# AUSTRIA

**Follow-up - State Reporting**
**i) Action by Treaty Bodies**

**CCPR, A/64/40, vol. I (2009)**

## VII. FOLLOW UP TO CONCLUDING OBSERVATIONS

237. In chapter VII of its annual report for 2003, [20] the Committee described the framework that it has set out for providing for more effective follow up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report (A/63/40, vol. I), an updated account of the Committee's experience in this regard over the last year was provided. The current chapter again updates the Committee's experience to 1 August 2009.

238. Over the period covered by the present annual report, Sir Nigel Rodley acted as the Committee's Special Rapporteur for follow-up on concluding observations. At the Committee's ninety-fourth, ninety-fifth and ninety-sixth sessions, he presented progress reports to the Committee on inter-sessional developments and made recommendations which prompted the Committee to take appropriate decisions State by State.

239. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table. [21] Over the reporting period, since 1 August 2008, 16 States parties (Austria, Barbados, Bosnia and Herzegovina, Chile, Costa Rica, Czech Republic, France, Georgia, Honduras, Hong Kong Special Administrative Region (China), Ireland, Libyan Arab Jamahiriya, Madagascar, Tunisia, Ukraine and United States of America), as well as the United Nations Interim Administration Mission in Kosovo (UNMIK), have submitted information to the Committee under the follow up procedure. Since the follow up procedure was instituted in March 2001, 11 States parties (Botswana, Central African Republic, Democratic Republic of the Congo, Equatorial Guinea, Gambia, Namibia, Panama, Sudan, the former Yugoslav Republic of Macedonia, Yemen and Zambia) have failed to supply follow up information that has fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the process of the next periodic report on the part of the State party. [22]

240. The table below takes account of some of the Working Group's recommendations and details the experience of the Committee over the last year. Accordingly, it contains no reference to those States parties with respect to which the Committee, upon assessment of the follow up responses provided to it, decided before 1 August 2008 to take no further action prior to the period covered by this report.

241. The Committee emphasizes that certain States parties have failed to cooperate with it in the performance of its functions under Part IV of the Covenant, thereby violating their obligations (Gambia, Equatorial Guinea).

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**Ninety-first session (October 2007)**

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**State party: Austria**

**Report considered:** Fourth periodic (due since 1 October 2002), submitted on 21 July 2006.

**Information requested:**

Para. 11: Prompt, independent, and impartial investigation of cases of death and abuse in police custody; introduction of mandatory human rights training for police, judges and law enforcement officers (arts. 6, 7 and 10).

Para. 12: Adequate medical supervision and treatment of detainees awaiting deportation who are on hunger strike; investigation of the case of Geoffrey A., and information on the outcome of investigations in this case and in the case of Yankuba Ceesay (arts. 6 and 10).

Para. 16: Ensure that restrictions on the contact between an arrested or detained person and counsel are not left to the sole discretion of the police (art. 9).

Para. 17: Ensure that asylum-seekers who are detained pending deportation are held in centres specifically designed for that purpose, preferably in open stations, with access to qualified legal counselling and adequate medical services (arts. 10 and 13).

**Date information due:** 30 October 2008

**Date information received:**

15 October 2008 Partial reply (responses incomplete with regard to paragraphs 11, 12, 16 and 17).

22 July 2009 Additional information received.

**Action taken:**

12 December 2008 A letter was sent to request additional information.

29 May 2009 A reminder was sent to the State party.

**Recommended action: The additional replies of the State party should be sent to translation and considered at the ninety-seventh session.**

**Next report due:** 30 October 2012

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20/ *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40* (A/58/40), vol. I.

21/ The table format was altered at the ninetieth session.

22/ As the next periodic report has become due with respect to the following States parties, the Committee has terminated the follow-up procedure despite deficient information or the absence of a follow-up report: Mali, Sri Lanka, Suriname, Namibia, Paraguay, and the Democratic Republic of the Congo.

**CCPR, CCPR/C/SR.2709/Add.1 (2010)**

Human Rights Committee
Ninety-Eighth session

Summary record (partial) of the 2709th meeting
Held at Headquarters, New York,
on Wednesday, 24 March 2010, at 10 a.m
...

**Progress report of the Special Rapporteur for follow-up on concluding observations (CCPR/C/98/2/CRP.1)**

1. **Mr. Amor**, speaking as Special Rapporteur for follow-up on concluding observations, introduced his report, which related to concluding observations the Committee had adopted from the eighty-fifth through the ninety-fourth sessions. He reviewed, country by country, the status of the response to the concluding observations and the action he had recommended to be taken in each case.

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5. Letters would be sent to a few States indicating that their replies had been largely satisfactory but that some additional information was required, and highlighting the instances where they had failed to implement recommendations in the concluding observations. In addition, the submission of Denmark had now been translated, and the report would be amended to show that it would be asked to submit some information in addition to its largely satisfactory replies. Lastly, the response of Austria had been on the whole satisfactory, and no further action was recommended.

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11. *The recommendations contained in the report of the Special Rapporteur for follow-up on concluding observations, as orally amended, were approved.*

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**CCPR, A/65/40 vol. I (2010)**

**...**

## Chapter VII: Follow-up to Concluding Observations

203. In chapter VII of its annual report for 2003,[16] the Committee described the framework that it has set out for providing for more effective follow-up, subsequent to the adoption of the concluding observations in respect of States parties' reports submitted under article 40 of the Covenant. In chapter VII of its last annual report,[17] an updated account of the Committee's experience in this regard over the last year was provided. The current chapter again updates the Committee's experience to 1 August 2010.

204. Over the period covered by the present annual report, Mr. Abdelfattah Amor acted as the Committee's Special Rapporteur for follow-up on concluding observations. At the Committee's ninety-seventh, ninety-eighth and ninety-ninth sessions, he presented progress reports to the Committee on intersessional developments and made recommendations which prompted the Committee to take appropriate decisions State by State.

205. For all reports of States parties examined by the Committee under article 40 of the Covenant over the last year, the Committee has identified, according to its developing practice, a limited number of priority concerns, with respect to which it seeks the State party's response, within a period of a year, on the measures taken to give effect to its recommendations. The Committee welcomes the extent and depth of cooperation under this procedure by States parties, as may be observed from the following comprehensive table.[18] Over the reporting period, since 1 August 2009, 17 States parties (Bosnia and Herzegovina, Chile, Costa Rica, Czech Republic, Denmark, France, Georgia, Japan, Monaco, Spain, the former Yugoslav Republic of Macedonia, Sudan, Sweden, Tunisia, Ukraine, United Kingdom of Great Britain and Northern Ireland and Zambia), as well as the United Nations Interim Administration Mission in Kosovo (UNMIK), have submitted information to the Committee under the follow-up procedure. Since the follow-up procedure was instituted in March 2001, 12 States parties (Australia, Botswana, Central African Republic, Democratic Republic of the Congo, Equatorial Guinea, Gambia, Namibia, Nicaragua, Panama, Rwanda, San Marino and Yemen) have failed to supply follow-up information that has fallen due. The Committee reiterates that it views this procedure as a constructive mechanism by which the dialogue initiated with the examination of a report can be continued, and which serves to simplify the preparation of the next periodic report by the State party.[19]

206. The table below takes account of some of the Working Group's recommendations and details the experience of the Committee over the last year. Accordingly, the report does not cover those States parties with respect to which the Committee has completed its follow-up activities, including all States parties which were considered from the seventy-first session (March 2001) to the eighty-fifth session (October 2005).

