



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



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REPORT

by Nils Muižnieks
Commissioner for Human Rights of the Council of Europe

Following his visit to Austria
from 4 to 6 June 2012

Summary

Commissioner Nils Muižnieks and his delegation visited Austria from 4 to 6 June 2012. During his visit, the Commissioner held discussions on human rights issues with a focus on the national system for protecting and promoting human rights and the human rights of vulnerable groups, in particular asylum-seekers, persons with disabilities, women, and older persons. The Commissioner met with national authorities and other interlocutors, including civil society representatives.

The present report focuses on the following major issues:

1. National system for promoting and protecting human rights

The Commissioner commends Austria's well-established system for promoting and protecting human rights. Some gaps remain however, such as the ratification of Protocol No. 12 to the European Convention on Human Rights providing for a general prohibition of discrimination. He appreciates the forthcoming ratification of the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT) and in this context the strengthening of the Austrian Ombudsman Board, in particular by allocating further resources. The legal and institutional framework against discrimination is characterised by considerable fragmentation and the Commissioner calls on the Austrian authorities to keep it closely under review. Affording the same level of protection across the different grounds of discrimination should be a priority. An effort towards harmonisation and streamlining would also be highly desirable with respect to the many institutions involved in the implementation of anti-discrimination and equality legislation in Austria.

2. Human rights of asylum-seekers

Noting a certain complexity in the current asylum system due to numerous reforms, the Commissioner recommends that future modifications aim at improving transparency and legal certainty. The regular involvement of civil society including access to places of reception and detention would also enhance transparency of and trust in the system. The Commissioner recommends that asylum-seekers' access to the labour market be extended. He appreciates that free legal aid is in principle available for asylum-seekers since autumn 2011 and strongly encourages the authorities to develop the system further and ensure that quality legal counselling is available free of charge during the entire asylum procedure as well as in detention and during deportation proceedings. Material conditions in pre-deportation facilities need to be reviewed in order to address long-standing concerns. Regarding unaccompanied and separated asylum-seeking children, the Commissioner calls upon the authorities to provide care in line with international standards, notably taking into account the best interests of the child. In this regard a guardian should be appointed from the outset and throughout the stay of these children in Austria.

3. Human rights of persons with disabilities

The Commissioner welcomes that a National Action Plan for Persons with Disabilities aiming at further implementing the respective UN Convention is currently being drafted in Austria. This is an invaluable opportunity for securing regular and systematic consultation with civil society and persons concerned to allow for their full participation in decision-making processes. Furthermore, the Commissioner stresses the need to ensure that in all areas covered by the plan, the applicable standards are adhered to in all *Länder*. In this regard the Commissioner encourages the authorities to further the system of inclusive education and to step up their measures for securing independent living and inclusion in the community as well as for providing access to the built environment. He notes with appreciation that the discussion has started on supported decision making and encourages the authorities to pursue their efforts vigorously in line with Article 12 of the UN Convention on the Rights of Persons with Disabilities.

4. Human rights of women

The Commissioner notes that despite measures taken to achieve gender equality, progress made appears to be rather slow, in particular regarding the gender pay gap. Lack of good-quality full-time childcare and gender stereotypes have been identified as major barriers to gender equality in this regard and need to be addressed. Often women face obstacles to family reunion in a migration context due to child care obligations and reduced employment opportunities resulting in low salaries. The Commissioner notes with appreciation the continuous measures taken to combat violence against women and domestic

violence. He encourages the authorities to close remaining gaps, in particular in the area of statistics, and speedily ratify the Council of Europe Convention on Violence against Women and Domestic Violence (Istanbul Convention). Welcoming the actions taken to counter trafficking in human beings, the Commissioner urges the authorities to step up their measures for victim identification, not least during asylum and deportation proceedings.

5. Human rights of older persons

In view of the fact that Austria is gradually developing into a demographically ageing society, the Commissioner commends the authorities for having strengthened the participation of older persons by establishing an institutionalised form of dialogue. He encourages the authorities to continue their path to ensure that social protection systems, health care, housing policies, and also anti-discrimination legislation including in the labour market, take the specific needs of older persons fully into consideration. Particular attention ought to be paid to the vulnerability of older people requiring services and care in institutions or at home. An adequate number of skilled staff, regular appropriate training and strong oversight are core to ensuring a safe environment for this vulnerable group.

