statutory accident-insurance remuneration was also held to be in contradiction to the Constitution (see Collection of Constitutional-Court Decisions, VfSlg. 16.754/2002).

4. Please indicate whether the State party intends to adopt and implement a national plan of action on human rights in accordance with the Vienna Declaration and Programme of Action of 1993 (A/CONF.157/23).

Austria took an active part in drawing up the Vienna Declaration and Program of Action (VDPA) and welcomed its adoption. In consequence, the principles contained in the VDPA are being introduced into all political spheres. The recommendations contained in the VDPA are thus implemented in numerous individual measures. Mention is made, by way of example, of the efforts and progress achieved, both on the EU level and the national level, in the area of fighting racism and xenophobia (for details see also the reply to Question 9). Furthermore, reference is made to the improvements obtained in the field of equality for women and the fight against human trafficking (for details see also the replies to Question 22 and following). In connection with children's rights, for example, a comprehensive national action plan was prepared in the year 2004 which is currently being implemented, with the assistance of a working group, set up specifically for this purpose, and also comprising NGOs and other organizations concerned, in addition to the federal ministries and the federal provinces. The rights of handicapped persons, too, will be even further improved with the entry into force of the new federal law on the equal status of disabled persons, which is currently being processed in Parliament. In the field of education one should mention the service point for human-rights educations, for example, financed by the Federal Ministry for Education, Science and Culture, in addition to many further activities.

The examples given here show that Austria is making major efforts to further improve the high level of human rights and thus also to implement the recommendations of the VDPA. In the opinion of the Republic of Austria it is therefore not necessary to have a special national action plan, set up specifically for this purpose.

5. Please indicate whether the State party intends to establish a national human rights institution in conformity with the Paris Principles (General Assembly resolution 48/134 of 20 December 1993, annex.) in order to promote and protect human rights, in particular, economic, social and cultural rights.

There are currently no plans to establish a national human rights institution.

However, on 13 December 2003 the European Council decided – last but not least on account of an Austrian initiative – to establish a European Human Rights Agency. To this end, the mandate of the European Monitoring Center for Racism and Xenophobia (EUMC), which is located in Vienna, will be expanded. The main task of the Human Rights Agency will be to provide the institutions and member states of the European Union with its expertise and thus to support them in their political and legal decisions regarding human-rights issues. In this way, the agency will contribute to an altogether more strategic and coherent human-rights policy of the European Union. The agency will be completely independent in the performance of its tasks. As regards substance, the human-rights agency will deal, among other things, also with the economic, social and cultural rights contained in the Charter of Fundamental Rights.

The Republic of Austria welcomes, with emphasis, the setting up of this European Human Rights Agency as a kind of “national human rights institution” on the level of the European Union and is particularly active in sharing in the preparatory work. It is planned to decide on the necessary legal framework conditions in the course of Austrian EU Presidency during the first half of 2006, so that the agency can take up its work on 1 January 2007.

6. Please indicate whether the State party takes account of its obligations under the Covenant when engaging in negotiations with the international financial institutions.

Vis-à-vis international financial institutions Austria’s policy is based on the principles of development and reduction of poverty (with the partial exception regarding the IMF’s political function to provide international order).

The economic, social and cultural rights are an integral component of the approach regarding development and reduction of poverty, although no general “rights-based approach” is pursued. As a matter of principle, Austria demands in the boards of IFIs that they are included in the policies and country strategies and that their

implementation is monitored in the practical project and program work in the course of internal evaluations.

7. Please provide information on migrant workers in the State party with regard to their enjoyment of rights enshrined in the Covenant, and indicate whether the State party intends to ratify the International Convention on the Protection of All Migrant Workers and Members of Their Families.

As part of the legislation pertaining to the employment of foreigners, Austria has tried and is trying to take account of the objectives of the Pact - in steps and to the extent possible.

The most recent step was the amendment in 2002 of the law relating to aliens (in force since 1 January 2003), which further improves the integration of migrant workers and their family members into the labor market. In the process of granting permits the parameter "progress regarding integration" is given special attention. As a result, foreigners who have become established, and especially their family members take precedence in being permitted to work. In addition, an evidence of taking up residence has been introduced, for which migrants of third countries may apply after having had a legal domicile for five years, and which provides them with unrestricted access to the Austrian labor market. Adolescent foreigners, who do not yet meet this requirement and have passed their final year of compulsory schooling in Austria, receive a clearance pass ("Befreiungsschein") and are thus on an equal footing with Austrians on the Austrian labor market. Additional facilities in granting employment permits were provided especially for young persons who have joined their families after the age of compulsory schooling and who have not yet reached the age of 18, as well as for family members who are exposed to violence in the family.

Most of the migrant workers, who have taken up domicile in Austria, and their families either have a long-term authorization to work, i.e. work permit, clearance pass ("Befreiungsschein"), evidence of establishment ("Niederlassungsschein") or confirmation of residential mobility ("Freizügigkeitsbestätigung"), as citizens of third countries (by far the largest group of persons) or as EU citizens of one of the Central and Eastern European countries that have joined the EU on 1 May 2004. As a result, they have free access to the Austrian labor market (only major point: the work permit is valid only in one federal province).

Transposition of the EU directives (Council Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents; Council Directive 2003/86/EC on the right to family reunification, and Directive 2004/58/EC of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States), which is currently under way, will bring further improvements regarding the rights of migrant workers and their family members.

There are currently no plans to ratify the International Convention on the Protection of All Migrant Workers and Members of Their Families. However, the current legislation on the employment of foreigners and the transposition of a number of EU directives in the field of migration, which is currently under way, implement the principles of this Convention to the greatest possible extent.

II. ISSUES RELATING TO THE GENERAL PROVISIONS OF THE COVENANT (ARTICLES 1 - 5)

Article 2.1: International assistance and cooperation

8. Please indicate whether the State party intends to increase its official development assistance with a view to meeting the UN target of 0.7 per cent.

Austria supports the international objective of reaching a level of 0.7% of the gross domestic product as Official Development Assistance (ODA) for developing countries. In line with decisions to this effect on the EU level (European Council of Barcelona), Austria is aiming to reach a volume of 0.33% BIP by 2006. According to the most recent forecasts, this goal will probably be already clearly exceeded in 2005.

Article 2.2: Non-discrimination

9. Please provide information on the measures taken by the State party to combat the phenomenon of xenophobia and racial discrimination.

It was mentioned at the beginning that it is not possible in the present context to list all measures undertaken by the Republic of Austria in connection with combating racism and xenophobia. The following comments are therefore not an exhaustive list of all measures and "good practices" but only refer to priorities in the areas of

legislation on equal treatment, penal law and education. In particular, it is not possible here to deal with the many measures and initiatives undertaken by the federal provinces.

As a general first comment, reference is made to the independent European Monitoring Centre for Racism and Xenophobia which is located in Vienna (see www.eumc.eu.int). The Monitoring Centre is financed by the European Union and prepares in-depth studies on the situation in the areas of racism, xenophobia, anti-Semitism and other related forms of intolerance (e.g. hostility vis-à-vis Muslims) in the member states of the EU. The Monitoring Centre focuses its activities on the areas of racial violence, legislation, education, housing and employment. Austria cooperates closely with the Monitoring Centre via a national liaison officer; it provides comprehensive information material and – last but not least – contributes to the funding of the Monitoring Centre.

A) Legislation on Equal Treatment

With 1 July 2004 as the effective date, new stipulations were introduced regarding the legislation on equal treatment in Austria. Previously, the equal treatment of the sexes was only covered by legislation obtained by a simple-majority vote. The new legislation on equal treatment serves primarily to transpose the anti-discrimination directives, issued pursuant to Article 13 of the EU Treaty, i.e. Directive 2000/43/EC of the Council implementing the principles of equal treatment between persons irrespective of racial or ethnic origin (**Anti-Racism Directive**) and Directive 2000/78/EC of the Council establishing a general framework for equal treatment in employment and occupation (Framework Directive on Equal Treatment), which bans any discrimination on the basis of religion or ideology, disability, age or sexual orientation. Directive 2002/73/EC of the European Parliament and Council amending Council Directive 76/2007/EEC on the implementation of the principle of equal treatment for women and men as regards access to employment, vocational training and promotion, and working conditions (Equal-Treatment Directive), was also transposed.

The **Anti-Racism Directive** covers the areas of occupation and employment, as well as the areas of social protection, social benefits, education and access to and provision with goods and services; the Framework Directive on Equal Treatment and the amended Directive on Equal Treatment only cover the areas of employment and occupation. All directives apply to the public and the private sector.

The three directives are primarily transposed by means of federal laws, which amended the Federal Law on Equal Treatment and the Federal Law on the Equal Treatment of Women and Men in Working Life (Federal Law Gazette I No. 66/2004). The former law on equal treatment was renamed Federal Law Regarding the Commission for Equal Treatment and the Equal-Treatment Ombudsman and amended to cover the institutions (Commission for Equal Treatment and the Equal Treatment Ombudsman) as well as procedures. The new law on equal treatment (Federal Law on Equal Treatment) takes over the substantive provisions of the former law on equal treatment and was expanded to include all those regulations that result from the need for transposition of the directives.

The discriminating fact of a disability is excluded, because this is planned to be transposed by a separate law on the equal treatment of handicapped persons, which is envisaged for the service regulations of the federal authorities, for which the regulations under the law on equal treatment will be taken as a basis, as well as of the matters under the competence of the federal provinces.

The law comprises the following priorities:

Nobody shall henceforth be discriminated, directly or indirectly, for reason of his/her gender, **ethnic origin**, religion or ideology, age or sexual orientation in connection with a labor relationship, especially

- * when entering into a labor relationship,
 - * when fixing the remuneration,
 - * when granting voluntary social benefits that do not constitute a remuneration,
 - * in connection with measures regarding basic and further training, as well as re-training,
 - * regarding occupational advancement, especially to higher positions,
 - * in connection with other working conditions,
 - * when ending a labor relationship,
- as well as regarding the remaining environment at work, such as
- * access to vocational counseling, vocational training, vocational further training and re-training outside the labor relationship,
 - * when cooperating in an employee or employer organization,
 - * in connection with conditions regarding access to self-employed gainful activities.

The scope of the law covers employees and home workers, as well as employee-like persons.

Furthermore, nobody may be discriminated, directly or indirectly, for reasons of **ethnic origin** in other areas, such as

- * social protection, including social security and health services,
- * in connection with social benefits,
- * in connection with education,
- * regarding access to, and the provision with, goods and services which are available to the public, including housing facilities.

In addition, new regulations were provided for damages in connection with violations of the requirement of equal treatment:

The requirement of equal treatment stipulates the following sanctions for the following facts of discrimination for reasons of **ethnic origin**:

- * refund for the material damage, i.e. positive damage or lost profit, or
- * creating a situation free from discrimination and – in both cases – also
- * refund for the intangible damage suffered in the form of suffering a personal impairment.

In addition to the ban on sexual harassment, contained in the previous law on equal treatment, any sex-related harassment, as well as harassment due to one of the aforementioned facts of discrimination is also considered to be discriminatory. Furthermore, the requirement of non-discriminating vacancy announcements, including sanctions, was also included among the facts constituting discrimination. A ban on prejudicial treatment was introduced as a measure to reinforce the protection against discrimination. It covers not only the complaining employee but also the other employees, such as witnesses or colleagues, who support the complaint.

The competencies of the existing Equal-Treatment Commission, which was previously responsible for the equal treatment of the sexes, were now expanded to include all aforementioned facts of discrimination. The Equal-Treatment Commission now comprises three senates:

- * Senate I for the equal treatment of women and men in the working environment.
- * Senate II for equal treatment without any distinction according to **ethnic origin**, religion or ideology, age or sexual orientation in the environment at work.
- * Senate III for the equal treatment without any distinction according to **ethnic origin** in other areas.

The costs of interpretation in proceedings before the Equal-Treatment Commission are borne *ex officio*. It was also determined that the court must take account of an

expert opinion or the result of a review by the Equal-Treatment Commission. If the court decision deviates from the foregoing, the court must explain the reasons for this divergence.

In analogy, the scope of competencies of the Equal-Treatment Ombudsman was also expanded. He is responsible for providing advice and support to persons who feel discriminated.

The participation of non-governmental organizations, who regard themselves as representing the interests of certain groups affected by discrimination, has been regulated as follows in proceedings before the Equal-Treatment Commission:

- * The person affected by discrimination may either be represented in the proceedings by a representative of such a non-governmental organization,
- * or the person concerned may apply that a representative of such a non-governmental organization is asked to attend the proceedings as an expert.

The role of non-governmental organizations in court proceedings has been established to be that of a third-party intervention. Third-party intervention may be claimed by a person who, without being a party in a legal action, wishes to take part in proceedings pending between other persons in order to support one of the parties. The provisions stipulate that the association represented in an action to enforce the rights of victims of discrimination may join the proceedings by way of third-party intervention in order to support the victims of discrimination.

The new legislation on equal treatment went into force on 1 July 2004.

B) Penal Law

With regard to legislation, compliance with the international obligations to take measures against racism and xenophobia was achieved by § 283 ("instigation") and § 33 item 5 of the Austrian Penal Law Code (general aggravating circumstance in committing a punishable offence for racist or xenophobic motives) and the law prohibiting NS activities ("Verbotsgesetz").

The individual provisions are commented below:

Persons may be punished by imprisonment of up to two years for committing the offence of **instigation**, pursuant to § 283 of the Austrian Penal Law Code, when publicly inciting or instigating others, in a manner that is suited to jeopardize public

order, to take hostile actions against a church or religious denomination existing in Austria, or against groups of persons who are defined by their affiliation to such a church or religious denomination, a race, a nation, an ethnic group or a state (paragraph 1), or who instigate in public against one of the groups as defined in paragraph 1 or use abusive language against them or try to bring them into contempt, in violation of their human dignity (paragraph 2). § 238 of the Austrian Penal Law Code penalizes such forms of instigation which – as we know from experience – are a particular risk to public peace, i.e. religious instigation, racial instigation, as well as instigation against nations and churches. Intent is required for the mental element. In both types of offences, contingent intent (*dolus eventualis*) is sufficient.

The subjects deserving protection are churches and religious denominations existing in Austria, or a group of persons defined by their affiliation to a church or religious denomination, a race, a nation, an ethnic group or a state. When speaking of groups of protected persons here, this refers to groups that have common "features". Insulting individual persons, who correspond to specific definitions, is punishable in accordance with § 115 and § 117 of the Austrian Penal Law Code (see below). "Nation" does not only refer to a nation in the sense of a state but to a nation in the ethnic sense of the word. "Race" is to be understood in the biological-anthropological sense, i.e. as a group of persons that is characterized by typical physical features that are hereditary.

The facts of the offence apply if a person incites or instigates others, in a manner that is suited to jeopardize public order, to commit a hostile act against one of the subjects in an offence, or who publicly instigates against them or who insults them in a manner infringing their human dignity or who tries to bring them into contempt. A hostile act is not a punishable act but any act that is addressed in an emotional manner against the members of the hostile group, such as a commercial or social boycott, for example. Human dignity is infringed in the event that the act of the offence generally denies the attacked group the right to be treated as human beings. This is the case, for example, if the members of the group concerned are disallowed the right to live as equal citizens or if they are presented as being inferior or worthless parts of the entire population, or if they are to be otherwise exposed to an inhuman or humiliating treatment. "Instigation" is understood to be a prejudicial incitement to hate and contempt that appeals to emotions and passions. A merely derogatory disparagement or insult is not enough. An insult may be a statement of disrespect that is particularly hurtful, on account of its form or substance. A

contemptible conduct is defined as presenting someone as not being worthy the respect of his/her fellow men or worthless.

According to the constitutional law of 8 May 1945, which prohibits the NSDAP (1947 **Act banning NS parties**) everybody is prohibited from engaging in National Socialist activities, which is punishable by imprisonment.

§ 33 of the Austrian Penal Law Code contains a list, by way of example, of particularly aggravating circumstances, i.e. reasons that must especially be taken into account when determining the punishment. According to § 33 item 5 of the Austrian Penal Law Code it is considered to be an aggravating circumstance **in determining the scope of the punishment** if "the offender has acted on racist, xenophobic or other particularly disdainful motives".

It should be pointed out, in connection with the enforcement of the individual penal stipulations of relevance here (instigation pursuant to § 283 of the Austrian Penal Law Code, Law Prohibiting NS Activities), that a change in cases was not noticeable in recent year. The internal records of the Federal Ministry of Justice indicate, however, that there has been a decrease in demands for prosecution based on § 283 of the Austrian Penal Law Code and/or charges under the Law Prohibiting NS Activities, on the one hand, but that the number of (final and enforceable) court decisions under the Law Prohibiting NS Activities has gone up, on the other hand. This is illustrated by the table below.

Statistics for 2004	§ 283 of the Austrian Penal Law Code	Law Prohibiting NS Activities
Demands for prosecution / Charges	14 (2003: 27)	24 (2003: 37)
Convictions	12 (2003: 13)	26 (2003: 31)
Acquittals	4 (2003: 6)	7 (2003: 3)

C) Overview of the measures taken against xenophobia and racism in the field of education between 1994 and 2004

In recent years the Federal Ministry of Education, Science and Culture took a number of initiatives regarding educational measures against racism. As part of the educational principle of political education, which applies to all school types, as well as the subjects (compulsory subjects) of political education, a number of measures were taken in order to combat prejudices, racism, racial discrimination, xenophobia

and anti-Semitism and to promote the respect for diversity, pluralism and mutual respect.

Education in human rights, for example, has several roots in the curricula. At the beginning of every school year, days of commemoration, anniversaries and international days are ordered to be held against racism, and teaching materials are made available on this subject. Service points for education in human rights and political education have been set up, and school projects against racism are promoted.

In accordance with the Durban Action Plan, the Federal Ministry of Education, Science and Culture drew up an action plan against racism in the year 2002, which serves the goal of establishing, institutionalizing and implementing measures in favor of tolerance and non-violence and against racism, racial discrimination and xenophobia.

Legal Provisions on Education in Human Rights

A decree regarding principle of "Educational Principle of Political Education" and the relevant curricula list human rights. The educational objective of the curricula of general compulsory schools and upper-level general schools requires that teaching in class must actively contribute to a democracy that is guided by human rights. The curricula for the educational subject of political education in the upper-level general schools (allgemein bildende höhere Schulen), the middle-level vocational schools (berufsbildende mittlere Schulen) and upper-level vocational schools (berufsbildende höhere Schulen) contain compulsory teaching material regarding human rights.

Intercultural Education

At the beginning of the nineties "intercultural education" was included in the curricula of all schools of general education (allgemein bildende Schulen) as another education principle, i.e promoting education to tolerance. The administrative and technical support, provided by the Federal Ministry of Education, Science and Culture, to pupils with another language but German as a first language includes pedagogical measures (information, further-training events, especially for opinion-multipliers, procurement of materials and development of materials, as well as studies) in the fields of "German as a second language" and "mother-tongue teaching". In addition, schools and institutions for the basic and further training of

teachers are supported when implementing the educational principle of "intercultural education", which addresses all pupils.