207. The Committee emphasizes that certain States parties have failed to cooperate with it in

the performance of its functions under Part IV of the Covenant, thereby violating their obligations (Equatorial Guinea, Gambia).

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**Ninety-first session (October 2007)**

...

**State party: Austria**

**Report considered:** Fourth periodic (due since 1 October 2002), submitted on 21 July 2006.

**Information requested:**

Para. 11: Prompt, independent, and impartial investigation of cases of death and abuse in police custody; introduction of mandatory human rights training for police, judges and law enforcement officers (arts. 6, 7 and 10).

Para. 12: Adequate medical supervision and treatment of detainees awaiting deportation who are on hunger strike; investigation of the case of Geoffrey A., and information on the outcome of investigations in this case and in the case of Yankuba Ceesay (arts. 6 and 10).

Para. 16: Ensure that restrictions on the contact between an arrested or detained person and counsel are not left to the sole discretion of the police (art. 9).

Para. 17: Ensure that asylum-seekers who are detained pending deportation are held in centres specifically designed for that purpose, preferably in open stations, with access to qualified legal counselling and adequate medical services (arts. 10 and 13).

**Date information due:** 30 October 2008

**Date information received:**

*15 October 2008* Partial reply (responses incomplete with regard to paras. 11, 12, 16 and 17).

*22 July 2009* Supplementary follow-up report received (in the main largely satisfactory).

**Action taken:**

*12 December 2008* A letter was sent to request additional information.

*29 May 2009* A reminder was sent to the State party.

*14 December 2009* A letter was sent stating that the follow-up procedure is considered completed.

**Recommended action: No further action recommended.**

**Next report due:** 30 October 2012

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[16] *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 40*, vol. I (A/58/40 (vol. I)).

[17] Ibid., *Sixty-Fourth Session, Supplement No. 40*, vol. I (A/64/40 (vol. I)).

[18] The table format was altered at the ninetieth session.

[19] As the next periodic report has become due with respect to the following States parties, the Committee has terminated the follow-up procedure despite deficient information or the absence of a follow-up report: **Austria**, Brazil, Central African Republic, Democratic Republic of the Congo, Hong Kong (China), Mali, Namibia, Paraguay, Republic of Korea, Sri Lanka, Suriname and Yemen.

**Follow-up - State Reporting**
**ii) Action by State Party**

**CCPR, CCPR/C/AUT/CO/4/Add.1 (2008)**

**Information received from Austria on the implementation of the concluding observations of the Human Rights Committee (CCPR/C/AUT/CO/4)**

[22 October 2008]

1. The Human Rights Committee requested that, in connection with the review conducted on 19 October 2007 in connection with its fourth periodic report under the International Covenant on Civil and Political Rights, the Republic of Austria submit further information about the implementation of the recommendations of the Committee pursuant to recommendations 11, 12, 16 and 17 of the concluding comments.

2. The Republic of Austria would like to comment on these as follows:

**Concerning the recommendations pursuant to item 11**

3. The State party should take immediate and effective steps to ensure that cases of death and abuse of detainees in police custody are promptly investigated by an independent and impartial body outside the Ministry of the Interior and that sentencing practices and disciplinary sanctions for police officers are not overly lenient, It should also reinforce preventive measures, including by introducing mandatory training for police, judges and law enforcement officers on human rights and treatment of detainees and by intensifying its efforts to eliminate deficiencies within the police training system with regard to restraint methods.

4. By way of introduction, reference is made to information submitted to the Committee on 29 October 2007, in connection with the review of the fourth country report of Austria, where, inter alia, the cases of Wague and Jassay were commented specifically.

5. With regard to investigations of cases of death or abuse, it needs to be pointed out that the criminal police must report to the public prosecutor's office (by way of a report on knowledge obtained and/or an incident report). Since the amendment of the judicial procedure in criminal cases (1 January 2008), the public prosecutor's office (which is in no way dependant upon the Federal Ministry of the Interior) launches the investigating process. It must be regarded as an independent and/or impartial body.

6. Cases of death or abuse are reported immediately to a Human Rights Advisory Board, set up with the Federal Ministry of the Interior. By law, it has an independent status, in order to be able to commence an investigation of human-rights aspects. In line with the general tasks of the Human Rights Advisory Board, this investigation does not relate to the responsibilities under criminal law or service regulations of the individual persons involved in the incident. As the work of the Advisory Board is directed at prevention, it rather identifies those facts,

constellations and structural problems that constitute risk factors, in order to minimize their emergence or their impact. Whenever required, working groups with inter-disciplinary know-how will be set up in this process.

7. In the cited cases, the officers involved were convicted by an independent judge in the course of criminal proceedings (see article 83 (2) of the Federal Constitution Act), and the court decision has become final and enforceable.

8. In the first-instance disciplinary proceedings before the Disciplinary Commission of the Federal Ministry of the Interior, which is again an independent body, the Deputy Disciplinary Counsel was instructed to move the dismissal of the four accused officers. As the Disciplinary Senate did not follow this motion when it pronounced its decision orally, an appeal was lodged immediately with the Higher Disciplinary Commission in the Federal Chancellor's Office, once the written decision had been served. The final decision of the independent Higher Disciplinary Commission (file number 22, 23, 24/43 - Dok/07) was issued in September 2007.

9. The Disciplinary Counsel of the Higher Disciplinary Commission appealed this decision to the Administrative Court. These proceedings are currently pending. It should be pointed out that the disciplinary senates have been endowed with the powers and the same status granted to judges.

10. Furthermore, it is mentioned that the project "The Police as a Human Rights Organization - Police.Power.People.Rights" was launched at the Federal Ministry of the Interior. It is planned to conduct a comprehensive analysis in the course of the project, involving the organizational units in the Federal Ministry of the Interior responsible for these issues, as well as to define an appropriate error and/or crisis management. The topics are:

- Stress studies of police officers concerning excessive stress
- Evaluation of the deportation practices
- Increased use of charter flights for problematic deportation cases
- Training of an additional pool of escort officers in order to support or replace the officers who have been dealing with deportations for years.

*Basic and Continuing Training*

11. The Federal Ministry of the Interior is taking several measures in connection with the basic and continuous training of police officers in the field of human rights, as well as in order to fight prejudices that may lead to racial discrimination. Special awareness is created among law-enforcement officers for the aforementioned phenomena, and they are offered training on these issues. In this context it should be pointed out that the structure of the human rights curriculum was drawn up in the year 2003. The topics of racism and xenophobia are taught during the basic training of law enforcement officers by explaining the legislation and the legal regulations, with the goal of linking police interventions more closely to the underlying statutory basis.