The Report ends with the Commissioner's conclusions and recommendations to the authorities. It is published on the Commissioner's website together with the authorities' comments.

Introduction

1. The present report follows a visit to Vienna by the Council of Europe Commissioner for Human Rights (the Commissioner) from 4 to 6 June 2012.¹ The visit focused on the national system for protecting and promoting human rights and on the human rights of vulnerable groups, in particular asylum-seekers, persons with disabilities, women and older persons.
2. In the course of his visit, the Commissioner held discussions with representatives of the national authorities, including the Federal Minister of Labour, Social Affairs and Consumer Protection, Mr Rudolf Hundstorfer and the Federal Minister for Women and the Civil Service, Ms Gabriele Heinisch-Hosek as well as the Ministry for European and International Affairs State Secretary, Dr. Wolfgang Waldner and the State Secretary in the Federal Chancellery, Dr. Josef Ostermayer. The Commissioner also met with national human rights bodies, namely the Austrian Ombudsman Board and a representative of the Human Rights Advisory Board, the Austrian Ombud for Equal Treatment, members of the Federal Equal Treatment Commission and the Equal Treatment Commission and staff members of the Federal Disability Ombudsman Office as well as with civil society representatives. The Commissioner also visited the Federal Reception Centre East at Traiskirchen where he spoke with residents, including unaccompanied asylum-seeking children, families and single mothers. At the end of his visit, the Commissioner met with elderly patients and staff at the interdisciplinary Socio-Medical Centre Baumgartner Höhe Otto-Wagner-Hospital and Care Centre.
3. The Commissioner wishes to sincerely thank the Austrian authorities for the assistance they provided in organising the visit and facilitating its independent and effective execution. He extends his thanks to all interlocutors, from the national authorities, civil society and the communities he visited, for their willingness to share with him their knowledge and views.
4. In the present report the Commissioner focuses on the following major issues: national system for promoting and protecting human rights (Section I); human rights of asylum-seekers (Section II); human rights of persons with disabilities (Section III); women's rights (Section IV); and human rights of older persons (Section V). These sections are followed by the Commissioner's conclusions and recommendations addressed to the authorities (Section VI).

I. National system for promoting and protecting human rights

5. Austria possesses a well-established system for promoting and protecting human rights. It consists of a general as well as some special complaints bodies and special protection mechanisms against discrimination. Austria has also ratified most of the Council of Europe and other international human rights treaties. The constitutional status afforded to the European Convention on Human Rights already in 1964 leads to direct effect within the domestic judicial system. The ratification by Austria of the Revised European Social Charter in May 2011 was an important step towards enhancing the human rights protection system. However, the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints has not been ratified.
6. During his visit the Commissioner discussed the recent experience of the Austrian authorities with the Universal Periodic Review undertaken by the UN Human Rights Council to systematically assess human rights protection in a country. He was pleased to learn that government officials and civil society representatives alike had perceived the procedure as beneficial. The Commissioner particularly appreciates the strong NGO involvement in the process and encourages the Austrian authorities to ensure that it continues in a regular manner. The Commissioner also discussed the possibility of using the experience gained during the process

¹ During his visit the Commissioner was accompanied by Mr Giancarlo Cardinale, Deputy to the Director of his Office, and Ms Silvia Grundmann, Adviser.

for a more in-depth debate possibly leading to a general human rights action plan. While noting that various action plans on specific human rights aspects already exist, the Commissioner believes that an overarching human rights action plan adopted by Parliament would lead to greater awareness and coherence as well as enhanced public ownership of human rights, which could be particularly beneficial in a federal structure.