International Days and Days of Commemoration against Racism

At the beginning of every school year, the Federal Ministry of Education, Science and Culture issues a decree to recall topical event, days of commemoration, as well as anniversaries, and it requests that these days are taken into account or celebrated in class-room teaching. Special reference is made to international days, for example the International Day for the Elimination of Racial Discrimination (21 March) or the International Day of Human Rights (10 December). The National Day of Commemoration of Victims of Violence and Racism in Commemoration of the Victims of National Socialism (5 May) was introduced by a unanimous decision of the National Council as early as 1997, which corresponds to the decision of the Conference of Ministers of Culture and Education of the Council of Europe of 18 October 2002.

Support to Anti-Racist Projects and Initiatives

"School without Racism" is an international school project which is coordinated in Austria by the "Verein Asylkoordination" (association to coordinate asylum) and the "ARGE Jugend gegen Gewalt und Rassismus" (working group of young people against violence and racism) and receives the financial support of the Federal Ministry of Education, Science and Culture. "Asylkoordination Österreich" (asylum coordination in Austria) has also received financial support for the information bus "Miteinander leben" (Living together) since 1994, "ARGE Jugend gegen Gewalt und Rassismus" in Styria for its manual (1994 and 1995) and the project on intercultural learning in Styria (1999 – 2002).

The following additional projects receiving support are mentioned by way of example:

- Romano Centro (Vienna), Roma assistants (2002), teaching materials for Roma children (2003 and 2004)
- "Verein Multikulturell" (Multi-Culture Association), Tyrol, date base (1997)
- "Verein ZARA" (Association ZARA) – civil courage and work against racism, anti-racism course, 2002.

Service Agency for Human-Rights Education

In 1997 the Federal Ministry of Education, Science and Culture set up a service agency for human-rights education in Vienna, in cooperation with the Ludwig Boltzmann Institute for Human Rights. The UN Decade for Human-Rights Education (1995 – 2004) was the incentive and international framework for this initiative. The service agency provides advice and information, primarily for educational work at schools. Its activities comprise the communication of knowledge about human rights (knowledge), promoting awareness for human rights (attitudes) and – by way of training programs – strengthening social abilities to apply human rights (skills). The service agency provides educational materials and offers advice on projects; it services a web site (www.humanrights.at) and publishes a quarterly newsletter "Teaching Human Rights. Information zur Menschenrechtsbildung" (Information on Human-Rights Education).

During the 2002/2003 school-year, the Service Agency for Human-Rights Education launched a two-year project, together with the Service Agency Political Education (again set up at the Ludwig Boltzmann Institute for Human Rights upon an initiative by the Federal Ministry of Education, Science and Culture), as well as "Asylkoordination Österreich" (Asylum Coordination Austria) and "ARGE Jugend gegen Gewalt und Rassismus" (Working Group Young People Against Violence and Racism). It will implement the peer-group concept of the European Peer Training Organization, which is a partner organization of the Anti-Defamation League.

Action Days on Human-Rights Education

From 20 November to 10 December 2004 the Service Agency for Human-Rights Education, together with the Federal Ministry of Education, Science and Culture, organized the Human Rights Days 2004 in order to create interest in the subject of human rights, to create awareness for the different forms of discrimination – especially at schools – and to show up cross-links to related concept such as teaching for peace and democratic thinking and global learning.

Project "National Socialism and the Holocaust. Remembrance and the Present Times"

On the basis of the further-training seminars for teachers at Yad Vashem, the Federal Ministry of Education, Science and Culture has set up a booking program

and opinion-multiplier network, which aims at new forms of communications and deals with this subject.

Booking Service for Speakers on Contemporary History

Since 1978 speakers can be booked for lectures – with expenses paid by the Federal Ministry for Education, Science and Culture – in order to deal with the subjects of National Socialism and Neo-National Socialism in the framework of the educational principle of political education at school. This makes it possible to invite victims of National Socialism, from the different groups of victims or racial and political persecutees, to speak and engage in discussions at schools.

As a central priority, this booking service holds an annual conference on the contemporary history on the complex subject of National Socialism. In 2004 the conference was held as the Austrian seminar in the further-training program of the Council of Europe for teachers "Teaching Remembrance" on the topic of "Genocide and Human Rights in the 20th Century".

Providing Publications for Classroom Teaching

Publications and other materials on the special subject of political education (racism, xenophobia, anti-Semitism, National Socialism and human rights) are made available, free of charge or against a small charge to cover overhead costs, by the Federal Ministry of Education, Science and Culture for use in classrooms.

Training of Law-Enforcement Officers

Furthermore, the subject of racism, xenophobia and anti-Semitism is also given special attention in connection with the basic training of law-enforcement officers.

Since 2001, the seminar program of the Anti-Defamation League "A World of Difference" has been carried out by the Federal Ministry of the Interior, as part of the further training, together with the ADL. The participants are civil servants from all sectors. A distribution key determines their participation, so that all organizational units are reached. Since 2004 it has become compulsory to provide this program also as part of the basic training. Beginning in 2005 the seminar will also be offered in the catalogue of seminars for civil servants at the head office.

External experts are intensively involved in the aforementioned seminars "A World of Difference", so as to facilitate the greatest possible multi-layered access to this area of subjects. The Advisory Council on Human Rights was and is also involved in the preparation of these seminars.

In this connection, there is continuous evaluation for the purpose of quality assurance and optimizing of contents – again with the involvement of external experts. The lecturers are kept abreast of the latest development by requiring them to attend further-training events. This is also an ongoing evaluation of the course and contents of the seminars. In addition, external experts are also always part of any basic and further-training events on human rights. To a large part, they also actively participate as trainers.

With regard to the basic and further training of law-enforcement officers, the Security Academy also offers numerous events and measures, which are intended to create awareness among law-enforcement officers in the direction of respect of human rights. Already in the course of their basic training, which all staff members have to attend, this topic is dealt with in the following variations, among others, parallel to giving instruction in purely legal matters such human rights and fundamental rights and freedoms:

- * applied psychology
- * professional ethics
- * rhetoric, communication and conflict management
- * sociology

Moreover, adequate coverage is also given to this area of subjects in other relevant areas – such as e.g. in the course of teaching security-police activities.

Furthermore, the following seminars are offered, among others, as further training:

- * the police and Africans
- * police activities in a multi-cultural society
- * strangers in our midst
- * inter-cultural guides

A considerable part of the staff members in this government department are reached by way of various training measures.

The Security Academy as the central control body for further training and education is responsible for defining the temporary target priorities, for adjusting them to higher strategic objectives and for incorporating them into the line organizations.

The following topics were defined as the priorities of the years 2002 and 2003:

- * human rights, ethics and police activities
- * fitness and health promotion
- * state security, terrorism, extremism.

Three priorities were defined for 2004:

- * human rights, ethics and police activities
- * corporate culture, personality and team development
- * drugs – prevention and repression.

The priority topic human rights, ethics and police activities represent the broadest possible basis for contents that were covered time and again in previous years as priorities in basic and further training. The area, considered to be a "temporary priority target", is to emphasize the special significance of this field of subjects in connection with further training. With this priority, the often emerging tensions between human rights and police intervention are covered comprehensively.

It should be mentioned that training courses to avoid any type of discrimination also constitute a priority in the **training of trainee judges**.

10. Please provide more detailed information on the situation of the Roma, in particular the foreign Roma living in Austria, with regard to their enjoyment of economic, social and cultural rights.

There is no statistical material that could provide information on the actual number of autochthonous and non-autochthonous Roma living in Austria. However, one could point to the results of the census held in 1991 and 2001. At the 2001 census, 4,348 Austrian citizens indicated that Romany is their everyday language (possibly in combination with German). At the 1991 census, 122 Austrian citizens indicated that Romany is their everyday language. It is known, though, that – apart from the fact that the everyday language and belonging to an ethnic group may not be regarded on same level, as a matter of principle – the figures are too low, especially for the Roma, on the one hand because a fairly considerable number of Roma do not use Romany (no longer use Romany) as their everyday language or did not want to indicate that. On the other hand, though, the figures are too high, because at the 2001 census many confused "Romany" with "Romanian". Rough estimates and personal indications reveal that several thousands of Roma live in Austria (some sources say that 50,000 Roma live in Vienna), and that more than the major part (possibly 90%) should be regarded as being non-autochthonous.

The Federal Chancellor's Office promotes the publication of newspapers by Austrian organizations of the Roma, which are published partly in German ("Romano kipo") and partly in two languages ("Romani Patrin", "Romano Centro", "DRoma"). In Burgenland, Romany is offered in primary school, and since the last school-year also in secondary school ("Hauptschule") on a test basis. A textbook for teaching Romany on the primary-school level is published with the help of grants. Occasionally, Roma-specific theater projects, exhibitions, etc. are being sponsored. In a language project, which has been going on for some 10 years, the varieties of Romany spoken in Austria are being codified ("Romany project" of the University of Graz).

The largest part by far of the non-autochthonous Roma in Austria is domiciled in Vienna. The non-autochthonous Roma may certainly share in the cultural options that the Austrian Roma associations are offering. A Roma association located in Vienna is making special efforts to raise the educational level of Roma children and is currently deploying 65 assistant teachers and 3 Roma assistants. The "teaching assistants" are students helping the children (6 – 15 years) with their school studies; they are in contact with the teachers. The "Roma assistants" are Roma who can regularly be found in schools with a high proportion of Roma children. They contact the parents, who often do not come to school, even if the teachers wish to see them. The "Roma assistants" also take care of the Roma children and help them to obtain a better status. The work of the "teaching assistants" and the "Roma assistants" is subsidized by the Federal Ministry of Education, Science and Culture, as well as by the Federal Chancellor's Office.

It is mentioned, by way of a general comment, that the new law on equal treatment, discussed under Item 9, which prohibits any discrimination on grounds of ethnic origin in connection with employment relations, and also in connection with social protection (including social security and the health services), as well as social benefits relating to education and the access to and the provision with goods and services that are publicly available (including housing), of course, also offers Roma commensurate protection and – in the event of discrimination – possibilities for compensation.

Article 3: Equality between men and women

11. Please provide more information on recent case law, especially of the Constitutional Court, regarding the principle of gender equality. Please also

provide further details of measures adopted by the State party to guarantee *de facto* gender equality in the area of economic, social and cultural rights. What steps has the State party taken to integrate gender issues into public policies, educational curricula and domestic legislation?

A) Regarding supreme-court proceedings:

(Items 1 to 11 relate to the Law on Equal Treatment and Item 12 relates to the Federal Law on Equal Treatment.)

1. After a precedent-setting decision by the **Austrian Supreme Court**, an employer is obliged to adjust wages and salaries if a female and a male employee provide the same type of work, in objective terms, after having first requested different amounts of remuneration. It is the responsibility of the employer to pay the same level of remuneration for the same type of work. In the event that a female employee continues to be discriminated against, in terms of her salary, by receiving a salary in compliance with her own initial notions, as compared to a male colleague, who was hired at the same time and given a higher remuneration, after a first period of initiation to the job, in the course of which the female employee provided the same type and quality of work as her male colleague, she is entitled to equal treatment. The Austrian Supreme Court also included the social environment into its examination of a confirmation regarding a gender-specific disadvantage. It stated that it is obvious that, in general statistical terms, women receive a lower remuneration than male employees, and that women are more frequently prepared than men to accept activities with lower pay, especially since their work is often classified as being less complicated and thus of lower value. Since it is primarily the employer who can assess the performance of his/her employees and who knows the level of their respective remuneration, the employer would have been obliged to eliminate the unequal remuneration.

2. In another decision by the **Austrian Supreme Court** it is stated that § 2 (1) of the Law on Equal Treatment must be interpreted in the sense of requiring a liability on the part of the employer that is independent of any fault, in view of the requirement that national law must be interpreted with the greatest possible conformity with EU Directives, especially since the case law of the European Court of Justice states that the Equal-Treatment Directive does not permit linking the liability of the originator of a discrimination to the proof of any fault. However, § 2a of the Law on Equal Treatment may not be understood to mean that it also stipulates a claim to compensation for pain and suffering for an applicant who was discriminated against, but would not

have been hired for the job in question anyway because of the better qualifications of the actually hired candidate.

3. The **Austrian Supreme Court** stated in a decision that a mere violation of § 2c of the Law on Equal Treatment, due to an announcement of a vacancy that is not gender-neutral, is not enough to give rise to a claim for compensation of pain and suffering. If the female plaintiff applied for the job, in spite of the text of the announcement of the vacancy, she cannot rely on § 2c of the Law on Equal Treatment. It is certainly neither pertinent, nor arbitrary if an employer has developed a sales strategy according to which a foreign representative markets the marketed garment fashion not only by representing the collection but actually wearing it. In the present case, the restriction to persons of the male sex was therefore with an adequate pertinent justification, since it practically rules out any activities by female employees.

4. In keeping with a preliminary ruling by the European Court of Justice, the **Austrian Supreme Court** stated in a decision that one cannot speak of the same type of work if the same type of activity is provided by employees with different professional designations over a longer period of time. Different collective agreements apply to psychologists and physicians, which is not discriminatory, if both types of professionals are deployed as psychotherapists. The European Court of Justice explained this, among other things, by saying that the psychologists and physicians working as psychotherapists appear to be exercising an identical activity, yet when treating their patients they rely on knowledge and skills which they have obtained in different study courses. In the one case it is a study of psychology, and in the other case it is a study of medicine. The European Court of Justice also regarded it as significant that physicians and psychologists exercise a psychotherapeutic activity in the specific case, yet physicians are also entitled to exercise other activities in other areas, which are not open to the psychologist who may only exercise an activity as a psychotherapist.

5. The **Austrian Supreme Court** stated in a decision that sexual molestation ("Begrapschen") on the part of a warehouse worker of a 15-year-old female apprentice, which was stopped only after a major controversy, constitutes grounds for dismissal for sexual molestation and considerable injury to a person's reputation. In this connection, any further employment of the warehouse worker is also unreasonable if the employer learns of the sexual molestation only one year later, and if the apprentice was of a marriageable age at the time of the offence.

6. When confirming a decision by the Higher Regional Court of Vienna, the **Austrian Supreme Court** stated that sexual molestation is a behavior that impairs the dignity of a person, is undesired and offensive. It justifies an immediate dismissal and also renders any further employment unacceptable, if the employer could be transferred to another job during the period of termination.

7. The **Austrian Supreme Court**, when confirming a decision by the Higher Regional Court Innsbruck, stated that when evaluating the existence of reasons for a dismissal, an objective yardstick must be applied. It is therefore not decisive whether the female employee who was sexually harassed by the plaintiff, wanted the dismissal of the plaintiff. The essential point is that it was unreasonable for the employer to continue the employment.

8. With regard to the question of sexual harassment the **Austrian Supreme Court** stated in general terms that the defendant created an intimidating, hostile and degrading environment at work by reacting to the rejection of his impertinencies not by self-critical understanding but by threatening the person concerned that he would dismiss her if she were to complain about his behavior.

9. In one case the **Austrian Supreme Court** argued that if molestations are repeated in relatively short intervals, in spite of the clear rejection by the female employees concerned, as a result of which they not only develop a justified fear to stay at the work place alone with the molester but, in addition, also create considerable psychosomatic disturbances, it is certainly not an excessive application of the judge's scope for discretion when awarding an amount of EUR 3,633.64 in each case as compensation for pain and suffering.

10. The **Austrian Supreme Court** stated that the facts, as defined in § 2 (1) item 3 of the Law on Equal Treatment, requires a culpable omission of reasonable remedies on the part of the employer. The legal entity is not only liable for its bodies under the bylaws but also for all persons who carry out activities in a responsible, directing or monitoring function. Since the informed persons – although they may be in a senior position – belonged to the medical staff and not to the administrative staff, the result is that neither the body according to the bylaws, nor their other representatives obtained any knowledge of the alleged infringements.

11. In a decision, in which the facts of a sexual harassment were confirmed, the **Austrian Supreme Court** stated in general terms that the damages depend on the period, type and intensity of the sum total of the molestations to which a female

employee is exposed, and that when establishing the amount of the compensation for pain and suffering, one must take into account the resulting intimidating and humiliating atmosphere at work. If the Law on Equal Treatment establishes a minimum amount of ATS 5,000 for relatively minor molestations, this does not rule out that correspondingly higher amounts of damages are awarded as the intensity of the molestations increases. In the specific case, the Austrian Supreme Court considered an amount of ATS 50,000 as compensation for pain and suffering as commensurate in the specific case, given the duration, type and intensity of the sum total of the molestations and the resulting intimidating and humiliating atmosphere at the work place.

12. The **Austrian Supreme Court** took a decision in connection with the Federal Law on Equal Treatment and stated that the "automatic" preference given to women in connection with civil-service promotions, as compared to equally suited men, is in contradiction to EU law. The Federal Law on Equal Treatment does not comprise a "clause on hardship and providing access", according to which women need not be given preference in promotions, if the reasons, vested in the person of the other candidate, prevail. As a result the law was amended to read that the "preference" given to female candidates will apply only "if the reasons vested in the person of the other candidate, prevail".

B) Gender Mainstreaming:

Since the year 2000 the Austrian Federal Government has committed itself in several government decisions on the implementation of a comprehensive equal-treatment strategy in the sense of a gender mainstreaming. To this end, it set up an inter-ministerial working group on gender mainstreaming in the Federal Ministry for Health and Women which, among other things, is responsible for monitoring projects and measures, as well as for developing criteria to support the gender mainstreaming strategy.

By introducing the 3rd Ministerial Decision on Gender Mainstreaming in March 2004, care was taken that the positive development, begun in the year 2000, in connection with applying the gender mainstreaming strategy will be further reinforced. The result was that all government departments have become obliged to create sustainable structures, to implement at least 2 projects and collect gender-specific data material. In addition, this ministerial decision was the first to define the joint targets for implementing gender mainstreaming and to apply gender budgeting.

The preparation of instruments, which may be provided as models to all organizations, is a major concern of the inter-ministerial working group.

Guidelines for examining gender compatibility requirements in regulatory projects will therefore be presented in the near future, which will make it possible to examine the consequences on equal treatment of legislative measures.

In addition, work is currently under way on a set of instruments for implementing gender budgeting on the federal level. By taking the budget items in the fields of drugs as a basis, a research project will develop methodological instruments for implementing gender budgeting in Austria's federal administrative system.

Another guideline, which will also be presented this year, will deal with the implementation of gender mainstreaming in hospitals.

In the Federal Ministry itself, an internal control group for gender mainstreaming was set up, which acts as a contact point and information center for a fast and sustainable implementation of the gender mainstreaming strategy.

When implementing gender mainstreaming in the Federal Ministry of Health and Women, care is taken to take the special needs of women into consideration, when designing measures such as the new system for preventive health checks. In the near future a women's health report will be presented in order to ensure health services that are in line with women's needs.