12. During the basic and continuous training, the following measures are taken and/or priorities are set. In general, the constitutional guarantees are communicated during the training,

as well as the fundamental and human rights, especially in the course of law enforcement. In addition, seminars make participants even more aware of human rights issues. In the course of the basic training of law enforcement officers, several of the subjects taught deal with these issues; this knowledge is further deepened in the training of team-leading and senior police officers.

*Applied Psychology*

13. The objective is to create a better understanding for the future work, as well as to analyze possible areas of tension that arise when people live together. Officers need to be reinforced in their social competences so that they are able to cope successfully with the specific challenges of their occupation. How to conduct official interventions in relation to various groups of persons and marginalized groups is another aspect that is covered.

*The situation of foreigners and contacts with foreigners*

14. Officers ought to have a better understanding and appreciation of the living circumstances and situations of the foreign persons they encounter in their practical work, to act without prejudices, to handle conflict situations that result from cultural differences in a manner that is more humane and appropriate to the situation, to better understand the work of social institutions, their methods, objectives and motivations.

15. A better understanding of the culture and the living circumstances of foreigners creates trust and removes fears. It results in a clear rise in the quality of the work performed by the police and contributes essentially to a better understanding.

*"People - Rights"*

16. In the framework of this programme, human rights issues are discussed, creating more awareness and sensitivity for human rights. The programme has the following content:
The origin and history of human rights, as well as forms of existing (and potential) human-rights violations, presentation of human-rights organizations, outline of the legal situation, as well as working on various studies and case studies, research into the sources of (wrong) self-images and (external and internal) job profiles, motivation, the main effective processes and mechanisms, social, psychological and group-dynamic aspects, especially in connection with aggression, frustration, prejudices, loyalty, authority and the use of power, elaborating preventive approaches in connection with human-rights violations. Basic and continuous training for officers working on deportation cases: in cooperation with various organizational units of the Federal Ministry of the Interior, officers who are in charge of conducting deportations are given special training (Human Rights Convention and psychological instructions).

*"Anti-Defamation League"*

17. In the course of efforts to fight prejudices and discrimination, a multi-year cooperation programme between the "Anti-Defamation League" (ADL) and the Federal Ministry of the Interior has been conducted already since 2001, with the title "A World of Difference".

18. Cooperation with the ADL consists in holding 40 continuous training seminars per year of 3 x 8 hours each. This network of trainers for basic and continuous-training measures serves to create an unbiased attitude among Austrian law-enforcement officers. The programme was supplemented by a focus of language use and hate crimes.

*"Xenophobia and Language Use*

19. It has been arranged for the teachers of the educational departments to take part in this continuous training programme that the Federal Ministry for Education, Science and Culture launched. This is also meant to create more awareness for this subject.

20. The study course "Police interventions in a multi-cultural society" is continued:
The study course "Police interventions in a multi-cultural society" is intended to give officers, who are in frequent contact with migrants in their day-to-day work, the possibility to deepen their experience, as well as their theoretical and practical knowledge and to obtain certification for this knowledge.

21. Moreover, one should mention the close cooperation with the Human Rights Advisory Board in the field of basic and continuous training. The recommendations of the Human Rights Advisory Board on the language used by law enforcement officers have also been taken up and implemented as special inputs into the existing training programmes.

22. One should also mention that the General Directorate for Public Safety and Security issued a decree on 7 August 2002 with the title "Language Used by Law-Enforcement Officers", which refers to the applicable legal provisions. At the same time, it was pointed out that language serves a function, has importance and power, and that there may be discrimination caused by the language used.

**Concerning the recommendations pursuant to item 12**

23. The State party should ensure adequate medical supervision and treatment of detainees awaiting deportation who are on hunger strike. It should also conduct an independent and impartial investigation of the case of Geoffrey A. and inform the Committee about the outcome of the investigations in that case and in the case of Yankuba Ceesay.

24. It must be stated in this connection that, as a matter of principle, all detainees are given a medical check-up by a physician without undue delay, at the latest, though, within 24 hours after their admission (preventive medical check-up upon admission), concerning their physical fitness for detention (see para. 7 of the Regulation of the Federal Ministry of the Interior on the Detention of Persons by Law-Enforcement Officers and Units of the Public Security Services [AnhO], in the version of Federal Law Gazette II No. 439/2005). This means that physical fitness for detention is a condition sine qua non for the detention of persons in a police detention centre.

25. Medical attention is ensured at police detention centres, and it can be confirmed that all authorities engage in their best efforts in order to comply with human-rights requirements.

Depending on their size, police detention centres have one or several general practitioners at their disposal, who spend variable numbers of hours on the treatment of detainees.

26. Physicians offer their services at certain office hours at the police detention centres. Moreover, the physicians at these centres may also be called in outside of their service hours, in case of acute medical problems during the enforcement process. The basic medical attention is provided on the basis of the family-doctor model.

27. Guidelines pertaining to the services of police physicians govern the work of these public-health officers (see item 1.10 and 1.22 of the decree, file number BMI-OA1300/0011-II/1/b/2006, dated 20 February 2006).

28. All medical interventions and instructions - including those performed by external physicians - are documented in detail in the health files and/or the health-status sheet of every detainee.

29. Already on account of their service position, police physicians are obliged to provide the medical services to which they are assigned by the authorities. On account of their service obligations with the police authorities, they must provide their services within the scope of their abilities, based on their knowledge, know-how and experience. A police physician cannot refuse to provide medical services. Such a refusal would result in serious disciplinary consequences.

30. As a result of the problems that have emerged in connection with detainees on hunger and/or thirst strike, a broad-based discussion took place, covering medical arguments in the first place. In this context, three round-table discussions with the Human Rights Advisory Board and organizations taking care of detainees served to define innovative approaches and humane strategies. The guidelines and quality criteria concerning the diagnostics and the psychiatric assessment of detainees on hunger and/or thirst strike, in particular, have led to specific re-formulations of regulations and better information.

31. However, it should also be stated that, within the scope of the Federal Ministry of the Interior, the phenomenon of hunger and/or thirst strike was observed exclusively in connection with cases governed by aliens-law provisions (the so-called "detention pending deportation"). Investigations into the motifs indicate that obtaining a discharge from detention, in the absence of physical fitness, continues to be the main motif for consistently refusing to accept food.

32. A decree of the Federal Ministry of the Interior governs in detail the approach to, and the medical treatment of persons on hunger strike (inter alia by working out parameters in consultation sessions with the Human Rights Advisory Board). For example, when a report about a hunger strike is received, the person concerned will be required to undergo a daily clinical check-up, of which all established parameters are documented on a mandatory basis. Of course, these check-ups are also performed on Saturdays, Sundays and holidays. Whenever necessary, laboratory tests will also be required (comprehensive blood analyses). Moreover, whenever there were striking psychic indications (or drug replacement therapies, etc.), instructions were also given to consult a specialist in psychiatry.