7. The Commissioner also discussed the reform of the Austrian Ombudsman Board, an independent body with constitutional status reporting to parliament. It is competent to examine maladministration based either on individual complaints or on its own authority. During his visit, the Commissioner was informed that the weekly TV show "Bürgeranwalt" ("Advocate for the People") is a major platform for Austrian Ombudsman Board issues. Each week, cases that come under the mandate of the Board are presented to an impressive average audience of 320,000 viewers.²
8. The Commissioner welcomes that the Ombudsman Board has recently been strengthened through the upcoming ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). The Ombudsman Board will become the national preventive mechanism (NPM) and integrate the Human Rights Advisory Board (HRAB) established in 1999 within the Ministry of the Interior. The Expert Commissions of the Ombudsman Board will inspect private and public places of detention, including police stations and prisons, reception centres for asylum-seekers, military barracks, psychiatric facilities, nursing homes, crisis centres and residential youth communities as well as programmes and facilities for persons with disabilities, thus implementing the OPCAT and the requirement of Article 16 (3) of the UN Convention on the Rights of Persons with Disabilities. The Commissioner appreciates that the authorities have chosen to support the reform with substantial resources to fulfill the new tasks.
9. Austria also possesses a legal and institutional framework to combat discrimination, racism and xenophobia. However, some gaps remain to be filled, among them the outstanding ratification of Protocol No. 12 to the European Convention on Human Rights, providing for a general prohibition of discrimination. Austrian anti-discrimination legislation has been criticised repeatedly for being scattered over numerous federal and provincial laws and for providing varying degrees of protection for different grounds of discrimination, resulting in confusion, legal uncertainty and potential injustice.³
10. In order to assist the implementation of anti-discrimination legislation, Austria has established several equality bodies at both federal and provincial level. On the federal level, the Office of the Ombud for Equal Treatment is organised into three different sections: the Ombud for Equal Treatment between Women and Men in Employment and Occupation; the Ombud for Equal Treatment irrespective of Ethnic Belonging, Religion or Belief, Age or Sexual Orientation in Employment and Occupation; and the Ombud for Equal Treatment irrespective of Ethnic Belonging and Gender in other Areas. These sections mirror the respective three Senates of the Commission for Equal Treatment. The Ombud for Equal Treatment provides information and legal advice and is also competent to negotiate with the person alleged to be responsible for the discrimination in order to reach a friendly settlement, or refer the matter to the Commission for Equal Treatment. It may also assist victims in hearings before the Commission. The Ombudpersons also carry out research and surveys, publish reports and submit reports to the Parliament with observations.
11. The Commission for Equal Treatment is responsible for the private sector while the Federal Equal Treatment Commission has been established as a separate body to deal with discrimination in the field of employment in the federal public sector. Victims of discrimination may rely on out-of-

² See the website of the Austrian Ombudsman Board for further information: <http://volksanwaltschaft.gv.at/en>

³ UPR Austria, Joint submission by the Austrian NGO Platform on Human Rights for the 10th Session of the UPR Working Group in January 2010, 30 June 2010, p. 3 with further references.

court proceedings before the Commission for Equal Treatment, which provides a confidential and free legal remedy. It cannot impose penalties but may recommend steps to end the discrimination. Where an issue considered by the Commission is subsequently before a court, the Commission's opinion must be taken into account. If the court chooses to diverge from the Commission's opinion, it must explain the reasons for this. All three equality bodies are under the auspice of the Federal Minister for Women and the Civil Service as a part of the Federal Chancellery.