C) The Equal-Treatment Ombudsman as Best Practice

General Comments:

The Equal-Treatment Ombudsman, which is a special institution set up by the Federal Government, is required to take the initiative in connection with the private sector. It underlines the statutory obligation of employers to implement equal treatment (against the background of legal action that is possible otherwise). Persons who feel discriminated are offered an altogether free access (primarily free of costs or psychological barriers) to the institutions that were set up specifically in order to implement equal treatment.

This role as a state agency affording equal treatment and equal status, as an institution exclusively committed to the interests of equal treatment is more than

merely a "representation of parties", as it is exercised by an attorney or an organization that represents the interests of a group and takes action in court on behalf of its members.

When parties are represented, the objective is to help the person(s) concerned to enforce his/her (their) rights. The Equal-Treatment Ombudsman also exercises this function within the framework of its statutory possibilities. However, its task is also to obtain recognition for the interests of the state and society in the equal treatment of all persons and the equal status of men and women.

Statutory Basis:

Since 1979 a Law on Equal Treatment has been in force in Austria which protects persons against "discriminations for reasons of sex" in the private sector. On 1 July 2004 the 6th amendment of the Law on Equal Treatment went into force (Federal Law Gazette No. 66/2004), which greatly expanded the scope of its application (see also Question 9 in this connection).

What are the features of the new legislation with regard to gender discrimination?

- The **scope of application** now covers all working environments, i.e. all "classical" work relations, including all employment-like contracts. In addition, the new stipulations apply to the field of basic and further training, in vocational guidance and in connection with access to self-employed gainful activities.
- The previous facts constituting discrimination were expanded to include **gender-related harassment**. This includes molestations that are due to one's gender, but are without reference to the sexual sphere, such as mobbing, for example, with a gender-specific background or constant statements like "All that women can do is prepare coffee", etc.
- The **period of limitation** for sexual harassment was doubled (from six months to one year), and the minimum amount for the payment of damages was also doubled.
- Companies who do not **announce their job vacancies in a gender-neutral manner** may be reported to the district administrative authorities in the future (previously this provisions applied only to professional job exchanges).
- The **equal status of men and women** in the work environment was included as a target provision.

The Equal-Treatment Ombudsman now consists of:

- A woman attorney for the equal treatment of women and men in the environment at work;

- An attorney for equal treatment in the environment at work without any distinction due to ethnic origin, religion, ideology, age or sexual orientation;
- An attorney for the equal status without any distinction due to ethnic origin in other spheres.

The Ombudsman advises and supports persons who feel discriminated, as defined in the Law on Equal Treatment, and accompanies them when attending proceedings before the Equal-Treatment Commission. In addition, the Law on Equal Treatment makes it possible to provide advice on positive measures for all groups exposed to discrimination and to support projects that serve the objective of equality of the sexes.

D) Plans in Support of Women

On the basis of the Federal Law on Equal Treatment (since 1993), all federal ministries and other institutions covered by that law issue plans in support of women. The most important features of the current plan of the Federal Chancellor's Office and of other government departments are, for example, to give preference to women whenever they are under-represented (§ 40 (2) of the Federal Law on Equal Treatment) and whenever their suitability is not less than that of the best-suited other candidate (until the requirements of § 42 and § 43 of the Federal Law on Equal Treatment are met), to take measures to protect dignity at the work place, to increase the number of women in measures regarding basic and further training, to promote occupational promotion and re-entry into working life, as well as measures to promote the reconciliation of occupation and family. The plan in support of women of the Federal Ministry of Health and Women will soon be issued as a regulation.

E) Measures Regarding Education

For several years the Federal Ministry of Education, Science and Culture has been trying to pay greater attention to the subject of equality between genders. Due to the one-sided educational preferences of girls and boys, steps have been taken at various levels to counteract these tendencies and to make the existing educational options attractive for both genders. In this connection efforts are also made to promote "conscious co-education" at school in order to make teachers aware of gender-specific socialization processes, as well as of the routine behavior patterns of girls and boys at school, and to reflect on their own expectations from, and attitudes towards the two genders. School is to offer to girls and boys, men and women, equal opportunities to develop their abilities, interests and perspectives for their future lives.

→ **The educational principle "Education to Equality between Women and Men":**

This teaching principle was introduced in 1995 and has been integrated in the curricula of most types of schools. The educational principle is to contribute towards motivating all those who work in the field of education to increasingly consider gender equality matters in the contents of curricula, in class, textbooks and other education materials used, and to intensify discussion of these topics in school.

The educational principle is meant to educate pupils to a conduct in the daily contacts with others that is based on the principle of partnership between women and men on the basis of equality. In addition, female and male pupils are to be led towards a readiness to reflect on causes and effects of traditional gender-specific discrimination, and, on the basis of their perceptions, to develop an attitude which will enable them to contribute to equality between women and men.

Targets of the educational principle:

- Raising awareness of gender-specific socialization through family, school, the media and the environment at work, as well as of the impacts of this socialization on a person's choice of education, occupation, life concepts, leisure-time organization and on his or her own thinking and conduct (such as body language, communication, role concepts, etc.) in a form commensurate with the respective age.
- Understanding the causes and forms of the gender-specific division of labor, both in the private domain and at work, of the connected vocational opportunities and working conditions, as well as of the different representation of women and men in certain fields (such as politics, education, the arts, science, crafts, technology) in the past and at present.
- Realizing how teaching contents, education materials and the behavior of all school partners may contribute towards handing down and reinforcing role stereotypes in the domain "school" (and in other domains of life).
- Reflecting on one's own conduct, on classroom interaction, on everyday contacts with others, on one's own gender-role concepts.
- Raising awareness for everyday forms of violence and sexism at school, at the work place, in the media; pointing out possibilities for prevention and intervention, as well as steps towards a conduct with others based on partnership.
- Promoting a readiness to eliminate gender-specific prejudices and discrimination, encouraging self-confidence and socio-cooperative attitudes

and/or offsetting deficits in this respect, as well as promoting a conduct by boys and girls based on the principle of partnership.

Implementation:

The implementation of the educational principle "education to equality between women and men" should at best start from everyday experiences of pupils of both sexes. In doing so, special significance should be attached to cooperation and the exchange of experience with teachers and parents, i.e. the persons vested with the right of education, possibly also with female and male experts on specific topics. Another important precondition for the implementation of the educational principle is cross-subject coverage of the topic, as well as its linkage to other integral educational principles (in particular to political education, sex education, media education, preparation for working life).

→ Regulation on Expert Commissions for the Statement of Suitability of Teaching Materials:

Section 9, Paragraph 1, Item 1 provides for the expert opinion, among other things, to also *"include the statement as to whether or not the requirements pursuant to Section 1, Paragraph 2, of the School Education Act are met, in particular with respect to [...] the equal treatment of women and men, and the education to a participation of women and men in social developments in a spirit of partnership"* (Federal Law Gazette No. 370/1974, in the version of Federal Law Gazette, Part II, No. 248, of 29 July 1998).

In 1999, a special **guideline for the representation of women and men in teaching materials** was published to assist in the writing and production, appraisal and evaluation of textbooks, films and other teaching materials, and to encourage consideration of their contents.

→ Gender issues in new curricula

For the first time, the principle of "conscious co-education" was incorporated in a curriculum, viz. that of general secondary schools (*Hauptschulen*) and general upper-level secondary schools (*allgemeinbildende höhere Schulen*), starting as of the school year 2000/2001. The aim is to support girls and boys in planning their occupations and lives in general, without being influenced by traditional role clichés.

The didactic principles of this new curriculum state among other things: "Co-education is not limited to the simultaneous instruction of female and male pupils. Rather, the target must be to consciously come to terms with gender-specific

prejudices. It is essential to select such instructional content as will appeal equally to girls and boys, to create a (learning) climate of mutual respect, and to adjust correspondingly teachers' expectations from, and behavior patterns towards, girls and boys."

In the meantime other gender specific items have also been integrated into new curricula of other types of schools.

→ **Action Plan**

The action plans of the Federal Ministry of Education, Science and Culture, which have been in existence since 1997, are to be understood as a comprehensive effort on the part of the entire Ministry to implement gender equality. The first "**Action Plan 2000**" was initiated in 1997 (99 measures for promoting equality between men and women at school and in adult education). This Action Plan was followed by the "**Action Plan 2003**" - Gender Mainstreaming and Promotion of Women at School and in Adult Education (2001 to 2003). The "Action Plan 2003" will be continued till 2006 putting its main emphasis on gender mainstreaming and gender-sensitive education. (These action plans were prepared on the basis of a catalogue of measures, which had been drawn up by an action platform. The latter had been established after the 4th World Women's Conference 1995 in Beijing.)

Particularly important points of emphasis in this connection are activities and projects on the subjects "vocational orientation for girls" and "girls in non-traditional training courses/occupations". In spite of clearly recognizable improvements in girls' educational levels and formal school-leaving qualifications, the number of girls in technological schools has risen only insignificantly. Women tend to be underrepresented in the craft trades, as well as in occupations requiring technical training or which are oriented towards the natural sciences. In view of this fact, the Federal Ministry of Education, Science and Culture has made increasing efforts to provide regular information on this subject, to make the people concerned more aware of this problem, and to support various associations and school projects which offer relevant advice and counseling on the subject of "vocational orientation for girls".

→ **Vocational orientation for girls**

For the purpose of widening the range of occupational choices for girls and raising the share of women in technological training courses/occupations the project "**FIT – Women in Technology**" was started more than ten years ago. The program envisages information and immersion days at six locations, viz. at the universities of

Klagenfurt, Linz, Salzburg and Innsbruck, as well as at the Universities of Technology of Graz and Vienna. The target group is female pupils, aged 16 to 19, at upper-level secondary schools.

In addition to this, the program "**MiT - Girls in Technology**" has been conducted since 1998 at upper-level secondary technical schools. The program is meant to create a greater awareness (on the part of teachers, parents, pupils and the administrative authorities in the field of education), which is to eliminate prejudices and role clichés.

For female pupils aged 13 to 15 (general secondary schools and pre-vocational schools) a project entitled "**READY**" was started in autumn 2001. Workshops on vocational orientation and career planning are conducted by female experts from counseling centers for girls and are integrated into vocational orientation at school.

The project "**MUT - Girls and Technology**" also targets girls in the age group of 13 to 15 years. It primarily aims at improving the labor-market chances for girls/young women, at widening the vocational perspectives of girls/young women in the direction of occupations which will be of importance in the future (technology, new media), and, on a long-term basis, at raising the percentage of women in non-traditional occupations. Events for teachers, intensive cooperation between provincial officers responsible for women's issues, officers of the Labor Market Service, and company representatives are to intensify the effects of the project.

➔ **Training for teachers**

The activities in connection with the action plans were complemented by several in-service and further training events for teachers, Internet seminars for teachers, and by various activities specifically geared to the requirements of women in the field of adult education.

➔ **Networks**

In connection with the action plans, various networks have been established: For the purpose of implementing the action plans more effectively, a network was established at the provincial school boards and in-service teacher training colleges (*Pädagogische Institute*). Another network in connection with the action plans and the educational principle "Education to Equality between Women and Men" exists at teacher training colleges (*Pädagogische Akademien*), technical and vocational teacher training colleges (*Berufspädagogische Akademien*) and training colleges for religious education teachers (*Religionspädagogische Akademien*).

→ **Projects for gender-sensitive instruction in schools**

In the last 10 years a few school projects were developed that tested different forms of instruction (e.g. pupils segregated by gender) and made teachers work also specifically with all-girls' groups and with all-boys' groups, so as to do more justice to the needs of girls and to achieve that, in their relations, the two sexes are guided by a greater understanding for one another.

The Federal Ministry of Education, Culture and Science supported these projects (also financially), which have made a significant contribution to the further development of co-education. In connection with the projects that were carried out, the results were evaluated, documented and published and made available to other interested teachers.

→ **Gender Mainstreaming**

As a result of the ratification of the Amsterdam Treaty, the Federal Ministry of Education, Science and Culture has attached greater importance to the subject of "Gender Mainstreaming", which is reflected in the various action plans. Gender mainstreaming requires a gender-sensitive attitude on all political levels, in all plans, decisions and measures. (Article 2 of the EC Treaty: Promoting the equality between men and women is one of the tasks facing the European Community. - Article 3 of the EC Treaty: In all the other activities the Community shall aim to eliminate inequalities and to promote equality between men and women). On the basis of a decision taken by the Council of Ministers in July 2000, an inter-ministerial working group was established on the national level to ensure the practical implementation of gender mainstreaming. At the same time, all other federal ministries were asked to set up a gender mainstreaming working group within their respective spheres. In the Federal Ministry of Education, Science and Culture this working group, which consists of representatives of all departments, already started its activities: its task is to inform, to promote greater awareness, and to advise and support the respective decision-making persons and units in implementing the top-down strategy of gender mainstreaming, so that the aspect of "gender" will be given due consideration in all of the Ministry's activities.

In this connection several **pilot projects** are currently being carried out, two of which concern the field of education: One is entitled "**Gender Mainstreaming and School Development**" and is concerned with gender-sensitive conditions and behavior on the class level. Six schools in four federal provinces are participating in this project.

On the basis of its results the follow-up project "Gender Mainstreaming - Cluster Schools" was started in November 2003; it provides, on the one hand, for supporting measures geared to individual schools; on the other hand, it encourages inter-school networking: Five cluster schools constituting a representative cross-section of Austrian school types are developing concrete strategies and measures which are to guarantee the successful implementation of the concept of gender mainstreaming in the whole school system.

In order to reach this aim, overall targets and features were defined on five levels:

Teaching level: Systematic and all-encompassing implementation of gender-adjusted and gender-sensitive teaching for all school pupils.

Personal level: All persons involved in school life are responsible for the implementation of gender mainstreaming in everyday school life.

Organizational and team level: Gender mainstreaming is a natural and noticeable part of school culture.

Cluster level: In a joint effort schools develop and test clear-cut and verifiable criteria: "Which factors make a school a gender-mainstreaming school?"

System level: The gender-mainstreaming cluster schools are good-practice models for implementation and help transfer gender mainstreaming to the entire school area.

The other pilot project, "**Gender Mainstreaming in Teacher Training**", relates to the field of teacher training (teacher training colleges, technical and vocational teacher training colleges, and training colleges for teachers or religion). Its targets include the incorporation of gender mainstreaming in curricula, courses and research projects, a balanced gender ratio in advisory or decision-taking bodies, as well as information and a greater degree of awareness of the subject.

For the purpose of achieving these targets and raising the level of awareness concerning gender mainstreaming, various seminars were organized for gender officials at in-service teacher training colleges (*Pädagogische Institute*) and teacher training colleges (*Pädagogische Akademien*), as well as for teaching staff at upper-level secondary technical and vocational colleges (*höhere technische Lehranstalten*). In addition, separate information and counseling packages on gender mainstreaming were developed for staff members at in-service teacher training colleges. In 2002/2003 most of these colleges made extensive use of these facilities.

III. ISSUES RELATING TO SPECIFIC PROVISIONS OF THE COVENANT (ARTICLES 6 - 15)

Article 6: The right to work

12. Please provide further information on the “National Action Plan for Employment” (para. 16 of the report) and indicate whether it has produced the anticipated results.

More recent data may be found in the last progress report on the NAP for Employment for 2004. The German and English versions can be found at <http://www.bmwa.gv.at/BMWA/Themen/Wirtschaftspolitik/Beschaeftigung/Aktionsplan/default.htm>. The English version is attached to the present document as Annexes 1 and 2.

With regard to the impact of the National Action Plan for Employment (NAP evaluation), please refer to the working translation of the respective chapters of the report "Arbeitsmarktpolitik in Österreich" (Labor Market Policy in Austria), which is enclosed as Annex 3. The German version of the report for 2003 can be found on the homepage of the Federal Ministry for the Economy and Labor at:

<http://www.bmwa.gv.at/BMWA/Themen/Arbeitsmarkt/Arbeitsmarktpolitik/default.htm>); see also "Wirtschaftsbericht der Bundesregierung 2002" (Economic Report of the Federal Government for 2002), pages 86 and following: (http://www.bmwa.gv.at/NR/rdonlyres/4CE5A91E-255C-4308-8C02-C0C545B9586A/1341/wboe2002_neu.pdf).

13. Please indicate the unemployment rates recorded during the past five years.

With regard to the unemployment rate for the last five years, please refer to the enclosed statistics (Annex 4).

14. Please provide up-to-date information on vocational training programmes for unemployed persons and on the results of their implementation.

Please refer to the most recent progress report on the NAP for Employment for 2004 (Annexes 1 and 2) with regard to the vocational training programs for unemployed persons.

Article 7: The right to just and favourable conditions of work

15. Please indicate whether the minimum wage is sufficient to ensure a decent standard of living for workers and their families. Please provide additional information regarding the criteria and procedures for determining and adjusting the minimum wage.

As a matter of principle, Austrian legislation leaves it to the employer and the employee to reach an agreement on remuneration. However, a free agreement on the remuneration for work is only admissible to the extent that this agreement is more favorable than the respective minimum rates which are laid down in documents of collective legislative effect, especially collective bargaining agreements.

No change has occurred in Austria concerning the well-tested system of autonomous agreements on wages and salaries by the groups representing the interests of employers and employees. As a result, the collective-bargaining partners are responsible for fixing the minimum wages and salaries.

As a rule, collective-bargaining agreements are reached for the different sectors. This approach appears to best ensure the necessary measure of flexibility, while taking account of the respectively achieved economic and social framework conditions. In particular, it allows a flexible reaction to the respective economic and social framework conditions in an industry and to adjust the development of incomes at the mostly annual agreements on wages and salaries to the changes in overall conditions. It is therefore the responsibility of the social partners to see to it that the economic development of companies and undertakings in an industry is taken into consideration, while ensuring that employees continue to adequately benefit from the growth in production, which thus takes account of the overall socio-political goal of maintaining the subsistence and increasing the wealth of all concerned.

For those labor relations that are not covered by a collective-bargaining agreement, a number of measures have been taken in Austria's legal system which also provide for the fixing of minimum wages and salaries, such as bylaws, minimum wage scales, remunerations for apprentices, as well as for agreements and rates for homework on contract. All these regulations always require the participation of representatives of the employees concerned in the respective appropriate form.

16. Please indicate the extent of gender wage differentials for work of equal value.

On the level of national statistics it is not possible to assess what is equal work and what is not. In connection with "gender wage differentials", it is mainly data on incomes from employed work that are collected and covered by Austrian statistics with respect to the different genders. As a rule, these statistics do not cover working hours. However, for the first time, the results available for 2003 of the EU investigation on SILC (Statistics on Income and Living Conditions) make it possible to evaluate the gender-specific hourly wage rates.