33. It must also be stated, in connection with the rebuke that the medical services offered by the authorities provide insufficient treatment of persons on hunger strike, that the detainees will frequently refuse to cooperate, in spite of being informed in objective terms of the medical consequences in connection with the need for check-ups (e.g. laboratory tests). The voluntary nature of the examinations performed is always pointed out (right to physical integrity).

34. The State party took the case of Yankuba Ceesay at the police detention centre in Linz very seriously. Relevant recommendations were taken as a starting point for engaging in comprehensive observations. An inter-disciplinary working group headed by Prof. Mörz, Senior Medical Officer of the Federal Ministry of the Interior, engaged in a comprehensive evaluation of the basic parameters.

35. Particular attention is attributed to supervising and monitoring the services provided by police physicians. Quality control measures by the Senior Medical Officer are conducted for all medical services of the police authorities on an ongoing basis. For this purpose, an assistant to the Senior Medical Officer was appointed, who is especially assigned to this task.

**Concerning the recommendations pursuant to item 16:**

36. The State party should ensure that any restrictions under Section 59 (1) of the Criminal Proceedings Reform Act on the contact between an arrested or detained person and counsel are not left to the sole discretion of the police, and that the rights to talk to counsel in private and to have counsel present during interrogations are never totally denied to persons deprived of their liberty.

37. As a matter of principle, an accused person is entitled to retain the services of a legal counsel, irrespective of whether the person is at liberty or detained. This right already derives from article 6 (3) letter c of the ECHR, as well as from article 4 (7) of the Individual Freedoms' Act and was incorporated into paragraphs 178 and 179 (1) of the Code of Criminal Procedure when adopting the Criminal Proceedings Reform Act of 1993, as far as detained accused persons are concerned.

38. Every accused person should have the possibility to contact a defense counsel in due time in order to be able to discuss the substance of a case prior to any interrogation. However, especially when prosecuting very serious offences of organized crime, there are situations where the - especially urgent - risk of collusion or conspiracy (e.g. by an "encrypted" instruction to contact certain persons) cannot be prevented, also when monitoring the contacts with counsel. For the sake of effective criminal police operations, it should therefore be possible in such special cases - during a relatively short period of time, i. e. until the accused is taken to the court prison - to limit the contacts between the arrested accused and the legal counsel to the time required for granting the power of attorney and providing brief general legal advice (thus without dealing with the substance of the case) (para. 59 (1) of the Code of Criminal Procedure; see also European Court of Human Rights in the case of *MURRAY v. UK*, journal number 1996, p. 587 and following (margin note 60). While recognizing a general right of accused persons, in keeping with article 6 of the ECHR, to have a legal counsel by their side as of the beginning of the police interrogation, the European Court of Human Right is prepared to accept certain restrictions if

they are issued "for good cause". However, a good cause no longer prevails if a restriction of the access to a legal counsel would violate the demand for fairness, when considering the proceedings from an overall perspective (see also Kühne: Anwaltlicher Beistand und das Schweigerecht im Strafverfahren [Assistance by Counsel and the Right to Remain Silent, European Court of Human Rights, journal number 1996, p. 571 and following).

39. After having been taken to the court prison - i. e. 48 hours after the arrest - accused persons already enjoy every right to speak to their counsel freely.

40. Moreover, while the importance of access to legal advice - also at the beginning of proceedings - needs to be recognized, it must be indicated at the same time, though, that accused persons and their counsels are not entitled to continuously interrupt the course of interrogations. Accused persons should therefore have a legal title to consult with their defense counsels prior to an interrogation; yet, it should continue to be possible to keep them from discussing their answers to every single question in the course of an interrogation.

41. In the course of transposing the EU repatriation directive, the right of persons detained pending deportation to obtain individual legal advice / to retain a legal counsel will be introduced into proceedings that end the stay of a person on Austrian soil. This will follow the model of the refugee advisor which already exists under the Asylum Act. Persons, who have both legal and linguistic qualifications, will provide the counseling and represent these clients. In case of need, the legal advice / legal representation will be free of charge for the detained person.

**Concerning the recommendations pursuant to item 17**

42. The State party should review its detention policy with regard to asylum seekers, in particular traumatized persons, give priority to alternative forms of accommodation for asylum seekers , and take immediate and effective measures to ensure that all asylum seekers who are detained pending deportation are held in centres specifically designed for that purpose, preferably in open stations, offering material conditions and a regime appropriate to their legal status, occupational activities, the right to receive visits, and full access to free and qualified legal counseling and adequate medical services.

43. The preventive measure of detention pending deportation is a very delicate issue and should only be used as a last resort. In keeping with supreme-court case law, detention pending deportation - especially when of "Dublin relevance" - is admissible only in very specific individual cases.

44. After the entry into force of the aliens' law package, the number of cases and their evolution has shown a clear downward trend, after going up initially. For example, 285 aliens were accommodated under more lenient conditions in 2008, and 7,463 persons were kept in detention pending deportation. The new legislative basis and the Aliens' Police Act of 2005 resulted in a rise of the detainees pending deportation to 8,694, as compared to 927 aliens who were granted more lenient measures. The increase of more lenient measures is therefore clearly on the rise. The further developments in 2007/2008 show a clear decrease in the number of cases in which detention pending deportation was imposed. Once again, the number of cases increased,

in which more lenient measures were awarded. By way of summary, it can be pointed out that the measured and sensitive application of detention pending deportation after reviewing and/or assessing each individual case can be documented accordingly.

45. Moreover, it is seen as an important step that a new detention centre is being established in Austria. The current police enforcement systems (police detention centres) have developed over the years. In general, they are only suited to a limited extent to ensuring a modern enforcement of detention pending deportation. It is now necessary to cope with the resulting challenges in an optimum fashion in order to put measures taken by the aliens' registration service on a new basis.

46. On the basis of international experience with special facilities for the enforcement of measures imposed by the aliens' registration service , the new building of a "Center for Third-Party Nationals due for Repatriation" at Leoben, which will accommodate 250 aliens, will provide the requisite conditions and will facilitate respect for human dignity (especially with regard to language and culture), the greatest possible consideration for the detainees, as well as their autonomy concerning everyday routines, at a much higher level than is currently possible in the existing police detention centers. Detention pending deportation is to be adapted to general living conditions to the extent possible. Restrictions are to be imposed only to the extent that these are necessary in order to achieve the objective of detention prior to repatriation.

47. At present the procedures required under building regulations are under way, and the competition on the construction of the centre and the awarding of the overall contract, on the basis of an existing plan regarding facilities and functions, is being prepared.

48. At the same time, the project "Open Stations" is being continued, and the police detention centres are being refurbished and upgraded continuously.