12. During his visit, the Commissioner discussed the apparent complexity of the legal anti-discrimination framework and the bodies established. This complexity leads to a lack of transparency. Consequently it bears a risk that victims of discrimination are not sufficiently aware of their rights and cannot access existing procedures, in particular in cases of multiple discrimination, in which it is difficult even for experts to identify the competent complaints mechanism. The Commissioner was informed that in cases where monetary compensation was awarded by courts the sums had been too low to provide for effective deterrence. Furthermore the Ombud for Equal Treatment is not able to stand in court proceedings. In discrimination cases subject to administrative criminal law such as denial of entry to a discotheque and the alleged lenience of local authorities to address the issue, neither the Ombud for Equal Treatment nor the potential victims have standing in the procedures. More generally, the Commissioner recalls that the European Commission against Racism and Intolerance (ECRI) repeatedly recommended that the Austrian authorities introduce a comprehensive data collection system that would make it possible to assess the situation with regard to the different minority groups in Austria and to discrimination.⁴ The Commissioner believes that implementing this recommendation would be a first and necessary step towards strengthening domestic protection against discrimination.
13. The Commissioner is aware that the equality bodies do not afford protection against discrimination for persons with disabilities as a separate legal framework exists. In his meeting at the Office of the Federal Disability Ombudsman the Commissioner learned about the work of this non-statutory co-regulatory body established in 2006 as a part of the Federal Ministry of Social Affairs and Consumer Protection. He was informed that civil society felt it important at the time to have a specialised body to advise and support victims of discrimination on grounds of disability. The Ombudsman is appointed by the Minister following a non-binding recommendation by an expert commission. The Commissioner observed that the visibility of the Disability Ombudsman could be enhanced and was informed that work on improving the website is under way. However, it struck the Commissioner that the Office of the Disability Ombudsman currently consists of only three staff members. In view of the growing number of people being faced with a disability of some kind not least through an increasingly ageing population, the Commissioner encourages the authorities to consider strengthening the current mechanism as well as establishing full independence of the Independent Monitoring Committee as discussed below.

II. Human rights of asylum-seekers

14. At the end of 2010, Austria hosted over 42,000 refugees and 25,000 asylum-seekers. The number of asylum applications filed in Austria had been declining in recent years as a result of restrictions introduced in the context of transposing EU directives into domestic law. However, with approximately 14,400 asylum applications received in 2011, Austria has registered an increase of about 30% in the number of asylum applicants compared with the previous year. As of May 2012 about 20,000 applications were pending. Over the last years the majority of applicants came from Afghanistan and the Russian Federation. As of May 2012, the gender breakdown of asylum-seekers in Austria was 74% male and 26% female, reflecting the general trend of the previous years.

⁴ ECRI report on Austria (fourth monitoring cycle), adopted on 15 December 2009, published on 2 March 2010, p. 10, p. 43.

15. Since a major reform in 2005, the asylum system has seen further substantial changes leading to a complexity of the legal regime governing asylum in Austria, which has been widely criticised, including by NGOs active in the field. Further reform is under way to introduce one central office (Federal Office for Asylum and Issues of Foreigners - *Bundesamt für Fremdenwesen und Asyl, BFA*) dealing with asylum and immigration matters, with a representation in each one of the *Länder*. It is expected to start operating in 2013. During his visit the Commissioner was pleased to learn that the new office will co-operate closely with UNHCR in a quality management project.
16. During his meeting with the Federal Minister of Labour, Social Affairs and Consumer Protection Mr Rudolf Hundstorfer, the Commissioner raised the issue of the very limited right to work for asylum-seekers in Austria. While asylum-seekers in principle may obtain a work permit, the requirements of the respective Aliens Employment Act are difficult to meet and permission is limited to seasonal work including harvest labour. Asylum-seekers may also work in community services albeit for a rather low pay. The Commissioner welcomes the ongoing discussion in Austria on extending asylum-seekers' access to the labour market including by granting young asylum-seekers permission to take up an apprenticeship and thus benefit from vocational training.
17. The Commissioner notes that in the framework of the transposition of the EU returns directive, legal counselling for asylum-seekers free of charge has been introduced in Austria as of autumn 2011. Following a call for tender, two NGOs active in the field have won contracts to provide free legal aid, including interpretation and translation of documents. However, it appears that the quality of these services varies and that for instance, translation and interpretation are not always provided. A fee of € 220 is allocated per case file to the NGOs for the entire procedure. It has been pointed out however, that this fee must cover all costs including transportation and translation services. No increase is awarded for cases that are more time consuming such as unaccompanied children, abused women or other heavily traumatised asylum-seekers, with the quality of legal counselling provided being accordingly negatively affected. Furthermore the Commissioner was informed that support during the asylum procedure is limited as the legal counsellor is not required to accompany an asylum-seeker to a court hearing, or to actually draft the appeal which must be submitted in writing.
18. As concerns material conditions in reception centres for asylum-seekers, the Commissioner visited the Federal Reception Centre East at Traiskirchen, where the basic needs of asylum-seekers were met. This appeared to be generally confirmed by those residents, including a number of adolescent boys mostly from Afghanistan, with whom the Commissioner spoke. At the Centre, the Commissioner also met with unaccompanied asylum-seeking children, families and single mothers. Single mothers, women and small children lived in a separate guarded house. A kindergarten with five female nursery teachers was available during the day for small children providing for several activities. However, it has been reported to the Commissioner that conditions vary substantially across the centres in the *Länder*, where asylum-seekers are transferred after the initial phase to await a decision on the merits of their application. Reports of inadequate living conditions in some of these centres have reached the Commissioner.
19. The Commissioner notes that since 2011 the number of unaccompanied minors from Afghanistan has increased considerably. Their number is reported to be currently about twice as high as the number of special places with adapted services foreseen for unaccompanied children in the Federal Reception Centre East. This raises the issue of whether all unaccompanied asylum-seeking children under the current circumstances benefit from the child-adapted services as originally planned for. Unaccompanied asylum-seeking children are in principle appointed a guardian. During his visit the Commissioner learned however that gaps remain for children at the admissibility stage and for those whose cases have been declared inadmissible or who are subject to being returned to another EU member state under the Dublin II regulation.
20. The Commissioner understands that in 2011, a duty of presence for asylum-seekers obliging them not to leave a reception centre during the first five or seven days of their arrival was