The most comprehensive data base is the "Allgemeiner Einkommensbericht des Rechnungshofes" (General Report on Incomes by the Austrian Court of Audit). Below, some results are given with regard to the wage differentials for work between women and men:

The incomes of all-year, full-time employees were evaluated in order to take account of the working-hour differentials between women and men (table). As a result, the gender-specific differential of the median income amounted to 21.1% in 2003 and went down by 2 percentage points since the year 2000. However, for the unadjusted gross annual income (median), the gender-specific difference amounts to 40.4% in 2003 and has remained more or less unchanged since the year 2000. One explanation is, among others, the increasing level of part-time work by women, whereas men are overwhelmingly employed as full-time employees and also work more paid overtime hours.

The results of EU-SILC on the difference between the average gross hourly earnings of men and women in 2003: Women earn less by 17% per hour than men.

Gross Annual Income of All-Year, Full-Time Employees

		women	men	differential (%)
2003 (€)	average	28,140	38,700	27.3
	median	25,360	32,160	21.1
2002 (€)	average	27,340	37,660	27.4
	median	24,500	31,240	21.6
2001	average	26,250	36,480	28.0

(€)	median	23,440	30,370	22.8
2000	average	25,480	35,530	28.3
(€)	median	22,820	29,690	23.1

Gross Annual Income of Employed Wage and Salary Earners¹:

		women	men	differential (%)
2003	average	18,247	30,278	39.7
(€)	median	15,792	26,507	40.4
2002	average	17,939	29,850	39.9
(€)	median	15,620	26,055	40.0
2001	average	17,538	29,464	40.5
(€)	median	15,304	25,592	40.2
2000	average	17,204	29,305	41.3
(€)	median	14,976	25,094	40.3

Differential: as percentage of men's incomes.

Source: "Allgemeiner Einkommensbericht des Rechnungshofes" (General Report on Incomes of the Austrian Court of Audit), Court of Audit, Vienna, 2002 and 2004.

In this connection, it is pointed out again that, on the level of legislation, the principle of equal remuneration for equal or equivalent work has been complied with for a long time by way of the Law on Equal Treatment. When assuming a violation of the demand for equal treatment in individual cases or in general regulations (collective-bargaining agreements, company statutes, and company-level classification schemes), the claim for payment of the remuneration differential may be filed in court or with the Equal-Treatment Commission.

Article 8: Trade union rights

17. The report contains seemingly contradictory information regarding the right to strike. The statement in paragraph 4 that the State party has not enacted any law regarding the right to strike appears to be contradicted by

¹ Employed wage and salary earners, excluding apprentices, but including persons with minimal employment

paragraphs 86 and 89. Please describe in detail the legislation governing the right to strike.

In Austria, the principle of neutrality in case of strike (labor disputes) applies to the state. The Austrian legal system does not contain any specific standards that govern strikes. The few statutory provisions that expressly relate to labor disputes reflect the attitude of Austria, namely the principle of neutrality for the state in labor disputes.

For example, pursuant to § 3 item 10 of the Law on the Promotion of the Labor Market prohibits the placement of labor with companies affected by a strike or lock-out, as well as to place persons who are on strike or in a lock-out. In accordance with § 13 of the Law on Unemployment Insurance, no unemployment benefits are due for the period in which the unemployment is the direct consequence of a company standstill caused by a strike. The same applies for the cases of a lock-out in a company, if this is a preventive measure against a partial strike, a passive resistance or another industrial action aiming at frustrating the continuation of work.

In the absence of relevant statutory regulations and in the absence of court decisions, on account of the rare strikes in Austria, the Austrian law on strikes is primarily a product of academe.

However, the fact that there is no official law governing strikes in Austria does not mean that strikes take place in an area without legislation. Rather, the general statutory provisions apply, especially those under civil law.

In practice, no labor-law sanctions are issued, given the fact that strikes are rare in Austria.

The right to form coalitions according to Article 11 of the European Convention on Fundamental Rights and Freedoms, which is guaranteed under constitutional law, and the provisions of the UN Social Pact regarding the freedom of trade unions are sufficient guarantees for the right to strike in Austria's legal system. There is therefore no further need for additional legislative measures,

Article 9: The right to social security

18. Please describe more fully than in the report (para. 94) the specific features of Austrian social legislation that have prevented the State party from

ratifying the ILO Conventions Nos.121 and 130, and the remaining parts of Conventions Nos. 102 and 128.

Those Conventions, or parts of Conventions, were signed which it was possible to ratify without any problems. Details should be available in the Austrian reports on these Conventions. The same also applies to Conventions that were not ratified, or only ratified in parts.

19. It is not clear from the report (paras. 96, 156 and 162) whether all persons residing in the State party are covered by health insurance. Are some groups of persons excluded? Please provide precise information.

In Austria, all persons domiciled here are potentially covered by statutory health-insurance protection. The major part of the population has health insurance on account of the statutory compulsory health insurance which is linked to the various forms of gainful employment or to receiving certain social benefits. They may also be entitled to health-insurance benefits as dependants of a person with compulsory health insurance (referred to as "co-insurance" in everyday language in Austria). All persons not covered by statutory health insurance and domiciled in Austria have the possibility to apply for voluntary self-insurance under the health-insurance scheme. The standard contribution to the scheme may be reduced by the insurance institution upon application and depending upon the income situation of the applicant. Persons with minimal employment, who only have accident insurance on account of their work, may opt, upon application, for full insurance coverage, which also includes health insurance and is available at favorable conditions. In addition, with regard to the group of asylum-seekers it should be pointed out that these were included in the health-insurance scheme by way of a decree issued by the Federal Minister of Health and Women. On the basis of an agreement between the Federal Government and the federal provinces, this health-insurance coverage is linked to the system of providing foreigners with basic services, whenever they are support-deserving and in need of assistance and protection.

Of course, not all persons staying in Austria have a de-facto title to enjoy statutory health-insurance benefits. In individual cases this may be due to the fact that – by mistake – they assume that they have insurance coverage or do not avail themselves of the possibility to take out self-insurance, for whatever reason, especially since this requires a voluntary application. In individual cases, persons without compulsory insurance may prefer a private health-insurance policy. With regard to persons supported by a social-welfare institution, it is in the discretion of that institution

whether it registers the person for self-insurance and pays the amounts due in this context (social-welfare institutions do not have the possibility of paying reduced contributions, since they should not be granted a relief at the expense of persons paying contributions), or whether it merely pays the costs of the necessary medical treatment whenever they are actually incurred. To an extent which cannot be determined with precision, persons without legal residence status in Austria will, of course, not have any health-insurance coverage, since they prefer to remain anonymous, given their lack of residence title.

For further information please refer to the enclosed report "Quantitative und qualitative Erfassung und Analyse der nicht-krankenversicherten Personen in Österreich" (Quantitative and Qualitative Data and Analysis of Persons without Health Insurance in Austria), which is enclosed as Annex 5.

20. It is not clear from the report (para. 113) what exactly is covered by invalidity insurance and how it relates to old-age pension insurance. Are they two separate insurance schemes? Please clarify.

Both, old-age pension and invalidity and/or occupational-invalidity pension are types of pension that result in the payment of benefits. In the first case, these are due upon having reached a certain age, and in the second case these are due to a reduced ability to work.

a) Old-Age Pension:

Insured persons are entitled to receive an old-age pension when they have reached the standard retirement age, i.e. once the "waiting time" (qualifying period) is over. The standard retirement age is 60 for women and 65 for men. "Waiting time" (qualifying period) is defined as a certain minimum period of insurance coverage, which must have been acquired for the different types of pensions. For an old-age pension it is necessary to have a minimum period of insurance coverage of 15 years of contributions.

Since the Law on the Harmonization of Pensions went into force, it has become easier for insured persons born after 31 December 1954 to have access to an old-age pension, since a seven-year period of insurance coverage obtained by gainful employment is enough, while the remaining 8 years may be supplemented, for example, by periods or child-rearing (see also Question 21, item b, in this connection).

b) Invalidity and/or occupational invalidity pension²:

We speak of invalidity or occupational invalidity if the capacity to work of the insured person is reduced, due to his/her physical or mental condition, to less than one half of that of an insured person who is physically and mentally sound and has the same training and equivalent knowledge and skills, and if one may expect that this insured person will probably be on sick leave for seven weeks in the course of a year, and if that person will also have to observe special resting periods on a regular basis during working hours.

In contrast to the benefits obtained upon retirement, an invalidity or occupational invalidity pension is generally granted independent of the actual age of the insured person. Rather, the decisive parameter is the reduced state of health and the consequently reduced capacity to perform in the occupation of the person concerned.

The pension is due upon application, when the "waiting time" (qualifying period) is over, when there is a case of invalidity and/or occupational invalidity which is likely to persist for a minimum of six months. As a rule, it will be granted for a limited period of time, i.e. for 24 months as a maximum after the relevant date ("Stichtag"). A further application may be filed within three months, if the reduced capacity to work continues. An invalidity and/or occupational invalidity pension will only be granted without any time limitation if it can be assumed, on account of the physical or mental status of the person concerned, that it is a status of permanent invalidity and/or occupational invalidity.

"Waiting time" (Qualifying period):

If the relevant date ("Stichtag") is before a person reaches the age of 50, this prerequisite is met when having obtained 60 insured months during the last 120 calendar months ("Rahmenzeit" = time frame).

In case of a relevant date after the age of 50, the qualifying period is extended by one further month of insurance coverage for every month of that person's life, up to a maximum amount of 180 months of insurance coverage. The time frame of 120 calendar months correspondingly goes up by two calendar months each for every further month of that person's life, up to a maximum amount of 360 calendar months.

A qualifying period is also considered to have been fulfilled if the beginning of the pension-benefit payments is prior to the age of 27 and if a minimum of six months of

² The term used varies, depending whether the insured person was a wage or a salary earner.

insurance coverage have been accumulated until that date, which must not be due to self-insurance according to § 16a of the Austrian General Social Security Act.

There is no need for a qualifying period if an accident at work, an occupational disease or a damage during service (while serving the military service or being trained by the Austrian Federal Army) is the reason for the invalidity or occupational invalidity.

Further requirements:

On the relevant date, the prerequisites for an old-age pension and/or a premature old-age pension, in case of a long period of insurance coverage, must not be met.

For a pension to be due, the activity must be ended which was the cause for the invalidity or incapacity to work of the insured person.

When reaching the age of 60 or 65, persons drawing an invalidity or occupational invalidity pension may apply for a conversion of the pension into an old-age pension.

21. It seems from the report (paras. 164 and 165) that people, especially women, who have not been gainfully active during their life time receive only a very small old-age pension. What steps does the Government intend to take in order to address this problem?

In this connection, two measures must be mentioned:

- a) the compensation premium and
- b) the reduction of the required qualifying period by the Law on the Harmonization of Pensions.

a) The compensation premium is meant to ensure a minimum income to every old-age pensioner who has his/her regular domicile in Austria, by taking into account his/her family situation, as well as other income and subsistence benefits. The compensation premium is the amount of the difference between the "total income" and the relevant compensation-premium guiding ratios.

This has the following implications for 2005:

As of 1 January 2005, the guiding ratios for compensation premiums are raised, in general, by 1.5%. The guiding ratios for compensation premiums amount to EUR 662.99 for single persons and to EUR 1,030.23 for married persons.

Since the entry into force of the Law on the Harmonization of Pensions (1 January 2005), it is necessary to have worked for a period of seven years in order to accumulate the insured periods for a pension. There is no difference between men and women. However, the statutory provisions for the transitional period take account of the different retirement ages for women and men.

The qualifying period, which was the prerequisite to date for an entitlement to an old-age pension, is now replaced by the requirement of a minimum period of insurance coverage. The prerequisite is satisfied if a minimum of 180 insurance months pursuant to the Austrian General Pension Act have been accumulated up to the relevant date, of which a minimum of 84 months must have been accumulated by way of a gainful activity. Periods for taking care of a handicapped child, as well as for taking care of a close relative entitled to a care allowance in class 3, as a minimum, according to § 5 of the Austrian Federal Care Allowance Act, as well as periods of leave for caring for a terminally ill relative are all regarded as insured periods from a gainful activity. The prerequisites for an entitlement to an old-age pension have thus been decisively improved, primarily for female insured persons. This group of persons needs to pursue a gainful activity for only seven years, while the remaining minimum periods of insurance coverage may be accumulated, for example, by periods spent raising children.

It should also be mentioned that while the average old-age pension of women is lower than that of men, more than 180,000 women also received an old-age pension in the form of a widow's pension in 2004. When drawing two pensions (direct pension and pension benefits after a deceased person), the monthly amount paid to women goes up to an average of about EUR 1,170.

Article 10: Protection of family, mothers and children

22. Please provide information on measures taken by the State party to address the problem of domestic violence, especially against women.

The Austrian Federal Government adopted an **action program against violence in the family** in June 2004 in order to counteract the problem of domestic violence and, in particular, of violence against women.

With this decision a politically binding basic consensus was laid down, as a basis for further project work. It can be summarized by the following statement:

"Although the intimacy of the domestic sphere is basically entitled to being respected by the state, this demand does have its limits whenever state intervention is required in order to protect the physical safety, primarily of socially or physically disadvantaged family members."

This principle of giving priority to preventing violence over the demand for respect of the private sphere is also the guiding principle for any intervention by the law-enforcement bodies. In a "normal situation" the private sphere of a person must be respected, the accompanying reservations to penetrate the living sphere of families must be overcome, though, if persons require protection against acts of violence.

On 1 May 1997 the **Austrian Federal Law for the Protection against Violence in the Family** (Law on the Protection against Violence) entered into force.

By adopting this legislative act, the basic and necessary statutory prerequisites were created for an implementation of a project of broad scope, which pursues the following objectives:

- * strengthening the position of the persons at risk
- * highlighting the standard that is disregarded by the act of violence
- * improving the cooperation of the institutions dealing with violence in the family.

The effectiveness of the Law on the Protection against Violence rests on **3 pillars** - **removing persons** ("Wegweisung") and **prohibiting** them **any entry** ("Betretungsverbot"), pursuant to § 38a of the Austrian Security Police Act, expanding **temporary court injunctions** pursuant to § 382b of the Regulations on Execution, and setting up so-called **intervention services**, in order to protect victims in accordance with § 25 (3) of the Austrian Security Police Act.

The centerpiece of the reform of protection against violence is that the bodies of the public security services are endowed with the security-police authority **to prohibit** a person, who is threatening to commit an act of violence, **access to the apartment and the immediate environment** of the person at risk (Ban on entry, § 38a of the Austrian Security-Police Act) ("Betretungsverbot"). If the person threatening violence is in the apartment of the person at risk, at the time that the ban on entering the apartment is issued, the ban on entry is linked to a **removal of the person** ("Wegweisung") from the area at risk. The ban on entry lasts for ten days. If the person at risk files an application for a temporary injunction with the local court, the

period during which entry is prohibited is extended until the family court has taken its decision, at the most by another ten days.

Already before the Law on the Protection against Violence entered into force, women had the possibility – in anticipation of divorce proceedings – to obtain **a temporary injunction of the local court** against their violent husbands. The injunction served the purpose of ousting/removing the husband from the marital apartment. With an amendment to the Regulation on Execution (§ 382b), this instrument was considerably expanded and, in particular, separated from the requirement of marriage. Temporary injunctions were expanded with considerable effect in the field of enforcement.

Temporary injunctions by the family court, **following the police ban on entering the apartment**, usually run for a period of three months. However, if they are applied for in the course of divorce proceedings, they are valid until the end of these proceedings. As to substance, the temporary injunction may clearly go beyond the police ban on entry of the apartment. The person threatening violence may, for example, be banned from going to other places than the apartment of the victim, such as the work place of the woman or the school of the children. In the last analysis, such persons may be prohibited to have any contact with the persons at risk.

Another central component of the reform is the creation of intervention services, as private institutions for the protection of victims and as partners of the security enforcement agency (§ 25 (3) of the Security Police Act): The Federal Minister of the Interior has the power to commission reliable and appropriate institutions concerned with the protection of victims, to contact persons exposed to violence for the purpose of offering counseling and other non-pecuniary support. The bodies of the public security services are obliged to inform the persons at risk (of the possibility of a temporary injunction according to § 382b of the Regulations on Execution and) of suitable institutions for the protection of victims. Immediately after returning from an intervention according to § 38a of the Austrian Security Police Act to their office, they must draw up a detailed documentation of their intervention, including a description of the situation which they encountered. This documentation is forwarded, without delay, to the intervention service with local competence. Its task is to establish (pro-active) contact with the person at risk, to provide solidarity, support and advice, in order to give them strength. The priority goal of an intervention center is to enhance the safety of threatened and abused women and children. The interventions focus on ending the violence, not on maintaining or ending the marriage or the co-habitation.

In this respect, the intervention service is an indispensable link between police intervention and family-court proceedings. Since the fall of 1999 every federal province has its own intervention center, two provinces support additional regional offices.

The main task of an intervention center is to guarantee the safety of the victims, hence to assess - in cooperation with the victim - the threat posed by the offender and to set up a crisis plan, as well as a safety program. In addition, help services include legal counseling, particularly on temporary injunctions by the court which prolong the expulsion of the offender from the home, as well as socio-psychological services. The intervention center coordinates the entire intervention process between all occupational groups involved in order to optimize its support to the victims, e.g. sparing them from having to repeatedly explain the act of violence.

Of course, victims can also contact the intervention centers on their own initiative. Hence, 7,983 persons, 95% of them female, were supported by the intervention centers (with 4,180 barring orders issued) in 2003. The intervention centers play an important role not only in handling individual emergency cases, but also in establishing and extending the cooperation and network of all groups. Apart from the police, the following institutions are involved: criminal and civil courts (the latter being responsible, e.g., for temporary injunctions under the Protection against Violence Act, support-money claims and divorce suits); the youth-welfare authorities, if children are involved; social-service departments; other non-governmental institutions, e.g. counseling services for debtors and women shelters.

An extensive information brochure explaining the Protection against Violence Act and including an extensive list of counseling and support services was published in 2001 (and is about to be updated). This brochure is sent, free of charge, to all relevant institutions for further distribution and, upon request, to interested persons.

It is one of the most important tasks of the police to prevent acts of violence and to take care that people can lead a life without being afraid of infringements. Sexual, physical or mental violence against socially disadvantaged persons, especially against women and children, always constitute a massive infringement of the right to life, freedom and dignity, as well as the physical and mental intactness of the victims.

The Law on the Protection against Violence started a process of re-thinking and a new awareness regarding the group of topics around "violence in the family". Violence in the family is no longer regarded as a private matter but seen as a

responsibility of the state and of society as a whole. Legal provisions concerning rape or sexual coercion in marriage or co-habitation were amended last year. Since May 2004 there is no longer any statutory difference as to whether a crime is committed in marriage/co-habitation or otherwise.

Removing the violent offender from the apartment, in which the victim of violence is also living, is an efficient tool and a clear signal by the state, both in favor of the victim's claim to safety and in demonstrating the responsibility of the offender for his violent behavior. The public at large is increasingly accepting the instrument of banning the offender from the apartment, the dark figure for cases of violence in the family thus decreases continuously.