49. The everyday routines at police detention centres have been given a structure. Detainees have access to unrestricted communication, regular outdoor exercise and sports, as well as libraries and/or foreign-language literature collections, as well as creative and cultural activities. One should mention, in particular, appropriate activities and regular workshops with the permanent and mother-tongue staff of centres for detention pending deportation.

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**CCPR, CCPR/C/AUT/CO/4/Add.2 (2009)**

**Further information received from Austria on the implementation of the concluding observations of the Human Rights Committee (CCPR/C/AUT/CO/4)**

[22 July 2009]

1. In connection with the review on 19 October 2007 of the fourth periodic report of Austria under the International Covenant on Civil and Political Rights, the Human Rights Committee has asked the Republic of Austria to present, within one year, additional information on the implementation of the recommendations by the Committee pursuant to paragraphs 11, 12, 16 and 17. In October 2008 the Republic of Austria complied with this request by submitting its comments. After a first review of these comments, the Human Rights Committee has now asked for more additional information in connection with the aforementioned paragraphs. In this connection, the Republic of Austria submits the following additional information.

**Concerning the recommendation pursuant to paragraph 11**

2. Concerning the independent and impartial investigation of cases of death and abuse of detainees in police custody, the State party would like to report that the Federal Ministry of Justice in its decree dated 15 December 1995, file number JMZ 430.001/30-II 3/1995, revised the existing form sheets for reporting on such cases where preliminary court inquiries or a preliminary investigation were initiated, on the one hand, against officers of the security authorities for alleged maltreatment and, on the other hand, for defamation against persons who have asserted such allegations. One can thus gather from these reports the number of persons against whom preliminary court inquiries or preliminary investigations were actually conducted on the basis of a report to the police in cases in which the proceedings were suspended.

3. Moreover, with its decree dated 30 September 1999, file number JMZ 880.014/37-II 3/1999, the Federal Ministry of Justice requested the public prosecution offices to clear up "allegations of abuse" against officers of the security authorities by way of preliminary court inquiries, if necessary upon an application to launch a preliminary investigation. This also applies to cases in which - without any specific allegation having been made - there are indications for a suspicion in this respect, for example on the occasion of delivering an arrested accused person to a prison, or in the course of an accused person's examination by the investigating judge. In the event of external signs of injuries, an expert opinion would have to be obtained without delay concerning the possible cause of a physical impairment. By way of a decree dated 21 December 2000, file number JMZ 880.014/48-II 3/2000, the Federal Ministry of Justice requested the heads of prisons to follow an appropriate procedure in the event of allegations of abuse against penal enforcement officers.

4. As the reform of criminal proceedings has become effective, the content of these decrees requires review, as the instrument of preliminary court inquiries no longer exists. With the entry into force of Article 90a of the Federal Constitution Act, the public prosecution offices have become agencies of the judiciary. However, this does not rule out that the Federal Minister of

Justice may issue instructions for the investigation of cases. Therefore, the Public Prosecution Act (§ 29 (3) and § 29a (1)) expressly stipulates that any such instruction is to be included in the investigation file and thus becomes subject to the control of the parties involved in the proceedings. Finally, it was also stipulated that the Federal Minister of Justice has to report to Parliament, i.e. the National Council, once every year of the instructions issued which de facto rules out any unlawful influence.

5. By way of decree by the Federal Ministry of Justice dated 20 December 2007, file number BMJ-L590.000/0040-II 3/2007, on the exercise of powers involving orders and coercive measures, the persons applying the law in the justice sector were informed of the decree by the Federal Ministry of the Interior dated 18 December 2007, file number BMI-OA 1370/0001-II/1/b/2007, concerning the documentation, the establishment of facts of cases, and the evaluation of the application of coercive measures. The members of the federal police forces, as well as members of the legal service units who are authorized to exercise powers involving orders and coercive measures, are thus obliged to document and report their official acts when engaging in measures subject to reporting, i.e. especially the use of arms and the use of coercive measures, with such consequences as physical injury or material damage. Whenever such a report is made, the facts of the case must be established. As a matter of principle, any physical injury must be established by a physician. The result of the investigation, obtained after performing the inquiries, must be communicated to the responsible public prosecution office for an evaluation of the criminal-law aspects, in the event of alleged or actual personal or material damage or danger to physical safety.

6. In connection with the investigations and the actual punishment in the case of Bakary Jassay, the Agents of the Austrian Government would like to report that three of the police officers involved in the incident on 31 August 2006 were found guilty of the offence pursuant to § 312 (1) and the first case of § 312 (3) of the Criminal Law Code, and the fourth person was found guilty as a contributing offender, as defined in the third case of § 12 of the Criminal Law Code. They were all sentenced with final and non-appealable effect. The three first-mentioned officers were sentenced to prison terms of eight months, and the contributing offender was sentenced to a prison term of six months. All prison terms were pronounced on the condition of a three-year probationary period.

7. In the subsequent disciplinary proceedings, the officers were sentenced to con-siderable fines (five monthly remunerations in one case, four monthly remunerations in two cases, and three monthly remunerations in one case), although the disciplinary counsel had moved that the incriminated officers be fired. The disciplinary counsel appealed the decision in these proceedings before the Higher Disciplinary Commis-sion to the Administrative Court, and the Administrative Court suspended it pursuant to § 42 (2) item 1 of the Administrative Court Act (file number Zl. 2007/09/0320-14) dated 18 September 2008. The Higher Disciplinary Commission has therefore initiated new proceedings and currently the case is under its review. The four police officers involved in the incident are currently serving only in back-office positions.

8. It has not been possible, as yet, to pay any compensation to Mr. Bakary Jassay. According to Austrian law, Mr. Bakary Jassay is entitled to compensation under official liability

(Official Liability Act, Federal Law Gazette No. 20/1949; taking account of the criteria for compensation as defined in Article 14 of the Convention against Torture). Mr. Jassay has not filed any such action to date, neither through a legal counsel, nor on his own. He also did not take any other initiative - such as, for example, to reach an out-of-court settlement - in order to assert his claim. Several talks were held between the responsible desk officer in the Federal Ministry of the Interior and Mr. Bakary Jassay's legal counsel. The Federal Ministry of the Interior is making every effort to exploit all possibilities in order to bring about an expedient solution of the case.

9. The Federal Ministry of the Interior also drew consequences of a general nature from the incident. A stress study was commissioned, examining excess strain on officers. Moreover, the deportation procedure was the subject of a comprehensive evaluation. Specifically chartered planes are used increasingly, whenever one must expect resistance in a deportation case.

10. The training of new teams was launched, in order to relieve and replace the escort teams that have been on duty for years. Moreover, the Human Rights Advisory Board is informed prior to performing complex deportations or deportations by chartered plane, in order to make it possible for members of the Human Rights Advisory Board to participate in the preparatory contact discussions and/or in the transfer to the airport.