introduced. Non-compliance could, under certain circumstances, be punished with detention. Although the Commissioner has not come across a case in which severe sanctions have been applied, he sees a potential conflict with the right to freedom of movement, which might also lead to the possible separation of families for close to a week where a part of the family may already reside in Austria.

21. The Commissioner is aware that numbers of rejected asylum-seekers and other persons kept in pre-deportation detention remain high in Austria. Many persons awaiting their expulsion are still being held, in some cases for months, in police detention centres which have been regularly criticised for their material conditions.⁵ Regular inspections by different bodies have noted some improvements but limited access to legal counsel and very limited possibilities for occupational activities have remained areas of concern.⁶ Moreover, the time-limit of one week for appeals lodged against decisions by the Federal Asylum Office to allow for deportation to another EU member state under the Dublin II regulation appears very short.

III. Human rights of persons with disabilities

22. The Commissioner notes that a general right to freedom from discrimination on the basis of a disability is set out in article 7, para.1 of the federal constitution. He notes the efforts made to strengthen the rights of persons with disabilities notably through legislation known as the Disability Equality Package, which established i.a. the Federal Disability Board and the Federal Disability Ombudsman in 2006. This legislation only covers areas of responsibility of the federal government. However, there are further laws protecting against discrimination in the *Länder*, some of which have also set up separate advisory committees in which disability organisations are represented.
23. The Commissioner notes with appreciation the swift signature and ratification by Austria of the UN Convention on the Rights of Persons with Disabilities (UN CRPD) including its Optional Protocol, which were followed by a first state report on implementation already in 2010. He understands that according to data obtained in 2008, about 20 percent of people living in private households in Austria reported a limiting illness or disability lasting for more than six months, which amounts to about 1.7 million people. With rising life expectancies, it can be assumed that more people will live for some years with disabilities. Consequently, physical and social barriers must be removed to make society more inclusive and to provide all citizens with equal opportunities, not least by closing gaps in disability legislation and ensuring its effective implementation throughout Austria.
24. Against this background, the Commissioner is pleased to note that a National Action Plan for Persons with Disabilities aimed at developing a domestic strategy for the implementation of the UN CRPD from 2012 to 2020 is being drafted. The drawing up of such a plan has been welcomed by human rights bodies and civil society. At the same time, a certain dissatisfaction has been expressed with the degree of consultation of civil society organisations and other relevant actors and their participation in decision-making processes.
25. In this connection, the attention of the Commissioner has been drawn to the need to ensure that the institutional framework for promoting and monitoring the implementation of the UN CRPD is fully in line with article 33 of the Convention, which requires member states to designate or establish independent mechanisms for this purpose. In this respect, some shortcomings as regards the status of the Independent Monitoring Committee have been highlighted, in particular its being embedded into the structure of the Federal Ministry of Labour, Social Affairs and

⁵ See also Report by the Commissioner for Human Rights Mr Thomas Hammarberg on his visit to Austria 21 – 25 May 2007, CommDH(2007)26, Strasbourg 12 December 2007, p. 21 ff.