The goal was reached, i.e. to **break the spiral of violence in the family by ousting/removing the offender and by supporting the victim.**

In 2004, **4,764 bans on the entry** were issued throughout Austria. In 641 cases, an administrative fine was imposed when the offender returned to the prohibited area. In 6,195 cases the security enforcement bodies intervened to settle disputes in families.

Since the instrument of "ban on entry/ousting" is applied with more restraint in rural areas than in urban settings, on account of the lower level of anonymity, the Federal Ministry of the Interior promotes numerous **projects to provide protection against violence on a regional level** (Upper Austria: pilot project Mühlviertel, Lower Austria: field office Zwettl). The goal of these projects is to establish the Law on the Protection against Violence and the principle of general prevention with sustainability also in the regions.

The Federal Ministry of the Interior also promotes **anti-violence training**, which the "Männerberatung Wien" (Advice to Men in Vienna) is providing together with the intervention service of Vienna.

With a view to more cooperation with the intervention centers, the Federal Office of Criminal Investigation carried out additional measures for an efficient implementation of the Law on the Protection against Violence. In this connection, numerous **cooperation and coordination meetings** were held in 2004 between the law-enforcement bodies and the intervention services.

In September 2004 a **Dutch delegation**, comprising senior representatives of the Dutch Ministries of Justice and the Interior, as well as representatives of NGOs, was

informed in detail at the Federal Office of Criminal Investigation about the Austrian reform model and the experience of the Austrian law-enforcement bodies in this context. The knowledge, which the Dutch delegation acquired, resulted in a new orientation of the Dutch draft legislation.

In the framework of an International Day of the European Network for Criminal Prevention in The Hague, the representative of the Federal Ministry of the Interior, together with representatives of the intervention services reported about Austria's Law on the Protection against Violence.

Training of Law Enforcement Authorities: Since 1989 police officers attend a two-day seminar on violence against women in the course of their basic training.

Quality assurance through training of all occupational groups concerned: In order to assure a high quality of all counseling services and intervention procedures, special training courses for all occupational groups that are in contact with victims of violence (courts, police authorities, youth-welfare officers, employees of women's institutions, health personnel, teachers, etc.) are essential.

In 1996/97, a series of training courses was offered to the relevant occupational groups across the country.

Employees of institutions concerned with women's affairs, which offer counseling and support for women exposed to violence, are not represented by any trade association that is responsible for their special training or further education. In response to this need, state-funded seminars for this target group have been held regularly since 1998. In addition, cooperation between all occupational groups is supported by state-funded interdisciplinary seminars, which have also been held regularly since 1998.

Psycho-social and legal accompanying measures of the courts: Even when interrogated by video transmission and not directly confronted with the accused, minors are subject to considerable stress in court proceedings. The experience of sheer helplessness, felt not just by the children but also by the persons who are closest to them, resulted in a model project "psychological and legal accompanying measures of the courts in case of sexual abuse suffered by girls, boys and young people" between 1998 and 2000, that was funded by the Federal Ministry of Social Security and Generations. When the Federal Ministry of Justice began to make direct case-by-case payments for the psycho-social and legal accompanying measures of the courts towards the end of 2000, the Federal Ministry of Social Security and

Generations commissioned a project to implement the service with existing structures. The main objective of the project was to train staff in order to ensure a professional level and to secure quality standards. Secondly, the project served to initiate and support cooperation between the providers of services to victims of sexual abuse. Its specific purpose was to establish a cooperation forum for accompanying services of the courts and interdisciplinary round-tables in each of the nine federal provinces of Austria. In the meantime, all the federal provinces have their own forum, and some have already established round-tables. Some 70 counseling centers throughout Austria offer psycho-social and legal accompanying measures of the courts to all victims (children and adults), free of charge, and at a professional level (status as of 2004).

Shelters for battered women: If it is very likely that victims remain exposed to further acts of violence when staying at home, and if the prerequisites for detaining the offender are not sufficient, the risk of escalating violence, which is particularly high during times of separation, can only be prevented by moving the victims to a safe place.

At present, Austria has a total of 29 shelters, which accommodate women and children exposed to domestic violence on a temporary basis.

Counseling services: At present, about 40 counseling services for women, which focus on supporting female victims of domestic violence, receive state funding. Their support includes e.g. legal services, psychological support, housing and financial information, etc.

Throughout Austria, some 20 child protection centers, many of them also funded by the state as family counseling centers, 10 children's and juveniles' ombudsmen and about 20 child-protection groups in hospitals provide protection and counseling to children and their closest care-providers, irrespective of whether a case is reported to the police or not.

Programs for Male Offenders - Prevention: One aspect of the issue "violence in the domestic sphere and social environment" is to treat the persons who maltreat or sexually abuse children and women. Numerous scientific studies have demonstrated that social work with the offenders decreases the rate of recidivism and thus helps to prevent suffering in the future. Social work with offenders is therefore an important contribution towards protecting victims and preventing further acts of violence. In Austria, a working group developed standards for offender programs, and the model

project “Work with Child-Abusing Male Offenders” was carried out. The key findings obtained by an evaluation of the research were published in late 2002. At present, a training scheme for persons working with persons committing acts of violence is being developed, and research on the diagnosis of recidivism is being undertaken.

Violence against children: Physical punishment has been forbidden by law since 1989. Funds are used to educate parents, to provide counseling, to increase awareness for the prevention of violence, but also to help victims. The project includes the following elements:

- Training programs for parents have been intensified during the last few years by providing information on an age-appropriate education and by offering possible alternatives to a non-violent upbringing, as well as strategies to ease stressful situations in order to prevent mental and physical violence. An amount of EUR 530,000 is spent every year in order to produce information material (web site, brochures, etc.).
- Funding institutions which offer preventive measures and support regarding educational issues (parents’ training, support of parent-child centers etc.) (EUR 1.1 mill.).
- Sex education for self-assured children to provide adequate information about sexuality so that they can express themselves in this respect, using the proper language – the brochure “Love, sex and so on ...” serves as a good basis.
- Brochure „(K)ein sicherer Ort“ (An (un) safe place“: awareness-raising on forms and consequences of sexual violence, as well as information on possible assistance for children and young people exposed to violence.
- Subsidies to child-protection-centers (EUR 195,000).
- Supporting professional associations in all Austrian hospitals with children’s departments, the so called “child-protection groups in hospitals”. These are multi-disciplinary teams, set up at hospitals, which provide counseling on assistance measures in cases of suspected maltreatment or child abuse.
- There is an ombudsman system for children and adolescents in each of the federal provinces and on the federal level. These are contact points for all issues and problems relating to children and adolescents. Violence against children in all different forms has a predominant place in the work of the ombudsmen offices. Awareness raising, information, networking, counseling, advocacy.

23. Please provide up-to-date information on measures taken to combat sexual exploitation of children, including child pornography and prostitution.

In recent years the penal provisions for sexual offences were reformed on several occasions.

The **2002 Act Amending the Austrian Penal Law Code**, Federal Law Gazette I No. 134/2002, deleted § 209 of the Austrian Penal Law Code and replaced it by another penal provision, i.e. **§ 207b of the Austrian Penal Law Code (sexual abuse of young persons)**. According to § 207b (1) of the Austrian Penal Law Code persons shall be punished by imprisonment of up to one year or a money of up to 360 daily rates who perform a sexual act on a person that has not yet reached the age of 16 and is not yet sufficiently mature, for certain reasons, to understand the significance of the act or to act on the basis of this understanding, by taking advantage of this lack of maturity, as well as of an age-related superiority, or who incite such a person to perform a sexual act on a third person or to have it performed on themselves by a third person. According to paragraph 2 of this provision, persons shall be punished by imprisonment of up to three years who perform a sexual act on a person that has not yet reached the age of 16, by taking advantage of the position of necessity of that person, or who have such an act performed on himself/herself by that person, or who incite such a person to perform a sexual act on a third person or to have it performed on themselves by a third person. Anybody, who incites a person that has not yet reached the age of 18, immediately against remuneration, to perform a sexual act on him/her or a third person or to have it performed by him/her or a third person, shall be punished by imprisonment of up to three years according to § 207b (3) of the Austrian Penal Law Code.

§ 207b of the Austrian Penal Law Code thus punishes the following behavior:

1. Sexual acts with girls and boys below the age of 16, if the older (male or female) partner takes advantage of the lack of maturity, due to that person's individual development, of the person below the age of 16, as well as by taking advantage of his/her own age-related superiority.
2. Sexual acts with girls or boys below the age of 16, if the (male or female) offender takes advantage of a position of necessity of the person below the age of 16 (e.g. drug addiction, illegal domicile, homelessness).
3. Sexual acts with girls or boys below the age of 18, if the sexual contact is made against a payment. The paying partner may therefore now also be punished for a sexual contact with juvenile prostitutes.

The introduction of § 207b of the Austrian Penal Law Code resulted in the introduction of a uniform "age of consent" which is now generally 14 for heterosexual and male homosexual and lesbian sexual contacts. The new facts constituting

special abuse for certain age groups are not restricted to specific sexual orientations. This also applies to the already existing facts (see §§ 208, 212, 213).

With the **2004 Act Amending the Austrian Penal Law Code**, Federal Law Gazette I No. 15/2004, the reform of the penal provisions for sexual offences was completed for the time being. Its main concern is the transposition of international legal acts to combat the sexual exploitation of children in the field of substantive penal law, especially the Council Framework Decision to combat sexual exploitation of children and child pornography of 22 December 2003 (OJ L13 dated 20 January 2004, p. 44), as well as to reinforce the protection of minor against sexual exploitation.

The following priorities of the amendment deserve mentioning:

§ 104a of the Austrian Penal Law Code introduced a new **general penal provision against human trafficking for the purpose of sexual exploitation, against exploitation by organ removal and against exploitation of one's capacity to work**. According to paragraph 1 of this provision, a person shall be punished by imprisonment of up to three years who hires, accommodates or otherwise takes in, transports or offers to another person or hands to another person a minor person or a major person (in the latter case by applying unfair means against that person), with the intention to exploit that person sexually, by removing one of his/her organs or exploiting his/her capacity to work. Unfair means are deception about facts, taking advantage of a position of authority, a position of necessity, a mental disease or a condition that renders that person defenseless, intimidation or granting or accepting an advantage in connection with the transfer of the control over that person. Anybody shall be punished by imprisonment from six months and up to five years who commits the offence through the application of force or dangerous threat. Anybody who commits the offence against a minor person, as part of a criminal organization, by applying gross violence or in such a manner that the life of that person is jeopardized deliberately or with gross negligence on account of the act, or if the act results in a particularly serious disadvantage for the person, shall be punished by imprisonment from one to up to ten years.

As an accompanying measure against human trafficking, § 194 of the Austrian Penal Law Code ("**prohibited adoption placement**") now punishes the placement for adoptions in which the child is "bought" from the person entitled to consent to the adoption, which was previously not punishable. If a person therefore causes a person, entitled to consent to an adoption, against granting that person an advantage for him/her or third parties to consent to an adoption of a minor person by another

person, that person shall be punished by imprisonment of up to two years. If the offender acts in order to obtain a pecuniary advantage for him/her or a third party, that person shall be punished by imprisonment of up to three years. The accepting persons and the children of the adoption, who are involved in the placement, shall not be punished as involved parties. This is a specific step transposing the Second Optional Protocol of the Convention of Children's Rights.

§ 201 of the Austrian Penal Law Code ("**rape**") was amended to the extent that the distinction, applied to date, between rape and application of considerable force and/or threat with serious danger to body or life and rape by not using gross force, deprivation of liberty and/or threat of danger to body or life was now eliminated. For every rape there is now a uniform punishment of imprisonment ranging from six months to ten years. Whenever the rape results in the victim's pregnancy, the possible punishment in the future is five to 15 years of imprisonment. Against the background of clearly more awareness regarding the personality of human beings and their rights to sexual self-determination, the privileged status afforded to rape and sexual coercion in marriage or co-habitation was deleted without any substitute.

The previously applicable version of § 207a of the Austrian Penal Law Code punished the production of pornographic presentations with persons below the age of 14, as well as the import, transport, export for the purpose of dissemination, the offering, procuring, handing over, showing or making otherwise accessible of such materials. However, this was possible only to the extent that the material showed sexual acts performed on these persons. The old version of § 207a did not comprise pictures of persons between the ages of 14 and 18, on the one hand, and merely arousing, clearly sexually motivated pictures of persons below the age of 14. With the 2004 Act Amending the Austrian Penal Law Code, the facts under § 207a of the Austrian Penal Law Code ("**pornographic presentations of minors**") were tightened in several respects. First, the possible punishments were considerably lengthened: Anybody who produces a pornographic presentation of a minor person, or imports it for the purpose of dissemination, transport or who exports it, or offers it to or procures it for others, hands it to others, shows it or makes it otherwise accessible, shall be punished by imprisonment of up to three years. In comparison to the earlier version of this provision, which punished these acts by imprisonment of up to two years, this is a considerable tightening of the provision. According to paragraph 2 a person shall be punished by imprisonment between six months and up to five years, who commits such an act on a commercial basis. Persons shall be punished by imprisonment of one to ten years who commit the act as a member of a criminal organization or in such a manner that it results in a particularly serious

disadvantage to the minor person. Such persons shall also be punished who produce a pornographic presentation of a minor person by applying considerable force or who in the course of that production endanger the life of the presented minor person deliberately or with gross negligence. The possible punishment for possession of child pornography was also increased, namely regarding pornography with young minors by up to two years of imprisonment, and regarding pornography with older minors by up to one year of imprisonment. This, too, is a major tightening of the provision.

In addition to the aforementioned possible punishments, the protected age in connection with pornography was raised from 14 to 18 years. This means that § 207a of the Austrian Penal Law Code does not only punish pornographic presentations of persons up to the age of 14, but also those of older minors, i.e. persons between the age of 14 and 18. Last but not least, § 207a of the Austrian Penal Law Code was expanded inasmuch as it now also covers pictures of the genitals or the pubic region of minors, with a clearly sexual motivation.

The provisions of § 212 of the Austrian Penal Law Code, which relates to the punishment of any **abuse of a relationship of authority**, were generally expanded to include relatives in ascending line. Apart from this, the provisions were expanded to include established physicians, psychotherapists and nursing staff and care-providers, to the extent that their relationship of authority is abused by sexual acts. As a result, § 212 (1) of the Austrian Penal Law Code now punishes by imprisonment of up to three years persons who perform a sexual act on minor persons, to which they are related in descending line, on a minor adopted/foster child, step-child or ward, or with a minor person under their educational control, training or supervision, when abusing that position vis-à-vis that person, or who have sexual acts performed on them by such persons, or who incite such a person to perform a sexual act on them in order to arouse themselves sexually or to obtain sexual satisfaction. According to this provision those persons must also be punished who, as physicians, clinical psychologists, health psychologist or psychotherapists, or as members of another health or nursing profession perform a sexual act with a person who is under their professional care, or as staff member of an educational institution or as a person employed in some other form in an educational institution with a person in the care of such an institution, as an official with a person under his official custody, thereby taking advantage of their position vis-à-vis that person, or who have such sexual acts performed on them by such a person, or who incite such a person to perform such acts on them in order to sexually arouse third persons or to obtain sexual satisfaction.

§ 215a of the Austrian Penal Code is a new **penal sanction against promoting prostitution and pornographic presentations by minors**. It is prohibited to hire, offer or place for such purposes, and/or exploit minor prostitutes and/or persons acting in pornographic presentations.

According to paragraph 1 of this provision, any person who hires a minor person, irrespective of whether he/she is already engaging in prostitution or not, for the practice of prostitution or to participate in pornographic presentations or who hires or places them with other persons for such a purpose, shall be punished by imprisonment of up to three years. Such persons shall also be punished who exploit a minor person engaging in prostitution or participating in a pornographic presentation in order to obtain for them or others a pecuniary advantage. Persons who commit the act as part of a criminal organization, by applying gross force or in such a manner that the act deliberately or in a grossly negligent fashion puts the life of the person concerned at risk or so that the person concerned suffers an especially serious disadvantage, shall be punished by imprisonment of between six months or up to five years. Persons who commit the act against a minor person shall be punished by imprisonment from one to ten years. Participation in a pornographic presentation is defined as a person, reduced to him/her, and removed from any other expression of life who performs a sexual act upon himself/herself or with another person or an animal, or who has such an act performed on himself/herself, or who exhibits genitals or pubic region, which serves to sexually arouse the onlooker.

Children and juvenile victims of sexual offences often tend to forget the abuse and to suppress it. Often, the juvenile victims of a sexual offence begin to digest the experience only when reaching adulthood or even later – mostly between the ages of 20 and 30 – so that only then will they be in a position to report the offence to the police. In the past, this often caused problems, as the offences had frequently become time-barred and it was no longer possible to punish the offenders. In recent years this situation was mitigated to some extent by an amendment on § 58 of the Austrian Penal Law Code, which is a provision in the penal-law code on the limitation of actions. As a result, the **period of lapse** for certain sexual offences committed on children and juvenile commences only upon the children and juveniles, who were victims of sexual offences, having come of age. There is therefore sufficient time to prosecute such offences against minors, after the minor victims of the offence have become adults.

Since these considerations, which focus on the victims, also apply to the punishable forms of abuse listed in § 207b of the Austrian Penal Law Code, the period of lapse was also extended to sexual abuse of juveniles according to § 207b of the Austrian Penal Law Code. As a result, the period of lapse may also only commence upon the victims having come of age, in connection with the sexual abuse of juveniles, as is the case with other sexual offences.

According to § 64 of the Austrian Penal Law Code, certain **offences committed abroad** may also be prosecuted by Austrian courts under certain circumstances, although the offence may not be punishable in that other country. Already before the 2004 Law Amending the Austrian Penal Law Code entered into force, it was possible to punish Austrian citizens if they committed sexual abuse of minors when staying in another country as sex tourists.

In connection with Austrian penal-law provisions regarding sexual offences there was, however, one gap, in the sense that it was impossible to bring Austrians to court, who “bought” sexual contacts with minor prostitutes abroad, without that fact being sanctioned by a punishment – in other words who acted in a manner that constitutes the facts of § 207b of the Austrian Penal Law Code. This gap has now been closed by the 2004 Law Amending the Austrian Penal Law code: Austrian “sex tourists” who have their regular domicile in Austria may be punished in Austria when visiting minor prostitutes of less than 18 years of age as sex tourists abroad (§ 207b, paragraph 3), or when taking advantage of a position of necessity of a person below the age of 16 for sexual abuse (§ 207b, paragraph 2), but also if they promote prostitution and/or the pornographic presentation of minors (§ 215a). Austrians are therefore no longer in a position to “buy” sexual contacts with minors abroad without being punished, although such contacts may be permitted according to the law applicable at the place of the offence. As a result, the policy was continued, namely to supplement international penal law by an improvement of the protection of minors against sexual abuse, especially in the poorer countries of this world.