11. The following can be reported on the introduction of specific compulsory training measures for police officers, judges and enforcement agents:

> In the year 2007, a module on fundamental rights was developed by representatives of academia and the professional associations, to be used in the initial and further training of judges and public prosecutors. Since 2008, this module has been compulsory for all prospective Austrian judges and public prosecutors. It deals with fundamental rights in everyday court work, including also the prohibition of torture, as well as the right to education. Since 2008 fundamental and human rights, including equal treatment and non-discrimination law, have also been subjects at the examination for the recruitment as judge ( § 16 (4) item 4 of the Judges' and Public Prosecutors' Service Act).

12. In addition, the justice sector organizes numerous events, as part of the further training of judges and public prosecutors, which deal with the topics of fundamental and human rights in general, and specifically also with promoting tolerance and fighting racism. The following events have been organized since 2007:

- 2007 Judges' Week on the subject of "The Judiciary and Human Rights" (Federal Ministry of Justice);
- Seminar "Islam - Society - Law - Judiciary: An Introduction" (Higher Regional Court Innsbruck);
- Lecture and excursion "DENK-MAL Marpe Lanefsch" (Federal Ministry of Justice);
- Seminar "Other Countries, Other Customs - Obvious and Less Obvious Features of Other Cultures; the Right to Asylum and the Protection of Victims" (Higher Regional Court Innsbruck);
- Conference "To Administer Justice - To Prevent Injustice" (Fundamental Rights Unit and

Federal Ministry of Justice).

13. Members of the judiciary also participate regularly in international events on the subject of fighting racism. One recent example is the participation in the conference of the international association of public prosecutors in the year 2008 which focused on "hate crimes". For the year 2009, the Thomas Morus Academy - together with other institutions - is planning an international event on how to deal with juveniles with a migration background in criminal-law cases. This event, too, will be appropriately announced to the members of Austria's judiciary.

14. Police officers are obliged to obtain special training in connection with restraint methods. In recent years, the training for such operations was evaluated on an ongoing basis and optimized, especially with a view to human rights aspects. Throughout the entire training, major attention is attached to the preservation of human dignity, to acting without reproach and prejudice, as well as to the use of adequate language. The police officers are especially alerted to these issues. The ongoing reference to the protection of human rights (especially the respect for human dignity, the prohibition of discrimination, etc.) is meant to contribute towards strengthening these values, as well as to guide the actions of police officers when operating under stress. Moreover, the training for operations is to ensure the implementation of the so-called "3D philosophy in operations" ("Dialog, Deeskalation, Durchsetzen" = dialogue, de-escalation, enforcement) in a commensurate manner. In the course of these operations, the principle of proportionality must be observed by continuously reviewing the coercive measures applied with regard to their necessity, proportionality and every possible care.

15. The reports of the Human Rights Advisory Board, of Amnesty International, etc. are reviewed on an ongoing basis, with a view to obtaining suggestions for the training of police officers. By way of a continuous evaluation, for the purpose of quality assurance and optimizing contents, by inter-disciplinary activities and interlinking all legal fields with human rights, it is ensured that adequate attention is paid to communicating human rights in all aspects of training, in parallel to teaching purely legal aspects.

16. Restraining methods are trained with great sensitivity (hog-tying, positional asphyxia syndrome, restraint asphyxia). The combination of handcuffs and ankle shackles never was, and currently is not provided in any regulation and is thus inadmissible.

**Concerning the recommendation pursuant to paragraph 12**

17. The following general information is provided concerning the practice applied in connection with hunger and/or thirst strikes:

- Detainees awaiting deportation are given a medical examination upon their admission;

- As of the report of a hunger and/or thirst strike, a daily clinical examination is performed and all parameters, as listed in the hunger strike form used by the chief medical service (which was coordinated with the physicians of the Human Rights Advisory Board), are documented. In addition, a daily check of the pulsoxymetry is compulsory;

- If a detainee goes on a hunger strike or refuses the intake of liquids, he/she must be taken to be seen by a physician immediately. The physician will examine the person and determine the individual critical weight loss. Moreover, the physician has to inform the detainee of the dangers of refusing the intake of food or liquids, in the course of which the physician must discuss the health consequences of a strike, if necessary with the assistance of an interpreter and/or a police officer with language skills (see the ordinance of the Federal Minister of the Interior concerning the detention of persons by security authorities and agents of the public security service, Federal Law Gazette II No. 128/1999 in the version of Federal Law Gazette II No. 439/2005, § 10). In addition, the detainee is handed an information sheet (available in 42 languages), which is explained and the issuance of which is documented. This practice has been observed since 28 October 2002. The respective documentation in the cases of Geoffrey Abba and Yankuba Ceesay is available in their medical records;

- If the enforcement of the detention pending deportation is not possible, on account of a health condition produced by the detainee himself/herself, a residence ban or expulsion is enforceable, and deportation is possible, the head of the court prison may be asked to admit the detainee to the prison hospital. It is to be noted that the Federal Ministry of the Interior - by expanding the scope of the information sheet for detainees and by involving organizations providing care to detainees awaiting deportation - provides for detained persons being informed about their legal status and in particular, about the fact that a hunger strike or self-afflicted injuries will no longer necessarily result in a release from detention pending deportation.

18. Concerning the case of Geoffrey Abba, in particular, the following information is communicated:

- Geoffrey Joel Abba, a Nigerian citizen, born on 20 February 1976, was arrested for the purpose of deportation in the course of a search by the aliens' police in a call centre by officers of the Federal Police Directorate in Vienna, as a valid residence ban was in force against Mr. Abba.

- On 30 August 2006 Mr. Abba went on a hunger strike. Initially, Mr. Abba lost 15 kg of his weight; subsequently, however, he regained some weight. The weight loss may appear to be relatively big. However, since this decline occurred over a period of about 30 days, one had to assume that Mr. Abba continued to take in - albeit small - quantities of food during the hunger-strike period.

- In keeping with regulations, the daily medical checks were made and the findings recorded (blood values RR 140/103, pulse 98). He was offered food three times per day; liquids were available at all times.

- On the basis of the medical examination by the police physician, he was in a state fit for detention. The detention awaiting deportation was upheld.

- On 2 October 2006 the aliens' police (police detention centre) transferred Mr. Abba (as a

"detainee awaiting deportation on hunger strike") to the hospital ward of the Vienna-Josefstadt prison, which serves as a special hospital. This action was based on the joint decree by the Federal Ministry of Justice and the Federal Ministry of the Interior dated 13 December 2005, file number BMI-LR1320/0020-II/3/2005, item 5 (legislation and law; own legislation; aliens' police matters concerning § 78 (6) of the Aliens' Police Act). The purpose of the transfer was to have his health status monitored.

· Mr. Abba refused to take in any solid food, as well as to be provided with medication, or to have his blood analyzed. On 8 October 2006, he weighed 49 kg (as compared to 53 kg when admitted). However, no medical coercive measures, as defined in § 69 of the Penal Enforcement Act were required up to his release from the Vienna-Josefstadt prison on 10 October 2006, which was ordered by the aliens' police.