⁶ See CAT/C/AUT/CO/4-5, 20 May 2010, para 16.

Consumer Protection and the fact that it does not dispose of a separate budget. The Commissioner also notes that no comparable monitoring bodies exist in the *Länder*.

26. Access to the built environment is another area that has been drawn to the Commissioner's attention as needing to be addressed with considerably more vigour. It has been reported to the Commissioner that building laws are not fully harmonised as different standards apply throughout the country and that under Austrian law there is no right to have barriers removed but only a right to compensation. Moreover, the already considerably long transition period of ten years for making federal public buildings accessible under the Federal Disability Equality Act (BGStG) has been further extended, with compliance becoming obligatory in 2019 instead of 2015.
27. The Commissioner notes that the federal structure of the country can present advantages, for instance related to ensuring that the human rights of persons with disabilities are implemented in a way that reflects local situations. Nevertheless, during his visit the Commissioner gained the impression that this structure also leads to a piecemeal approach and diverging goals across the *Länder*, a circumstance which the draft action plan currently does not sufficiently address. It struck the Commissioner that in nearly all his meetings, fragmentation and incoherence resulting from the federal structure of the country were mentioned as major obstacles towards achieving progress in the effective implementation of the human rights of persons with disabilities on the ground. In this respect, it has also been explained to the Commissioner that the constitutional system provides the tools to minimise such fragmentation, including the possibility of binding agreements between the Federal State and the *Länder*.
28. In the Commissioner's view, an area in which concerted effort between the *Länder* and the Federal State is needed is the integration of children with disabilities in mainstream schools. While 50 per cent of children with disabilities already attend regular schools, non-governmental organisations report that in recent months the number of children with disabilities attending special schools appears to be on the rise. The Commissioner finds it important that the progress achieved over the years in the integration of children with disabilities in mainstream schools be maintained. Furthermore, it appears that financial subsidies for children with special needs lack clear legal guidance and that as a result the administration is left with too high a degree of discretion in granting such subsidies.
29. The Commissioner notes that the draft National Action Plan for Persons with Disabilities covers the right to live independently and be included in the community and therefore also addresses the need for a progressive replacement of institutions for persons with disabilities with community-based alternatives (de-institutionalisation). However, concrete measures in this regard fall within the competencies of the *Länder* and are therefore not part of the current draft action plan. The Commissioner emphasises the crucial role of de-institutionalisation plans committing all competent authorities to a concrete timetable and the attainment of measurable targets, in order to achieve progress in this important field.
30. Legal capacity and the introduction of supported autonomous decision-making for persons with intellectual or psychosocial disabilities is a further important area on which there is currently a debate in Austria. The Independent Monitoring Committee published a paper in May 2012 discussing the current system of guardianship and alternatives to it.⁷ The Commissioner understands that approximately 60,000 persons are estimated to have a guardian in Austria at present. The number of guardianships is also reported to have increased significantly in recent years, with trends in the age structure of Austrian society increasing the likelihood that the need for supported decision-making will be on the rise. The Commissioner understands that there are also discussions about the possibility for persons with intellectual disabilities to exercise their right to vote in practice mainly due to lack of support measures. Against this background, the Commissioner welcomes the fact that the Minister of Justice has announced a pilot project for supported decision-making to start in 2013 and hopes that this will be a first step towards

⁷ Available under <http://www.monitoringausschuss.at/sym/monitoringausschuss/Stellungnahmen>.

establishing a system regulating the exercise of legal capacity by persons with intellectual or psychosocial disabilities that fully complies with the requirements of Article 12 of the UN CRPD.