Last but not least, the 2004 Act Amending the Austrian Penal Law Code also changed or tightened the provisions in § 218 of the Austrian Penal Law Code regarding **obscene acts in public**. According to § 218 in the old version only those persons could be prosecuted who committed an obscene act in public – in other words in front of a larger number of persons – or under circumstances at which their behavior was likely to create justified nuisance when perceived directly. The major part of the convictions under this provision were connected to acts of exhibitionism, such as having sexual intercourse in public or masturbating in public, for example.

However, up to the date of the amendment an exhibitionist could not be punished, when confronting a woman, for example, who was alone in a train compartment or alone at night in a dark street, on account of the requirement of an act in public. However, a person will find such situations much more irritating and threatening than if confronted with such acts in the presence of many persons and in which the person need not feel to be the only and immediate addressee of the exhibitionist behavior of the offender. The new wording of § 218 of the Austrian Penal Law Code now also covers this type of behavior, provided that the offender acts with the intent of molestation and under circumstances which are suited to create a justified nuisance. Apart from molestations and exhibitionist behavior it was also a concern of the legislator to stipulate penal sanctions for individual sexual molestations of specific persons, especially in the non-public sphere, in order to provide the persons concerned with better protection against sexual trespasses of some scope. According to the new § 218 of the Austrian Penal Code, performing a sexual act now constitute an offence, if this is done with the intention of molesting another person. This may be a sexual manipulation by the offender of his/her body, as in the case of masturbation, on the one hand, but also a sexual act on the victim, on the other hand. Sexual acts of this type also include the immediate physical handling of the gender-specific private body parts of the victim. It is enough, in this connection, if the offender thinks that it is possible that the victim of his/her sexually motivated acts will have negative emotional sensations of a certain magnitude, such as fear, disgust or anger, and continues nevertheless to perform the act.

As a specific measure in the **fight against the sexual exploitation of children, including child pornography and child prostitution a reporting service for child pornography** was set up with the Federal Ministry of the Interior in March 1997, in order to take account of the growing phenomenon of child-pornography presentations, especially on the Internet.

The reporting service, which is now located with the Federal Office of Criminal Investigation, accepts leads and information regarding child-pornography material from Austrian and foreign prosecuting agencies, as well as from Internet users and conducts the necessary criminal-police investigations, which may result in a report to the public prosecutor.

The main focus of activities at the reporting service in the years 2002 and 2003 was to build up and expand contacts to similar organizational units in the other member states of the EU. At the same time, increased efforts were made to build up contacts

with the candidate countries for EU membership, by organizing information meetings and participating in international working sessions. On account of the intensified cooperation it was possible, on an increasing scale, to process information and leads from foreign police authorities regarding possible Austrian offenders, as well as to obtain a much better picture of the international scene on account of the ongoing exchange of information.

The investigating officers take part in further-training events on a regular basis. Special attention is paid to training courses which are offered by INTERPOL and EUROPOL, since they offer the possibility of acquiring expertise, but also offer an intensive, international exchange of information with representatives of foreign prosecuting agencies.

The reporting service for child pornography strives to intensify international contacts/cooperation, especially in the framework of the enlarged EU and the **“Interpol Specialist Group on Crimes against Children.”**

The Federal Office of Criminal Investigation/Reporting Service for Child Pornography attributes special weight to international police cooperation in connection with identifying victims of abuse regarding child pornography. Cooperation with INTERPOL and its records on identified victims and offenders has proven to be very efficient.

The information and knowledge obtained in the course of international events is passed on to the investigators in the subordinate units on an ongoing basis in the course of training courses.

Irrespective of the rapid progress in technical developments in the field of information technology, efforts are being made in order to remain up to date and to update the technical equipment accordingly.

The reporting service for child pornography in the Federal Office of Criminal Investigation has been cooperating successfully with the Association of Austrian Internet providers (ISPA), which operates the **hotline STOPLINE**. Users who come across child-pornography material on the Internet can report this to STOPLINE, which will then report the fact to the reporting service. The Federal Office of Criminal Investigation is also represented on the advisory board of the hotline service and takes part regularly in the meetings of this body.

In recent years, contacts with national and international NGOs have been intensified.

Moreover, on 1 May 2004 the **federal law on judicial cooperation in penal matters with the member states of the EU** entered into force in Austria.

§§ 60 and following of this law make it possible to form joint investigating groups for conducting penal investigations between the competent authorities of the member states of the European Union. A joint investigating group, acting in Austria, is headed by the investigating judge.

The joint investigating group is set up for a specific purpose and for a determined period of time after having been approved by the judicial authorities. It is therefore a useful tool in order to react with flexibility to facts and phenomena of relevance to the police, especially when of a cross-border nature.

If so required, such joint investigating groups may also be set up in order to combat child trafficking. The law-enforcement members of the team will then come from the respective specialized units of the security police and departments.

The following measures may be mentioned in the field of awareness-raising:

- The in-flight video entitled “Child abuse is not a peccadillo”: The video is shown on Austrian Airlines aircraft during flights to Southeast Asia. It serves to contribute towards raising awareness, namely that sexual assaults on children are to be rejected, irrespective of the place where they occur, and are liable to punishment.
- Promotion of the exhibition “Hinschauen statt wegschauen (Don’t look away – Face it)” by ECPAT Austria, which draws attention to the sexual exploitation of children by tourists, and offers strategies to take action. The exhibition will first be presented at the Vienna International Airport and will later also be shown in other locations in Austria where there are large crowds.
- In 2002 the Tourist Office established a bi-annual round table with representatives of Austrian tourism stakeholders (associations of travel agents, Chambers of Commerce, Federal Ministry for Social Affairs and Generation) in order to raise awareness for the topic of sexual exploitation of children in tourism.

24. Please provide up-to-date information on measures taken to combat trafficking in persons, especially women and children.

A) Penal-Law Basis

The **2004 Act Amending the Austrian Penal Law Code**, Federal Law Gazette I No. 15/2004 transposed several international legal documents regarding the fight against human trafficking: as to the European Union this refers to the Framework Decision of the Council of 19 July 2002 combating human trafficking (OJ L203 of 1 August 2002, page 1), as well as in the framework of the United Nations, especially the Additional Protocol of the United Nations regarding prevention, combat and punishment of human trafficking, especially trafficking of women and children, the Convention of the United Nations against cross-border organized crime, as well as the Optional Protocol in connection with the Convention on the Rights of Children about selling children, child prostitution and child pornography. The following main features of the amendment should be highlighted:

§ 104a of the Austrian Penal Law Code introduced a new **general penal provision against human trafficking for the purpose of sexual exploitation, against exploitation by organ removal and against exploitation of one's capacity to work**. According to paragraph 1 of this provision, a person shall be punished by imprisonment of up to three years who hires, accommodates or otherwise takes in, transports or offers to another person or hands to another person a minor person or a major person (in the latter case by applying unfair means against that person), with the intention to exploit that person sexually, by removing one of his/her organs or exploiting his/her capacity to work. Unfair means are deception about facts, taking advantage of a position of authority, a position of necessity, a mental disease or a condition that renders that person defenseless, intimidation or granting or accepting an advantage in connection with the transfer of the control over that person. Anybody shall be punished by imprisonment from six months and up to five years who commits the offence through the application of gross force or dangerous threat. Anybody who commits the offence against a minor person, as part of a criminal organization, by applying serious violence or in such a manner that the life of that person is jeopardized deliberately or with gross negligence on account of the act, or if the act results in a particularly serious disadvantage for the person, shall be punished by imprisonment from one to up to ten years.

As an accompanying measure against human trafficking, § 194 of the Austrian Penal Law Code ("**prohibited adoption placement**") now punishes the placement of adoptions in which the child is "bought" from the person entitled to consent to the adoption, which was previously not punishable. If a person therefore causes a person, entitled to consent to an adoption, against granting that person an advantage

for him/her or third parties to consent to an adoption of a minor person by another person, that person shall be punished by imprisonment of up to two years. If the offender acts in order to obtain a pecuniary advantage for him/her or a third party, that person shall be punished by imprisonment of up to three years. The accepting persons and the children of the adoption, who are involved in the placement, shall not be punished as involved parties.

According to § 104 of the Austrian Penal Law Code slave-trade is punishable by imprisonment of between 10 and 20 years. Also those persons must be punished who arrange for others to be held as a slave or brought into a slave-like situation, or so that other persons come to be slaves or come into a slave-like situation.

Moreover, § 217 of the Austrian Penal Law Code prohibits cross-border trading in prostitution. The penalties are higher if trafficking for prostitution occurs through deception regarding the purpose of the journey to the country or through coercion or use of force. Depending on the severity of the offence, the offender is liable to imprisonment for up to ten years.

Article 104 of the Austrian Aliens' Act (smuggling of aliens, human trafficking) contains criminal-law provisions on alien smuggling, which can be punished with up to 10 years of imprisonment. Article 105 of the Austrian Aliens' Act (exploitation of aliens), in force since 2003, prohibits the exploitation of illegal resident aliens. In combination with the provisions against human trafficking under criminal law, this provision is intended to facilitate effective action against criminal organizations and gangs which incite women, mostly under false pretences, to trust these organizations and gangs. This offence is also punishable with up to 10 years.

With regard to the special measures for the protection of minors, reference is made to the explanations provided in connection with Question 23.

B) Other Measures:

On 28 October 2004 an **inter-ministerial task force to combat human trafficking** was set up (which had previously met in an informal setting since May 2003), in order to better coordinate Austria's strategies and efforts to combat human trafficking, as well as to improve the exchange of information on questions and items in this connection. The Austrian intervention center for persons affected by trafficking with women, which is an independent NGO, takes part in the meetings of this task force as a regular member.

On 24 February 2005 another **inter-disciplinary further-training seminar** for judges, public prosecutors and law-enforcement officers was held, which was attended by international lecturers.

With regard to protecting frontiers, the EU enlargement to the east and the efforts of the new EU member states bordering on Austria in connection with securing their EU external borders proved to be successful. Stricter controls by our new EU neighboring countries along the borders to Austria have also led to smaller numbers of arrests, since persons crossing the border illegally are now stopped before attempting to cross the borders into Austria.

The arrests at the Vienna's Schwechat Airport went down by 76.66% in 2004, as compared to 2003. This is due to the effective measures taken there, such as the controls in areas located ahead of Austria.

By optimum controls and the deployment of the federal gendarmerie and assistance unit of the Federal Army in the federal provinces of Lower Austria and Burgenland, a highly efficient control of the green and blue borders was possible. This served as a preventive factor and kept many persons from crossing the border, which had a positive impact on the total number of persons arrested.

Another reason for the decreasing number of arrests are the target-oriented projects, which are carried out in cooperation between the central office of the Federal Office of Criminal Investigation and Austrian and foreign units and which led to the **breaking up of international gangs of traffickers**. Stricter controls along identified trafficking routes reduced the attractiveness of these routes for criminal organizations. A considerable preventive effect was thus achieved.

The continuously optimized **cooperation with authorities** in states that are considered to be classical **transit countries** for illegal persons on their route to the EU area made it possible – on the basis of the exchange of information - to give at least rough forecasts regarding future flows of migration and to develop counter-strategies in advance.

Preventive measures aim both at the supply and the demand side. Austria instructed its embassies and consular offices abroad to inform female applicants for entry visas about the possible risks and dangers, as well as the legal situation in Austria (including persons to contact if the women should become victims of human

trafficking and of exploitation). This is achieved by means of personal talks and an information sheet translated into the respective local languages. In order to reduce the demand, customers of minor prostitutes may also be prosecuted in Austria. This also applies if an Austrian, who is domiciled in Austria, has relations to minor prostitutes abroad – irrespective of the law in the country of the offence (see earlier comments regarding Question 23).

Austria organized a number of **awareness-raising campaigns** and training seminars. The exhibition “Hinschauen statt Wegschauen” (Don’t look away – Face it) at Vienna’s Schwechat Airport, which aims at making tourists aware of the topic of sex tourism and also touches upon the subject of human trafficking, was inaugurated in November 2004. In January 2005 the Federal Ministry of Justice and the Federal Ministry of the Interior in Vienna scored a further success when organizing an interdisciplinary seminar on human trafficking, which was attended by more than 50 persons actively involved in this field.

According to § 10 (4) of the Alien Act, witnesses in support of the penal prosecution, as well as **victims of human trafficking** (for the purpose of enforcing their civil-law claims against the offenders) may be granted a **humanitarian residence permit** for the required period in the case of punishable acts pursuant to § 217 of the Austrian Penal Law Code.

With the financial support of the Federal Ministry of the Interior and the Federal Ministry for Health and Women, an organization called LEFÖ runs an **Intervention Center for Persons Affected by Trafficking with Women** (IBF) in Vienna, which offers all kinds of assistance to victims, such as psychological, legal and health care and assistance, emergency shelters and German courses. In the other federal provinces, the victims have access to women’s shelters and intervention centers against violence.

Austria has joined several international legal instruments against human trafficking such as, for example, the Convention of the United Nations on the Rights of Children and its Additional Protocol. Furthermore, Austria signed the UN Additional Protocol on the Prevention, Combat against and Punishment of Human Trafficking, Especially Trafficking of Women and Children, connected to the Convention of the United Nations against Cross-Border Organized Criminality. At present, this is being discussed in Parliament – it will be the first of the three additional protocols to the UN Convention on Cross-Border Crime that will be ratified. Moreover, Austria took an

active part in the deliberations of the Council of Europe on a European Convention to combat human trafficking, which were completed in February of this year.

Austria has reinforced police cooperation with countries in eastern and south-eastern Europe, which are often countries of origin for victims of human trafficking, in order to break up a number of gangs operating in human trafficking. Austrian liaison officers work in this region, and only recently an additional liaison officer was stationed in Romania. In the year 2003 the department with responsibility for the countries in south-eastern Europe (ADA = Austrian Development Agency) spent EUR 1.7 million on financing a women's shelter in Belgrade. Cooperation with Romania concerning the return of minor Romanian children who were transported to Austria for the purpose of exploitation was so successful that the number of Romanian children detained went down from 260 in the year 2003 to 10 in the year 2004. This model project is now likely to be also applied in Bulgaria. IOM is also expressing interest in this project, and Austria might play a leading role concerning this problem that concerns all of Europe.

Article 11: The right to an adequate standard of living

25. Please indicate which population groups are worst affected by poverty. Please describe measures taken to alleviate poverty and give updated figures, covering the period after 1997.

In the year 2003, 1.04 million persons or 13% of the population were exposed to poverty.

For EU-wide and comparable reporting on poverty and social marginalization, 60% of the median income are determined to be the critical value. This means for Austria an exposure to poverty with a weighted annual income of less than EUR 9,425. This corresponds to a monthly income of EUR 785 (12 times). In order to ensure comparability of households of different sizes, the following EU scale is applied: the first adult is attributed a rating of 1, every additional person as of the age of 14 a rating of 0.5, and children below 14 are giving a rating of 0.3.

Altogether 1,044,000 persons or 13.2% of the population in Austria are below this income threshold. 571,000 (14.0%) women and 473,000 (12.3%) men are exposed to poverty according to this definition. When looking at the age structure, younger

and elderly persons are at a greater risk of poverty, while those in the middle adult ages are less exposed.

Households with (long-term) unemployed, single parents and migrants, as well as families with many children are at a greater risk of poverty.

State social benefits clearly mitigate the scope and intensity of the risk of poverty. Without social benefits, the rate of exposure to poverty would be 42% for the population at large. The social benefits of the state therefore reduce the risk of poverty by more than two thirds. For households that do not receive pensions, the percentage of persons exposed to poverty is reduced from 30% to 12%, on account of the social benefits. For households with children, the social benefits play a more than proportional significance in mitigating the exposure to poverty. Without social benefits 50% of the families with many children, for example, would be exposed to poverty. The social benefits reduce this rate to, in fact, 18%.

By comparison to other EU countries, the exposure to poverty is relatively low in Austria. In the year 2001, the rate of exposure to poverty was 12%, which is three percentage points below the average of all EU-15 countries, i.e. 15%.

Measures:

In order to protect persons with lower pension incomes, the guiding ratios for compensation premiums were raised to fully offset inflation. For couples, the guiding ratio for compensation premiums was even raised by a higher value. Under the unemployment-insurance scheme, benefits were adapted. At the same time, persons receiving lower unemployment-insurance benefits were given improvements, i.e. their substitute rates were raised. These reforms served primarily to secure the financial sustainability of social systems and the state budget. However, they were designed in such a manner that they did not affect the socially weaker groups, or that compensations or even improvements were provided for them.

Reform measures were taken that close major gaps in the national welfare system. In 2002, the child-care allowance entered into force, which now offers a pecuniary benefit to all families during the first 2.5 to three years of age of the child, which is different from the former maternity-leave payments. As of 2004, there were further improvements (additional payments for families with many children in the amount of half the child-care allowance). This is also a contribution towards reducing the

poverty of families and creating better overall conditions to reconcile family and occupational life.

Special efforts were undertaken in order to adequately care for persons in need of assistance, such as – primarily – to build up mobile options of assistance. Recent years have been characterized by a clear further development of the services for handicapped persons and persons requiring care and assistance, as well as other persons needing care and assistance. Support is also given to the care-giving family members, who are mostly women. This helped to improve their chances of a gainful employment.

Key data indicate that the regional disparities have declined. The per-capita gross domestic product in the lesser developed regions grew more vigorously than on the national average. The distribution of the regional employment ratios remained on a very low level. A study by the Chamber of Physicians indicates that the medical services, available on an out-patient basis, have been expanded above average in the rural areas.

When looking at the different groups in the population, the following developments of relevance to poverty are worth mentioning for the period under review:

Children and young adults: In 2002 the share of 18 to 24-year-olds having completed compulsory schooling at the most, sank below 10% for the first time in 2002. For handicapped children and young adults, the choice among several forms of child care and integrated education, as well as schools offering special promotion were expanded by providing more options. Adolescents of foreign descent continue to follow higher school careers to a lesser extent than their Austrian counterparts; yet, the differences have been reduced. When adopting a vertical approach to the education pattern, girls have already overtaken boys; yet, the gender-specific decisions in favor of an occupation, which has a strong influence on occupational careers and their development, is making only slow progress. The 2001 Law Amending the Rights of Parents and Children reinforced the legal status of young persons.

Women: The share of women obtaining an education has continued to go up. By the same token, their share in gainful employment has gone up, primarily on account of rising numbers of part-time jobs. For the first time, the figure for employed women exceeded 60%. Visible measures were taken in order to improve the reconciliation of family and occupational life (labor-market measures, child-care allowance, an

expanded availability of facilities caring for children, handicapped persons and persons needing help and assistance, leave for attending to terminally ill family members). Gender mainstreaming is increasingly becoming accepted as a principle in designing and evaluating measures, primarily labor-market measures.

Families: The high level of pecuniary benefits for families was further expanded by introducing the child-care allowance and the increase in family allowance for specific target groups. This is of benefit especially for families with lower incomes. On account of the growing number of gainfully employed mothers, the financial situation of families is improving. With the rapid expansion of mobile assistance facilities, care-giving family members – especially women – are relieved to a noticeable extent. Families in crisis situations (e.g. violence in the family) are also being provided with a broader scale of assistance options.