· Before being released from detention awaiting deportation, Mr. Abba was offered suitable food; according to the prison management, he was also given the opportunity to make a telephone call. He left the Vienna-Josefstadt prison on his own. However, he eventually had to obtain emergency medical assistance at a public hospital, on account of his generally weak condition.

19. As a result of the Abba case, the Federal Ministry of the Interior comprehensively overhauled the rules of the aforementioned decree on the treatment of detainees awaiting deportation on hunger strike, such as those on admission, release, including compulsory examination upon release, organized by the Federal Police Directorate Vienna, the obligation to notify relatives and further referral to another hospital (now: decree of the Federal Ministry of the Interior dated 13 December 2006, file number BMI-LR 1320/0020-II/3/2006). The decree makes sure that, in the future, the appropriate (re-)action is taken in medical emergencies, as well as that the requisite notices are given upon release and/or referral.

20. Moreover, the independent Human Rights Advisory Board investigated the case. An urgent report was prepared, on which the Federal Ministry of the Interior commented officially. No recommendations were issued on the basis of this incident.

21. Concerning the case of Yankuba Ceesay, in particular, the following information is communicated:

· Yankuba Ceesay, born on 2 March 1987 at Latrikunda, Gambia, was taken from the Linz prison to the police detention centre Linz of the police station on 12 September 2005 at 8.40 hrs. in order to enforce his detention pending deportation.

· On 27 September 2005 Mr. Ceesay went on a hunger strike.

· On 4 October 2005, Mr. Ceesay was taken to the office of the police physician by his co-detainees. As he refused to be examined and refused to have his body weight established, it was ordered that he be taken to the out-patient station specializing in internal medicine of the General Public Hospital of the City of Linz.

- On 4 October 2005, at 9.30h, he was taken to that hospital, where arrangements were made to take a blood sample and to examine the detainee. As Mr. Ceesay resisted the taking of a blood sample, this was performed by applying coercive measures. There was no medical reason for a further stay at the hospital and, at the time of the visit to the out-patient station, there was no indication of a life-threatening situation emerging.

- On account of his conduct during the examination, Mr. Ceesay was taken to a security cell (cell with linoleum flooring, no furniture) upon his return to the police detention centre, where he was monitored at short intervals (15 to 30 minutes), as there was the risk that he put himself and others in danger.

- At 12.50 hrs., the officer on duty informed the paramedic that it seemed that Mr. Ceesay was not breathing anymore. The paramedic went to the security cell immediately, in order to check on the vital functions. As it was no longer possible to establish any vital functions, an emergency doctor and the police doctor were called in. Unfortunately, re-animation was without success.

- An autopsy was made of the body of the deceased in order to determine any third-party fault on the part of the officers on duty. The detailed autopsy report showed that a massive shift in electrolytes was the cause of Mr. Ceesay's death, which was primarily the result of an undetected disease, i.e. sickle-cell anemia. The expert opinion showed that the death, ultimately due to an unknown hereditary health disposition of the deceased, was not foreseeable, and that any symptoms of the disease would only have been noticeable if a laboratory examination had been made at an earlier stage, for which there was no indication. As none of the persons involved could be blamed for any misconduct, the public prosecution office Linz discontinued the proceedings pursuant to § 90 (1) of the Code of Criminal Procedure in its old version.

22. Up to that case, there had been no experience in police detention centres concerning the health effects of sickle-cell anemia in connection with a hunger strike.

23. After this regrettable unhappy incident, all medical services of the police were informed immediately, and orders were given to expand the examination of potential risk persons. The already comprehensive medical examination by the police doctors upon admission was expanded in that, in the event of a person going on hunger and, in particular, on a thirst strike, as well as coming from a country where sickle-cell anemia is endemic, a complete differential blood analysis is to be made instead of only determining the hematocrit value.

24. The Ceesay case was also investigated by the independent Human Rights Advisory Board. The result was a detailed report - "Provision of Medical Services during Detention pending Deportation" - with eight recommendations. The report can be accessed at http://www.menschenrechtsbeirat.at/cms/. On the basis of this report, a working group was set up at the Federal Ministry of the Interior, which, in particular, prepared a new set of legal principles for the provision of medical services. This was presented at a conference for all staff and freelance police doctors. The relevant forms were adapted accordingly. They are available for download at the "detention file - enforcement administration"

(Anhaltedatei-Vollzugsverwaltung). The checks by specialists and under service regulations were stepped up by visits to be made by senior doctors and the management department. An intensive exchange with the Human Rights Advisory Board took, and is taking place on this subject. In addition, one should mention the introduction of a tool for paramedics, prepared with practitioners, which is comprised in the detention file.

**Concerning the recommendation pursuant to paragraph 16**

25. One essential element of the reform of the Code of Criminal Procedure, which entered into force on 1 January 2008, is the improved legal position of accused persons and their rights of defensc and participation. Pursuant to § 7 (1) of the Code of Criminal Procedure, accused persons have the right to obtain the assistance of their legal counsel at every stage of the proceedings, which is independent of the issue whether a person has been detained or not. Pursuant to § 58 (1) of the Code of Criminal Procedure, an accused person may establish contact to his/her legal counsel as of the beginning of the investigation procedure, issue a power of attorney to him/her, and discuss the matter with him/her before being interrogated.

26. The criminal police must make it possible for an arrested person to contact a legal counsel. Already in the course of their basic training, police officers are given special training with regard to the information to be given to persons upon their arrest. Arrested persons are also given an information sheet on this subject (available in 48 languages). Moreover, the criminal police must inform every arrested accused person of the legal counsels on standby duty and, in addition to handing him/her the "Information Sheet for Arrested Persons", must also hand him/her the "Information Sheet concerning Legal Counsels on Standby Duty" (in the respective language version). If so required, an interpreter must be called in.

27. If the detained accused person asks for a legal counsel of his/her choice or a legal counsel on standby duty, he/she must be allowed to make a telephone call to the legal counsel of his/her choice or to the hotline of the service for legal counsels on standby duty. If the circumstances so require (e.g. reasons of language), the telephone call may also be conducted by an organ of the criminal police or, if present, by an interpreter.

28. The wish of the detained accused person to contact or to have contacted a legal counsel via the service for legal counsels on standby duty, as well as the wish to establish contact to the legal counsel directly at the duty station of the criminal police, as well as any refusal to avail himself/herself of these rights, or any possibly established contact with a legal counsel must be put on file in Arrest Report II (item 2 of the sheet on information). It must also be documented appropriately that the information sheet on legal counsels on standby duty was handed to the detained accused person.

29. Pursuant to § 59 (1) of the Code of Criminal Procedure, contacts between a detained accused person and a defence counsel may be monitored by the criminal police, before that person is admitted to the prison, and the contacts may also be limited to the scope required to provide general legal information, but only on the condition that this appears to be necessary in order to prevent any interference with the investigations or the evidence. This restriction on contacts between the defence counsel and the detained accused person is thus only possible in particularly justified cases, and only for a relatively short time, i.e. for a maximum of two days.