31. During his visit, the Commissioner met with elderly patients and staff at the interdisciplinary Socio-Medical Centre Baumgartner Höhe Otto-Wagner-Hospital and Care Centre. A number of them were suffering from severe dementia and thus required intensive services and care. The Commissioner also spoke with a patients' ombudsperson (*Patientenanwalt*) and a residents' representative (*Bewohnervertreter*) and familiarised himself with these specific human rights protection mechanisms.
32. Patients' ombudspersons act as legal representatives in court proceedings for involuntary placement and also support individuals during their stay in hospitals or psychiatric departments. In principle their tasks end by law when the individual dies in an institution. However, in 2010 the Austrian Supreme Court of Justice held that their power of representation remains in such cases as otherwise there would be a gap in human rights protection.⁸ The Commissioner is aware that there is no established domestic case law yet regarding the continuation of the power of representation if an individual dies shortly after having been released from an institution where he or she might have been subjected to measures of restraint or medical treatment. This gap leads to legal uncertainty which risks provoking further court cases.
33. Residents' representatives work in multidisciplinary teams consisting of i.a. health and social workers, lawyers and psychologists and are responsible for monitoring all measures of restraint applied to residents in care homes, facilities for persons with disabilities and hospitals with the exception of psychiatric departments. Furthermore, the Austrian Ombudsman Board has been designated to inspect all facilities designed to serve persons with disabilities in order to prevent the occurrence of any forms of exploitation, violence and abuse, pursuant to Article 16 paragraph 3 of the UN CRPD. Patients' ombudspersons and residents' representatives are employed by specialised associations selected by the Federal Ministry of Justice and largely funded through the federal budget. During his visit the Commissioner noted a high level of commitment towards securing individual patients' rights in co-operation with personnel at the facility.

IV. Women's rights

Gender equality

34. Women's rights have been in the focus of public debate in Austria over the past years, with numerous measures taken to achieve gender equality. The Federal Minister for Women's Affairs and Civil Service as part of the Federal Chancellery is mandated with promoting women's' rights. Within this ministry, the Federal Equal Treatment Commission is responsible for addressing discrimination in the federal public sector, including the equal treatment of women and men and the advancement of women. For the private sector, which is also under the auspices of the Ministry, the Equal Treatment Commission settles discrimination disputes before or even during court proceedings and issues advisory opinions. Despite this framework to promote gender equality, progress made appears to be rather slow. As regards participation in politics, in November 2011, women accounted for 28% of the members of the Federal Council and 30% of the National Council. On average, women earn 25.5% less than men do. As is still the case in many countries, there is a high concentration of women employed in sectors where salaries are generally low (typically education, healthcare and social assistance), also reflecting lingering gender stereotypes. The Global Gender Gap report of 2011 places Austria in 34th place out of 135 in its ranking of countries according to gender-based disparities. This is a slightly improved position compared with the 2010 (37th place) and 2009 (42nd place) rankings. The data from the

⁸ See decision 4 Ob 210/09z of 23 February 2010 available under <http://www.ris.bka.gv.at>.

Gender Gap Index shows that Austria rates comparatively low in the areas of “economic participation” (rank 77), “educational attainment” (rank 76) and “health and survival” (rank 46).⁹

35. In his meeting with the Federal Minister for Women and the Civil Service, Ms Gabriele Heinisch-Hosek who, was joined by the Chairs of the Federal Equal Treatment Commission and the Equal Treatment Commission, the Commissioner was informed about the measures taken to implement the National Action Plan on gender equality in the labour market of June 2010. The plan sets out four priority areas of action: (i) diversifying educational paths and career choices as well as gender-sensitive career orientation; (ii) increasing labour force participation of women with special emphasis on full-time employment; (iii) boosting the number of women in leadership positions, and (iv) reducing the gender pay gap. Over 50 measures were set out to implement these priorities, including combating gender stereotypes, providing incentives for female employment, positive action measures, increasing training for women and heightening wage transparency.¹⁰ However, NGOs active in the field remain critical for various reasons: the lack of a systematic evaluation of measures taken to promote gender equality; isolated, marginal pilot projects in the area of gender budgeting; continuing discrimination of women in the labour market; the continuing dire need to harmonise family life with the requirements of the labour market; and the lack of resources allocated to the Ministry.¹¹
36. As regards in particular the gender pay gap, the Commissioner notes that private sector companies of a certain size are required to draw up staff income reports every two years and that the federal government is required to publish annual income reports. He also welcomes the emphasis put by the Minister on increasing the availability of childcare. In this respect, the need to ensure that full-time and good-quality childcare and school facilities are available in order to provide women with a genuine choice on whether to work full- or part-time has been highlighted. The Commissioner believes that intensified awareness raising measures among school children to enable them to make better informed decisions as to their choice of future employment and consequently apprenticeships and studies are an important step towards closing the gender pay gap. Increased training of women from disadvantaged groups lacking formal education could be another measure in this regard.
37. During his visit, the Commissioner was informed about certain requirements for family reunification affecting third-country nationals and their spouses. NGOs active in the field have criticised in particular the requirement to prove a minimum regular monthly income of about € 1,200 per married couple and about € 125 per child, as it particularly affects women caring for small children. Furthermore, administrative proceedings are often lengthy, amounting to long waiting periods which are particularly detrimental for small children. For immigrants still subject to a quota, if the overall immigration quota is exceeded, a person is placed on a waiting list on which they may remain for up to three years. After three years, they are exempt from the quota and provided with a settlement permit for the purpose of family reunification. The Commissioner notes that the European Commission against Racism and Intolerance (ECRI) has criticised the length of time for which families could be separated pursuant to such legal provisions in light of the fundamental right to respect for family life and recommended that the quota system for family reunification be abolished.¹² The European Committee of Social Rights has also deemed a waiting period which can last up to 3 years as excessive.¹³