Handicapped persons: The child-care and educational options available for handicapped children and adolescents were expanded. A program (“Clearing”) was set up in order to optimize the transition from school to vocational training and occupational life. On account of the special employment offensive of the Federal Government for this target group (“A billion for the handicapped”), as well as the labor-market activities and measures of the regional and municipal bodies, it was possible to offer clearly more support and assistance. In comparison to the general development of the labor market, the employment situation of young persons did not deteriorate.

Persons in need of care and assistance: The availability of mobile, partly out-patient and in-patient care and assistance has been greatly expanded in recent years. It has been possible to reach already some of the targets for 2010, envisaged by the federal provinces for their demand and development plans. The social-law status of care-giving relatives was further improved.

Migrants: The principle of the policy regarding foreigners is “integration before new entries”. The number of foreigners with access to the housing and the educational sector has improved. An increasing number of foreigners, who have stayed in Austria for longer periods of time, are being granted full access to the labor market.

Persons lacking social integration: The facilities to care for the homeless have been greatly expanded. As a result, the number of homeless living in the streets went down. In addition, the quality of the facilities available to care for the homeless was also improved. There are a decreasing number of court convictions, which is due to a

massive expansion of the diversion measures. As a result, the re-integration into society of delinquent persons has been made easier. Persons with addictions are also offered more options.

26. Please indicate what measures have been taken by the State party to address the problem of the large number (2,000 in 1998) of homeless people (paragraph 348 of the report), and provide more recent figures.

27. Please provide more specific and detailed information on the number of forced evictions (paragraph 349 of the report) and on measures taken to provide alternative housing to persons affected by such measures.

More recent figures regarding homeless persons are not available. On account of the intensive efforts of the federal provinces and the municipal authorities, the figure must have gone down.

Accommodation available to homeless persons:

For the social integration of homeless persons, the National Action Plan for Social Integration (NAPinCl) for the federal province of Vienna formulated precise objectives, namely that there shall not be any more homeless families and no long-time homeless persons (a maximum of two years in temporary facilities) by the year 2006. Important steps in the implementation of the Vienna integration plan for homeless persons since 1998 is the removal of obsolete large-scale facilities, replacing them by homes for specific target groups. Homeless persons should spend a maximum of two years in these temporary facilities. Then, they should live in their own apartments or in adequate long-term forms of accommodation. The further expansion of permanent living facilities, satisfying specific needs, transforms all persons moving into these facilities into former homeless persons. In the year 2003, the number of long-term homeless persons in Vienna was reduced by 35 per cent. The number of those persons who were accommodated for more than two years in the temporary accommodation facilities of the Vienna Assistance Service to Homeless Persons went down from 428 to 276. It was possible to reduce the number of persons who spent more than ten years in such facilities by more than 80 per cent. It currently amounts to 11%. This success was obtained by closing one large facility and opening several smaller living units, satisfying specific needs and geared to specific target groups, which especially take account of the situation of homeless families or homeless senior citizens. With the improvement in the situation of the homeless in Vienna in the year 2003, it can be assumed that the targets set by the "NAPinCl" will be reached by 2006.

In addition, as part of the program "Emergency Housing" (Notfallwohnungen), the City of Vienna provides accommodation to persons of longer residence (a minimum of five years in Austria and a minimum of one year in Vienna) under certain circumstances (victims of speculations, apartments with health hazards, accommodation in crisis situations, special social emergencies).

The integration of homeless persons is also promoted by the federal provinces. In Upper Austria, for example, a model to prevent evictions is currently being developed in cooperation with the social-assistance institutions and the bodies providing assistance to homeless persons, which will be implemented as of 2005. In Styria, too, preventive and early-warning systems are being developed, in cooperation with the district administrative bodies and Caritas.

Unfortunately, no more detailed information can be provided on the number of forced evictions.

Article 12: The right to physical and mental health

28. Please provide detailed information, including statistics, on persons infected by HIV/AIDS and on the measures taken by the State party to combat HIV/AIDS.

Please find enclosed the current AIDS statistics, as well as statistics on HIV laboratory reports (see Annexes 6 and 7).

29. Please provide information on the problems of alcoholism, smoking and consumption of illicit drugs, in particular, among young people. What steps have been taken to combat these problems?

First, it should be stated that the wording of the question appears to be ambiguous – on the one hand alcoholism (i.e. the dependence of alcohol) but, on the other hand, smoking (not: dependence on nicotine) and the consumption of illegal drugs (not: dependence upon drugs) is to be the subject of the information. It therefore appears to be more meaningful to provide information on alcohol consumption in general, in addition to information on alcoholism.

I.1 Prevalence:

Smoking:

In Austria 58% of the adult population smokes. The number of male smokers went down continuously during the two last decades, while that of the female smokers went up steadily. As a result, the number of smokers has therefore remained unchanged.

According to the HBSC 2002 (6th WHO Survey “Health Behavior in School-Aged Children”), daily smoking occurs only rarely among 11-year-olds, at a rate of 3% among 13-year-olds, and of 22% among 15-year-olds. In the age group of the 15-year-olds, the percentage of smokers went up from 14% to 23% between 1990 and 1998, and then remained stable until 2002. While in 1990 just as many 15-year-old boys and girls were smokers, there are now 5% more girls smoking than boys. This development reflects trends in emancipation (the behavior of substance consumption in women is being assimilated to that of men), of acceleration (children adopt the behavior patterns of adults at an increasingly younger age), and the clear lead in development of girls at that age. There are much fewer smokers in upper-level schools, and there are particularly many smokers in vocational schools.

According to the HBSC 2002, 4% of the 11-year-olds, 15% of the 13-year-olds and 45% of 15-year-olds smoked at least occasionally, which is a good correlation with the ESPAD 2003 results (Alcohol and Other Drug Use Among Students in 35 European Countries), according to which 36% of the 14-year-olds, 43% of the 15-year-olds, 55% of 16-year-olds, and 64% of the 17-year-olds are smokers.

Thus, about two thirds of the population begins smoking at an adolescent age, only a few take up smoking as adults. However, the number of smokers decreases again as age advances (because many smokers give up smoking altogether, and because the mortality of smokers is clearly higher than that of non-smokers). While Austria ranks altogether in the middle section in Europe, regarding the number of smokers, it holds a top ranking in Europe regarding the share of smokers among the 15 and 16-year-olds, according to the ESPAD study.

Alcohol:

Like in other Alpine or Mediterranean countries, the consumption of alcohol is an integral component of the economic, social and cultural life in Austria. By tradition, the issue is therefore not consumption of alcohol in Austria in most cases, but the excessive consumption of alcohol.

However, the growing consumption of alcohol among juveniles, and here especially the excessive consumption of alcohol, is a problem that has been discussed more frequently in recent times. When looking at forecasts, based on hospital diagnosis data, the consumption of alcohol among children and juveniles appears to have increased extremely in the course of the last decade. However, the aforementioned data is of limited reliability only when replying to the present questions, since the practical value of such data for the hospitals has changed during the last ten years (while they were previously an insignificant instrument for hospital management, they have become the basis for the financial settlement of services – Uhl A. (2003): “Jugend und Alkohol – mit besonderer Berücksichtigung des rauschhaften Trinkens. Praev.doc. 1, 3 – 10 /Juveniles and Alcohol – with Special Consideration to Excessive Drinking)

In contrast to the foregoing, the HBSC study reveals that the average consumption of alcohol in the reviewed age groups (11, 13 and 15 years of age) has changed only little in the course of the last decade. There is very little drinking in upper-level schools, and there is particularly much excessive drinking in vocational schools. However, one may not conclude any consistent trends from the ESPAD study, since it was conducted in Austria for the first time in 2003.

According to the HBSC 2002 study, 3% of the 11-year-olds, 6% of the 13-year-olds and 35% of the 15-year-olds consume alcohol on a weekly basis. According to ESPAD 2003, 43% of the 14-year-olds, 53% of the 15-year-olds, 66% of the 16-year-olds and 65% of the 17-year-olds drank alcohol at least once during the previous week. The regular consumption of alcohol has therefore become a reality for many children and adolescents.

Apart from the tasting of alcoholic beverages, the relevant independent consumption of alcohol among young persons begins around the age of 13. Then, access to alcohol consumption sets in much faster than before (acceleration), while the total amount consumed on a long-term basis is today less than before (moderation). Women are increasingly adapting their consumption of alcohol to the consumption behavior of men (emancipation). There are a growing number of persons giving up smoking (consumption of nicotine); yet, the consumption of alcohol increases with age. However, the overall consumption of alcohol has been on the decrease in Austria for three decades.

Whether the number of persons suffering from alcoholism (5% of adults in Austria suffer from alcoholism, 10% fall ill with alcoholism in the course of their lives) is going

down, on account of moderation, cannot be evaluated at present – a minor reduction would appear to be plausible, though (Uhl, 2003).

Illegal Drugs:

Among illegal drugs, cannabis continues to rank first by far among all other substances. Although the national data does not allow providing any evidence regarding changes in the course of the last few decades, regional investigations and international comparisons lead one to conclude that the prevalence of cannabis experiences has gone up steadily over the last years. According to the HBSC 2002, 15% of the 15-year-olds indicated to have had experience with cannabis. According to ESPAD 2004, 13% of the 14-year-olds, 17% of the 15-year-olds, 25% of the 16-year-olds and 37% of the 17-year-olds indicated the same. It is assumed that between 40% and 50% of the juveniles had experience with cannabis before becoming adults. While the consumption of alcohol and nicotine at upper-level schools does not play any major role, it is cannabis that is most popular there.

While previously it was mainly cannabis among the illegal drugs that was tried out and/or consumed, it is now increasingly also other drugs that are being consumed, and the regular consumption of cannabis is gaining in importance. According to the ESPAD study 2004, the following drugs are consumed most frequently by the age group 14 to 17 years: cannabis (22%), ecstasy (3%), cocaine (2%), crack (2%), heroine (1%), amphetamines (5%), GHB (1%), LSD (2%), sniffing substances (15%), magic mushrooms (4%).

The number of opiate consumers giving rise to problems is currently estimated to amount to 20,000 to 30,000, with consumption patterns prevailing which comprise several toxic substances. The number of mortalities due to drug consumption (drug-related mortalities) clearly sank after a peak value around the mid-nineties (1996: 195 cases); yet, in 2003 it went up again (163 cases), as compared to the two previous years (2001 and 2002: 139 cases each).

Statistical treatment data for all of Austria are currently only available for the treatment with substitute substances. The growing acceptance and recourse to this form of treatment is generally on the increase (2003: 6,413 treatments, of which 891 first treatments and 5,533 continued treatments). There are, though, regional variations. The number of women amounted to 25 to 35% in the course of the years; it is higher among women aged less than 20 than in the other age groups. The increase in the number of first treatments is primarily due to the age groups 19 to 24

years, which may be an indication for an easier accessibility of the treatment for young opiate consumers or an indication for growing prevalence of the problem of opiate consumption.

I.2 Measures:

I.2.1 Improvements in the Epidemiological Data Base:

In addition to the HBSC school survey, conducted on the WHO level on a regular basis, an ESDAP study was conducted for the first time in Austria in 2003, which the Council of Europe, performs at regular intervals. In 2004, a first study of consumption patterns in Austria was conducted among the population in general, which includes alcohol, smoking and several other life-style parameters, in addition to drugs. First results will be available in the spring of 2005.

With regard to illegal drugs, a main focus of the Federal Ministry of Health and Women is to improve and expand the monitoring. The 5 so-called epidemiological key indicators, defined on the European level by the European Monitoring Center for Drugs and Drug Addiction, serve as a basis in this connection. The improved data situation will make it possible in the future to obtain a better and more objective evaluation of the epidemiological situation, as well as to better adjust possible options on that basis. In addition to the aforementioned general survey among the population in 2004, a uniform documentation and reporting system for all of Austria, regarding the institutions providing drug assistance, is currently being implemented. This will collect standardized and anonymous data on the anamnesis of those persons that avail themselves of the drug-assistance services. These data will in turn be used to assess and plan the system of drug assistance.

In the field of quality assurance, a growing number of measures was and is being undertaken. For example, as commissioned by the health department, a concept and several curricula for the drug-specific further training of five occupational groups of relevance in providing assistance in drug problems was developed, and there is a number of further-training options available on the national, regional and local level. Measures with regard to quality assurance (development of guidelines, designing model profiles, etc.) are being stepped up in all areas of drug assistance on the federal and regional level. Pursuant to § 15 of the Drug Act, the Federal Ministry for Health and Women lists institutions with positive evaluations in the Federal Law Gazette.

I.2.2 Drug Prevention:

A high priority is attached to drug prevention in Austria, with primary prevention, in turn, being attributed special attention. The efforts are not specific of any substance, but generally aim at reinforcing the personality of children and young persons in general, making them thus less prone to developing consumption or addiction problems. Primary prevention thus relates not only to substance-related addictions, but just as much to non-substance-related forms of addiction (addiction to gambling, Internet addiction, etc., but also eating disorders).

The federal provinces play a major role in the implementation and financing of local, as well as regional measures with regard to drug prevention. In order to cope with this responsibility, centers of competence for drug prevention (Special Agency for Drug Prevention) were set up in recent years in the Austrian federal provinces, which are oriented mainly in their strategies by the health-promotion concept of the WHO, in line with the Ottawa Charter (WHO 1986). The prevention programs of the Federal Ministry of Health and Women, as well as of the Federal Ministry of Education, Science and Culture are also developed along these lines. The special agencies deal mainly with launching, developing, advising and accompanying projects conducted on a local and regional level, and offer training to opinion multipliers, as well as specific training for the different groups of occupations.

An important task of the specialized agencies is to put the measures regarding drug prevention on a more professional level and to ensure their quality assurance. When implementing preventive activities on site, they cooperate with the local partners and/or the occupational groups, active in this sector ("setting").

Cooperation and networking play a major role in drug prevention, which are being promoted by the health department by funding a special meeting, held every year, of the Austrian specialized agencies for drug prevention.

I.2.3 Specific Measures:

Smoking:

An amendment to the Tobacco Act (Federal Law Gazette I No. 74/2001) was a legislative measure taken in 2001. In the course of transposing Directive 2001/37/EC, the limits on the contents of noxious substances of cigarettes, as well as the labeling requirements (information on the health hazards of smoking) were tightened, in

particular. With the regulation in the Federal Law Gazette II No. 217/2004, the method to measure the carbon monoxide content in the gaseous phase of cigarette smoking was determined.

On 1 January 2005 a further amendment of the Tobacco Act entered into force. In the course of transposing Directive 2003/33/EC, together with the perspective contained in the Council Recommendation 2003/54/EC, as well as the Tobacco Framework Convention of WHO WHA 56.1, a comprehensive ban on advertising and sponsoring for tobacco products, as well as additional measures to curb smoking were adopted in 2004. In particular, a ban on the putting into circulation of single cigarettes or packages of cigarettes of less than 20 units was issued. This measure is geared, in particular, to the group of children and young persons, who react with great sensitivity to price hikes when buying cigarettes and who are lured to consumption by the availability of seemingly cheaper small packages, etc. In addition, the protection of non-smokers was intensified: In the future, there will be a general ban on smoking in closed rooms in public places, with only a few exceptions (especially restaurants and pubs).

Measures to curb tobacco consumption are a priority activity of the health department during the period under review. In cooperation between the health department and the education department, and on the basis of a study commissioned by both departments ("The Role of National Policies to Control Smoking in Young Persons and the Influence of Schools and Parents") the project "no smoking in schools" is being developed and launched. In addition, in May 2004 the following package of 5 measures was put together, which has already been launched and which also serves to transpose the WHO framework convention on tobacco control:

1. For the first quarter of 2005 a campaign is being prepared which is intended to keep young persons from taking up smoking.
2. Assistance to give up smoking with the campaign "The Last Cigarette", which is to support the 55% of smokers, who are willing to give up smoking, to take that step. The Internet site (www.isch.at), which was developed in cooperation with scientists, is the main element of the campaign, which is conducted together with the radio station Ö3.
3. Improving the protection of non-smokers, and
4. Non-smoking areas in restaurants and pubs – an agreement with the catering industry provides that 30% of all eating places will be equipped with smoke-free areas (which will cover a minimum of 40% of the available seating capacity) by the end of 2004, as well as 60% by the end of 2005, and 90% by the end of 2006.

Alcohol:

The Alcohol Coordination and Information Center (AKIS) was set up in the year 2000, which systematically collects, processes and disseminates data on the consumption of alcohol to specialists and the interested public.

The Federal Ministry for Health and Women is currently working on a strategy concept in the field of alcohol. An essential feature in this connection will be, among other things, the area of "Young People and Alcohol". Two specialized conferences were organized in preparation of this work, in which all relevant experts and economic groups participated, in order to foster discussions on a broad level and to enhance awareness for the problems.

Like in other countries of Central and South-Eastern Europe – which is in contrast to the English-speaking and North-European countries – alcohol in Austria is part of the economic, cultural and social life, it is drunk more on regular and frequent basis, with alcohol excesses occurring not so often as in the aforementioned regions. The efforts of Austria's health politicians are therefore focused on the problems of alcohol consumption. The objective is a sensible approach to alcohol, in the sense of a consumption that is not a health hazard. In addition to addiction-preventing measures, refraining from the consumption of alcohol in certain situations, especially at the work place, in road traffic and during pregnancy, are therefore priority areas for health politics. Alcoholism has been recognized as a disease in Austria, the costs of a treatment are borne by health insurance. Moreover, social welfare also covers treatment costs. Austria has a sufficient capacity of therapeutic facilities, organized throughout Austria. The options for alcohol-specific treatment have a long tradition marked by psychiatry. Self-help groups round off the available options. Austria is taking part in the EU project "ENCARE", which deals with the problems of children and young people who live in families suffering from alcohol exposure. Experiments relating to therapy, prevention, counseling, research and administration are part of the approach.

Illegal Drugs:

Austria's current policy regarding drugs builds on a four-pillar model (prevention, therapy, limiting damage and repression). The objectives and principles on the federal level are, in particular, the measures adopted by way of legislation and regulation. The 9 federal provinces all have their specific drug and addiction

concepts, with the trend in recent years moving in the direction of an integrated and holistic approach to legal and illegal drugs. A nation-wide drug concept is currently being prepared.

Austria's drug policy follows a comprehensive and balanced approach and attempts to pursue a strategy towards solutions that distinguished between drug dependence and drug trafficking, with the model of "therapy instead of punishment" playing an important role in connection with drug consumption and drug addiction. The goal is a society that is free from drugs to the greatest possible extent.

In addition to reinforcing preventive measures, the government program of 2000 also provided for increased activities to curb drug trafficking. In 2001 this resulted in a decrease in the so-called "limit amount" for heroine (from 5 to 3g), as well as in an increase in the maximum punishment for leading members of drug gangs up to lifelong imprisonment. The 21st amendment to the road-traffic regulation introduced the obligation, in the case of a suspected drug-related impairment in driving ability, to have a blood-test made, which improves the level of available evidence and helps to reduce the number of traffic accidents caused under the influence of drugs on a longer-term basis.