30. Pursuant to § 59 (2) of the Code of Criminal Procedure, the detained accused person has the right, as a matter of principle, to communicate with his/her defence counsel without being monitored. However, if the accused person is being detained on grounds of collusion or conspiracy, and if it is feared, on account of particularly important circumstances, that the contacts to the legal counsel might affect the evidence, then the public prosecution office may order the monitoring of the contact with the defence counsel. Before admitting the accused person to the prison, the criminal police have this right to issue an order to this effect. The monitoring must not be concealed, and it must be terminated at the end of two months after the arrest or upon the bringing of charges.

31. Moreover, pursuant to § 164 (2) of the Code of Criminal Procedure, the accused person has the right, as a matter of principle, to call in a defence counsel when being interrogated. However, one may depart from this practice, whenever it appears to be necessary, in order to prevent any risk to the investigations or an impairment of the evidence. In these cases, an audio or video recording should be made, to the extent possible. As can be gathered from the cited provisions, restrictions concerning the procedural principle pursuant to § 7 of the Code of Criminal Procedure, as required by the European Court of Human Rights, are only possible if justified reasons prevail. In addition, the specific features of the respective individual case must also be taken into account. Important reasons for restricting contacts to legal counsel may be that the accused person is suspected of being a member of a criminal organization, of which the other persons involved have not yet been interrogated. As the accused person has the right, in accordance with § 106 (1) of the Code of Criminal Procedure, to object to violations of a substantive right, or to being denied procedural rights by the criminal police or the public prosecution office in the course of investigative proceedings, it is ensured that there is court control over the lawfulness of the acts undertaken by the criminal police or the public prosecution office.

32. Any possible restriction of the contacts to the legal counsel are therefore not at the discretion of the officers, as there are clearly defined statutory requirements the observation of which is reviewed by independent courts.

**Concerning the recommendation pursuant to paragraph 17**

33. Detention pending deportation is currently still being carried out at police detention centres of the federal police authorities.

34. Very high demands are being put to the police detention system, especially in connection with detention pending deportation. In recent years, considerable efforts have been made in order to decisively improve the quality of detention. In particular, adequate standards were created so that any detention pending deportation will merely serve the purpose of preventive detention and not have any penal character.

35. One should mention here, in particular, the further implementation of so-called "open stations" and/or the "opening of cell doors/detention rooms". An "open station" is a separate, closed homogenous building section in a police detention centre, available to accommodate

detainees awaiting their deportation, where detention pending deportation can be implemented in an improved and more humane setting.

36. The Federal Ministry of the Interior and its various subordinate service units make every effort to continue, with efficiency and effectiveness, the improvement of detention conditions, within the framework of available financial, staff and technical resources. For example, in the years 2006 to 2008 the Federal Ministry of the Interior spent EUR 1,045,000 only on building improvements at Austrian police detention centres. It was possible to achieve major improvements in the enforcement of detention by the ongoing implementation of several "open stations" (police detention centres at Linz, Salzburg, Innsbruck, Bludenz, Graz, Eisenstadt, Klagenfurt, Villach, Wels, and Vienna/Women's Section).

37. At present, an "open station" is being built at the police detention centre Vienna-Hernalser Gürtel for 50 male detainees awaiting deportation. The work will be completed in June 2009 (expenditure: about EUR 150,000).

38. It ought to be pointed put, in particular, that it is planned to set up a modern centre for third-country nationals who will be returned to their home countries. With a view to meeting national and international standards and guidelines in an optimum manner, when the aliens' police enforce deprivation of liberty, it is planned to build a new centre for third-country nationals pending their return to their respective home countries.

39. Detention pending deportation, used as a preventive measure, is applied with great sensitivity and only as a "means of last resort". According to the present case law of the highest courts, detention pending deportation - especially in "Dublin" cases - is admissible only if there is really a need for detention in a specific individual case.

40. The figures and their development after the entry into force of the legislative package for aliens in 2005 show a clearly downward trend - after an initial upward trend.

41. In the enclosed annex, the Committee will find a comparison concerning orders for detention pending deportation, deportations and voluntary return to the respective home countries.

42. With regard to the length of the detention pending deportation, one can state that it lasted 24.14 days on average in 2008 (the mean duration of detention pending deportation is 11 days, i.e. one half of the detentions pending deportation last up to 11 days, the remaining half more than 11 days).

43. Concerning access to qualified legal assistance for detainees awaiting deportation one can state that, at present, free access to gratuitous legal assistance is not provided (the possibility to consult a legal representative is listed in the regulations on detention). Only those detainees awaiting deportation, who instruct a person to represent them, are provided with legal advice. Detainees awaiting deportation who apply for asylum in Austria in any case receive free legal advice and/or representation in the framework of the asylum procedure.

44. The highest possible level of legal information will be ensured in the future, on account of the obligation to inform the persons concerned systematically about their rights and obligations, as well as about the house rules. If the third-party national concerned wishes to challenge the decision in connection with his/her return to the respective home country, the third-country national concerned can obtain legal advice, legal representation and language assistance pursuant to Article 13 of the EU Directive on common standards and procedures in Member States for returning illegally staying third-country nationals (2008/115/EC of 16 December 2008, OJ No. L 348/98 of 24 December 2008). Upon application, third-country nationals must be granted the necessary legal advice and/or representation for free, in accordance with the relevant legal regulations or provisions of the individual States on assistance in connection with procedural costs. With the implementation of the aforementioned EU directive on home-country return, the guarantees for legal protection will be improved and free access to legal representation will be facilitated.

45. Moreover, in connection with the subject of legal protection/legal advice during detention pending deportation, one must mention the "Working Group Legal Protection", set up and directed by the Human Rights Advisory Board. This working group - involving human rights experts and practitioners - has drawn up recommendations and published a report. These recommendations will be examined more closely for their realization in the present context in the course of the imminent implementation of the EU directive on home-country return.

46. In this connection, one must also mention, in particular, the preparation for return. The preparation for return is provided on a voluntary basis (on the basis of promotion agreements) by private assistance organizations (always one organization per police detention centre). This also includes information provided to the person concerned on the facts and the legal circumstances, and it serves to generally support enforcement in conformity with the standards of the aliens' law. This also ensures that the staff members of the organizations preparing detainees for their return inform their clients about pending proceedings and the possibility of a voluntary return. However, the legal advice and/or representation of the detainees awaiting deportation receiving this preparation are not part of the promotion agreement.

47. The medical care of detainees awaiting deportation is to be guaranteed by the Federal Ministry of the Interior. Depending on its size, every police detention centre has one or several general practitioners at its disposal, who are available for different lengths of time. Specialists for psychiatry were engaged under contract to provide out-patient acute treatment. At the police detention centres, a police physician pays a visit on a daily basis.

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