In the field of prevention, the measures of primary prevention have increasingly been supplemented in recent years by methods of secondary prevention. In recent years, drug prevention in companies was given special attention. The new media (Internet) were included in the prevention work, and the area of low-threshold and easy-access options of prevention was further expanded.

In recent years, increasing priority was given to young people in connection with specific drug measures. The "integrative" approach is underlined when working with young people exposed to drugs, which attempts to avoid any stigmatization of the young people concerned to the greatest possible extent. Young persons with alarming consumption patterns often face massive social and mental problems. New concepts and methods of early intervention have been developed, which are yielding positive results. However, there are also increasingly special options available for young problems with drug problems.

The drug-specific treatment options have a long tradition in Austria. Both the in-patient and the out-patient sector have been largely expanded and organized to span the entire territory of Austria. Addiction has been recognized as a disease in a psycho-social context, the treatment costs are borne by the statutory health

insurance and/or the public social system. The in-patient and out-patient treatment options are supplemented by numerous self-help groups.

In addition to approaches oriented by a restraint from consumption, increasing emphasis was attached to the need of drug-accompanying measures which are geared to minimizing the risk and limiting the damage. The goal of health policies is to bundle different support options, to the greatest possible extent, offered by several professions that offer prevention, treatment and re-socialization, in the direction of integrated measures. Attempts are being made to react by means of drug-policy measures to epidemiological developments. Given the federal structure of the health and social sector, it is primarily on the regional level and in keeping with regional needs (geared to demand and needs) that measures are taken, with the experience gained with practical work being used for the further development of the prevention and drug-assistance system.

With regard to a treatment by substitutes, a review of the overall conditions is currently under way, which corresponds to the state of the art in medical science and is meant to ensure the best-possible supply of patients and a possibly safe application of the medication used.

On account of the federal structure, as well as the inter-disciplinary nature of the drug problems, it is important to adjust the activities of the many players, in order to avoid any frictional losses to the greatest possible extent. In Austria, great attention is therefore attached to coordination in the field of drugs. Every federal province has a coordinator for drug and addiction issues. On the federal level, there is cross-department coordination with regard to drugs, with the health department taking the lead. A coordinating body on the federal level (Federal Drug Forum) serves to regularly coordinate all drug-related matters between the federal and the regional levels.

30. Please provide information on steps taken by the State party to improve public awareness on matters pertaining to sexual and reproductive health.

Since 1974 a program of medical check-ups for mothers and babies (**Mother and Child Pass**) has been implemented in Austria in order to ensure that pregnant women obtain the basic medical attention. It offers the possibility of five check-ups, free of charge, as well as two laboratory checks during pregnancy. Together with the "Mother and Child Pass", every pregnant woman is given the accompanying brochure "Mein Baby kommt" (My baby is arriving), which offers important health information and lists addresses to contact.

As of the summer semester 2005, young people will also be given a **Health Pass**. The accompanying brochure also contains important information on sexual and reproductive health.

Articles 13 and 14: The right to education

31. How does the State party reconcile the introduction, as from the 2001/02 academic year, of university tuition fees (para. 439 of the report) with the requirement, under article 13 (2) (c) of the Covenant, to ensure the progressive introduction of free higher education?

The introduction of tuition fees was accompanied by a number of social measures. Since the introduction of the tuition fees, a large number of students have received refunds of the tuition fee by way of study grants. The refunds to persons receiving study grants, as well as to students with positive study success, who exceed the income limits for receiving study grants, are a comprehensive social measure for those students who would not be able to complete their studies without such support. As shown in all previous reports on the social situation of students, this support is mainly for the benefit of students from socially disadvantaged classes of society.

32. The current proportion of women in assistant lecturer posts at universities stands at just 23 per cent (para. 505 of the report), in spite of the relatively high proportion of women studying at university (58 per cent among new entrants and 34 per cent at doctoral studies level). Please indicate what specific measures have been taken by the State party to ensure gender equality in teaching posts in higher education.

When complying with their tasks, universities are obliged to obtain an equal status for men and women. Promoting women is an explicit task of the universities, which is laid down in the 2002 University Act. All bodies of the universities must act towards achieving a balanced relationship in numbers of the men and women working at universities. To this end, universities must issue a plan on the promotion of women. A working party dealing with issues of equal treatment has been set up at every university, in order to counteract gender-related discrimination.

In the future, negotiations regarding the agreement on the performance of universities and their outcome will also include the implementation of the 2002 University Act and the targets established there.

Article 15: Cultural rights

33. Please give details of journals published in minority languages and of radio and television broadcasts in those languages.

A) Journals published in minority languages:

No daily newspapers are published in any of the languages of the ethnic groups, which obviously is due to the estimated low number of copies to be published, given the limited number of readers. However, there are weekly newspapers and other periodic journals, such as for example:

- A weekly church magazine and the weekly newspaper “Novice” for the Slovenian language group;
- a church magazine and the weekly newspaper “Hrvatski Novine” for the Croatian language group;
- a bi-monthly publication “Béci Napló” for the Hungarian language group;
- the print media “Viodenske svobodne listy”, “Kulturni klub”, “Informacni Zpravodaj” and “Ceska Slovensak Viden dnes” should be mentioned for the Czech language group, which are supported with funds for the promotion of ethnic groups;
- four newspapers by associations of the Roma should be mentioned, which are of particular importance for the understanding by the majority population and the political office-holders of the concerns of this ethnic group (three in two languages, i.e. German and Romany).

In addition, the organizations of the ethnic groups publish many other newspapers of associations, information sheets, bulletins, etc.

The newspapers “Put” and “Punkt” are financially supported from general funds for publications.

B) Radio and television broadcasts in minority languages:

The ORF offers a diversity of programs for the six ethnic groups in its radio and television programs, as well as on the Internet and the teletext program. The efforts to expand the available programs have not yet been completed. On the one hand, these are programs in the respective languages of the ethnic groups and, on the other hand, these are programs offered in German which are intended to bring topics

of specific relevance to the ethnic groups closer to the German-speaking population. In addition, the ORF organizes activities for the ethnic groups on an ongoing basis in the course of a number of off-air events.

The following is available to the **Slovenian ethnic group**:

The **radio** programs offered by the ORF have been considerably expanded by its cooperation, begun on 21 March 2004, with "Agora & Korotan Lokalradio GmbH" (this is the name of the Slovenian private radio station "Radio dva-AGORA").

Ever since, the ORF has been producing an eight-hour information and entertainment program in the Slovenian language, which is broadcast in the course of the day on the frequency of the Slovenian private radio station **Radio dva-AGORA** in the time frames 06.00 to 10.00 hrs, 12.00 to 13.00 hrs. and 15.00 to 18.00 hrs. The two news broadcasts of the ORF in the Slovenian language at Radio dva-AGORA "Studio ob 12-ih" and "Studio ob 17-ih" are also available on the Internet and can be downloaded. The time frames 10.00 to 12.00 hrs. and 13.00 to 15.00 hrs. are the responsibility of "Radio dva" and/or "Radio AGORA" which produce on the same private radio frequency; for the time frame from 18.00 to 06.00 hrs. "Radio AGORA" produces and broadcasts programs. As a result, there is **a 24-hour full program on the private radio frequency in Carinthia** for the Slovenian ethnic group, which has met with a positive response from the Slovenian ethnic group. The ORF news programs in the German language are taken over from the regional studio for Carinthia at every full hour from 06.00 to 18.00 hrs. (exception: 12.00 hrs.). News programs in the Slovenian language are broadcast at 6.30 hrs., 7.30 hrs., 8.30 hrs., 9.30 hrs., 10.30 hrs., 15.30 hrs. and 16.30 hrs.

"Radio Carinthia" continues to broadcast a magazine in the Slovenian language every Wednesday from 21.03 to 22.00 hrs.; every Sunday and holiday a very popular Slovenian-German morning program is offered, always from 6.06 to 07.00 hrs. The magazine "Servus – Srecno – Ciao" in three languages (German, Slovenian, Italian), which supports the idea of the Alps-Adriatic Sea region has been extended by one hour every day, beginning on 22 March 2004, and has since been broadcast on "Radio Carinthia" from Monday to Friday from 16.03 to 19.00 hrs., with the news being broadcast in all three languages always at 18.30 hrs.

“**Radio 1476**” continues to take over the programs for the ethnic groups from the regional studio for Carinthia, as this has been the case ever since the summer 2003, in order to offer members of the ethnic group outside the broadcasting range the possibility to receive these programs for the ethnic group, namely by receiving them via the "ORF digital" and the live streams on the Internet. In addition, a broadcasting slot is reserved on “Radio 1476” for programs in the Slovenian language, namely every Saturday and Sunday from 18.00 to 20.00 hrs.

Part of the ORF television programs features the television magazine “Dober dan, Koroska” of the regional studio for Carinthia in the Slovenian language every Sunday from 13.00 to 13.30 hrs., which is shown as a separate local program in Carinthia on the channel "ORF 2". This program is broadcast a second time on Mondays on the ORF 2 night program, which can be received throughout Austria; it is also available on the Internet as a real video which can be downloaded. As a result, members of the ethnic group living outside of Carinthia also have access to these programs, in addition to receiving them via "ORF digital". (The television channels of RTV Slovenija also re-broadcast the ORF program “Dober dan, Koroska”.)

In 2002, the programs available to the **ethnic groups that live in Burgenland** were expanded considerably. In addition to supplying the ethnic groups with programs in their mother tongues, topics of relevance to the ethnic groups are frequently program components in all broadcasting channels of “Radio Burgenland” so that the only German-speaking audience is also informed about topics concerning the ethnic groups. Moreover, a Euregio magazine, integrated into the area-wide program of “Radio Burgenland”, deepens the connections to and the understanding for the new regions neighboring Burgenland and tries to eliminate possible prejudices. In the off-air segment, “Radio Burgenland” frequently launches initiatives to the benefit of the ethnic groups (CD productions, events, etc.).

The following is available to the **ethnic group of the Burgenland Croats**:

The ORF's “**Radio Burgenland**” offers two minutes of news in the Burgenland Croatian language from Mondays to Saturdays, always at 12.38 hrs. From Mondays to Sundays (always at 18.15 hrs.), the program features an evening magazine in the

Burgenland Croatian language, followed (always at 18.25 hrs.) by a thirty-minute magazine program in the Burgenland Croatian language. Every week (always on Mondays from 20.04 to 21.00 hrs.) features in the Burgenland Croatian language are broadcast in a three-language magazine (Burgenland Croatian, Hungarian, Romany).

In June 2003 the radio broadcasts in the Burgenland Croatian language were further developed in form and substance; they are now even more specifically geared to the target group, they consist of new materials and have a new layout, and they are presented by new moderators. They are very well received by the ethnic group.

Since July 2003, the programs produced by "Radio Burgenland" for the ethnic groups have been re-broadcast on medium wave on "ORF-Radio 1476". As a result, members of the ethnic group living outside the broadcasting range of "Radio Burgenland" can receive terrestrially the programs of "Radio Burgenland" for the ethnic groups, in addition to receiving them via "ORF digital" and via live stream. In the time frame from 21.00 to 21.30 hrs., always on Tuesdays and from Thursdays to Sundays, programs are broadcast for the ethnic groups in the Burgenland Croatian language; one further magazine in the Burgenland Croatian language is broadcast on Fridays from 19.30 to 20.00 hrs.

As an element of the ORF's television programs, the regional studio for Burgenland broadcasts a TV magazine "Dobar da, Hrvati" in the Burgenland Croatian language every Sunday from 13.30 to 14.00 hrs., which is shown on ORF 2 locally in Burgenland. This program is re-broadcast on Mondays on the night program of the ORF that can be received throughout Austria; it is also available on the Internet as a real video which can be downloaded. As a result, members of the ethnic group living outside Burgenland also have access to this program, in addition to receiving it via "ORF digital", and they have the possibility to record this program. The four-language program "Servus Szia Zdravo Deltuha", offered by ORF 2 locally four times every year, always on Sundays from 14.20 to 15.05 hrs., also provides a fixed place for features in the Burgenland Croatian language. The broadcast can also be accessed via Internet as a real video and can be received throughout Austria via "ORF digital".

The following is available to **ethnic Hungarian group**:

The ORF's "**Radio Burgenland**" offers five minutes of news in the Hungarian language every day at 18.55 hrs., and it broadcasts a thirty-minute magazine every Sunday at 19.30 hrs. The range of programs is supplemented by a weekly magazine in three languages which is broadcast on Mondays from 20.04 to 21.00 hrs. and also features Hungarian subjects.

Since July 2003 the programs for the ethnic groups that "Radio Burgenland" produces are re-broadcast on medium wave by "ORF-**Radio 1476**". As a result, members of the Hungarian ethnic group living outside the broadcasting range of "Radio Burgenland" can also receive terrestrially the program for the ethnic groups of "Radio Burgenland", in addition to the possibility of receiving them via "ORF digital" and via live stream on the Internet. In the time frame from 21.00 to 21.30 hrs., every Monday, programs for the Hungarian-speaking ethnic group are broadcast, and on Wednesdays, 15-minute programs in Hungarian are broadcast. Furthermore, since September 2004 a magazine program in Hungarian is broadcast every Sunday from 20.00 – 20.30 hrs. for Hungarians living in the Vienna area, which is a special production of Radio 1476.

As part of the **television** program, the Hungarian magazine "Adj'isten magyarok" is broadcast six times per year on ORF 2 locally in Burgenland, on Sundays at 13.05 hrs. On four further dates every year, the regional studio broadcasts the four-language TV magazine "Servus Szia Zdravo Deltuha", always on Sundays from 14.20 to 15.05 hrs., which also comprises Hungarian contributions. Both magazines can also be accessed via the Internet as real videos.

For the **ethnic group of the Roma**, a broadcasting slot was also created in 2004 to provide members with radio and television:

The ORF's "**Radio Burgenland**" broadcasts a weekly three-language magazine on Mondays from 20.04 to 21.00 hrs., in which contributions in Romany are regular features of the program. On four further dates per year, the regional studio broadcasts the four-language TV magazine "Servus Szia Zdravo Deltuha", always on Sundays from 14.20 to 15.05 hrs., which also features contributions in Romany that can also be accessed via the Internet as real videos.

Another new element is a weekly magazine that has been broadcast by "**Radio 1476**" since the beginning of 2004, namely on Fridays from 20.00 to 20.30 hrs. In addition, every Saturday, beginning at 20.30 hrs. the Romany magazine of the previous week is re-broadcast. Furthermore, since July 2003 programs for the ethnic groups – which also includes a 15-minute program in the Romany language every Wednesday – from the regional studio for Burgenland are re-broadcast on "Radio 1476".

The following is available to the Czech and the Slovak ethnic groups:

"**Radio 1476**" introduced two new magazines in early 2003 in the Slovak and Czech languages. On account of the positive reaction by the audience, the scope of the programs was considerably expanded in early 2004, and a fixed program slot on week-days has been introduced for the magazines in the Slovak and Czech languages (Mondays to Fridays, 19.05 to 19.30 hrs.).

Initiatives and programs for all ethnic groups:

It is also of significance for **all ethnic groups** that every Sunday (from 13.30 to 14.00 hrs.) "ORF 2" broadcasts a television program in German "Heimat, fremde Heimat" which serves the goal of making **subjects that are specific of the ethnic groups accessible to the only German-speaking population**. In line with this approach, "Radio Vienna" broadcasts a radio version of "Heimat, fremde Heimat" in German every Sunday from 19.00 to 20.00 hrs.

Since May 2004, all ethnic groups have also been addressed by the **online platform of the ORF**, which is presented in a modern online design at "**volksgruppen.ORF.at**". All regional radio stations of the ORF, as well as "Radio 1476" – and thus all programs for ethnic groups broadcast by "Radio Burgenland", "Radio Carinthia", "Radio Vienna" and "Radio 1476" – are also available **on the Internet** via live stream. (<http://volksgruppen.orf.at>, <http://1476.orf.at>, <http://burgenland.orf.at>, <http://kaernten.orf.at>). An especially developed content-management system also makes it possible to use diacritic signs.

In addition to the radio and television programs of topical interest, which the regional studios for Burgenland and Carinthia have been made available **on the Internet as real audios and/or real videos for downloading** since the year 2000, information programs of the regional studio for Carinthia have been broadcast since 21 March 2004 on the frequency of the Slovenian private radio station as a real audio and can be downloaded.

All programs broadcast for the ethnic groups by "Radio Burgenland", "Radio Carinthia", "Radio Vienna" and "ORF 2" (including the local broadcasts in Burgenland and Carinthia and the teletext program) can be received via "ORF digital" **throughout Austria**, which ensures that members of the ethnic groups are also provided with the programs who live outside the autochthonous areas.

On page 639 **ORF TELETEXT** provides daily information on all broadcasts for the ethnic groups of the special relevant radio and television broadcasts, as well as – since 2003 – daily topical information on events of relevance to the ethnic groups.

34. Please provide information on the measures adopted to preserve languages and cultures of ethnic minority groups living in Austria.

Austria ratified the European Charter on Regional and Minority Languages. The Charter aims at protecting and promoting the European regional or minority languages, as part of the European cultural heritage. It only covers languages that have been used by tradition in a certain area of a country by the members of ethnic groups. The Charter does not cover dialects of the national languages, nor the languages of emigrants.

The provisions deal, among other things, with the pre-school education in the minority languages (nursery schools), the school education in the minority languages on the primary and secondary school level, the options available in the minority language on the university level, as well as in vocational training and adult education, and the use of the minority languages as official languages, and the media in the minority languages.

When ratifying Part II of the Charter, Austria listed all six minority languages found in Austria, which are thus considered to be protected with a view to the targets and

principles of the Charter. In connection with Part III of the Charter (i.e. the section according to which a minimum of 35 criteria must be satisfied), Burgenland Croatian for the language area of the Burgenland Croats in Burgenland, Slovenian for the Slovenian language area in Carinthia, and Hungarian in the Hungarian language area in Burgenland were mentioned. In addition, Austria was also in a position to satisfy criteria (though not all of the 35 criteria) under Part III of the Charter for the Czech language in the federal province of Vienna, the Slovak language in the federal province of Vienna, the Romany language for Burgenland, the Slovenian language in the federal province of Styria, and the Hungarian language in the federal province of Vienna.

The Burgenland-Croatian language is also indicated for the area of Vienna under Part II of the Charter, but not any further, since Vienna was never an autochthonous residential area for Burgenland Croats.

The report of the Republic of Austria pursuant to Article 15 (1) of the European Charter for Regional and Minority Languages of October 2002 is attached (Annex 8). The report (in its German version) can also found at <http://www.bundeskanzleramt.at>.

Furthermore, Austria promoted projects regarding the languages of ethnic groups and specific of ethnic groups, such as lectures, concerts, libraries, courses of music and folklore dancing, language courses. This also applies to organizations (associations) which serve the purpose of maintaining and supporting ethnic groups.