Violence against women and domestic violence

⁹ http://www3.weforum.org/docs/WEF_GenderGap_Report_2011.pdf.

¹⁰ <http://www.bka.gv.at/DocView.axd?CobId=44455>, pp.13-14.

¹¹ See www.frauenrechte-jetzt.at, NGO-Schattenbericht, Mai 2012, p. 5ff.

¹² ECRI report on Austria (fourth monitoring cycle), adopted on 15 December 2009, published on 2 March 2010, p.

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¹³ European Social Charter, European Committee of Social Right, Conclusions XIX-4 (2011) Austria, January 2012, p. 22.

38. Violence against women, including spousal abuse, remains a problem in Austria. The Commissioner notes that the authorities have taken various measures against this phenomenon. Already in 1997, Austria created a legal framework for better protection of victims of domestic violence by introducing a specific act (*Bundesgesetz zum Schutz vor Gewalt in der Familie*). This act introduces the principle of “Whoever hits must leave” allowing police to ban the alleged perpetrator from the family home (*Wegweisungsrecht*). The legal framework was further reformed, most recently by the Second Protection Against Violence Act (2009). This act introduced notably the criminal offence of persistent perpetration of violence, more severe punitive sanctions for several sexual offences and measures for controlling sexual offenders.
39. Regarding support services for victims, the Commissioner notes that violence protection centres have been established in all Austrian provinces and the Prevention Advisory Council co-ordinates public and private institutions operating in the field of violence prevention at the federal level. The government supports Women’s Service Offices offering counselling for victims of violence. Reportedly, 30 shelters for women who became victims of violence have been established with a capacity of 750 places as well as a free 24-hour hotline. Free legal and psychosocial support is available to domestic violence victims to assist them in securing their rights in criminal procedures. Furthermore, all prosecution services with 10 prosecutors or more are required to establish a special competency for cases of domestic violence assigning them to specially trained prosecutors. The recent amendments to equal treatment legislation increased the minimum threshold for compensation claims in cases of sexual harassment.
40. During the visit, however, some gaps in the protection of women against violence have been brought to the Commissioner’s attention. It appears, for instance, that law enforcement authorities have not been sufficiently aware of the imminent danger for the victim posed by their spouse in some cases, and that this has resulted in the violent deaths of some women. The Commissioner also notes that in spite of the CEDAW recommendation of 2007 to ensure systematic data collection disaggregated by type of violence and by the relationship between perpetrator and victim, no such statistics are yet made public.¹⁴ While there appears to be some detailed information on protection orders issued by police, no data is available on protection orders issued by the domestic courts. In this context, the Commissioner recalls Article 11 of the Council of Europe Convention on Violence against Women and Domestic Violence, requiring state parties to collect disaggregated relevant statistical data at regular intervals on cases of all forms of violence covered by the scope of the Convention. Recorded data on victim and perpetrator should be disaggregated by sex, age, type of violence as well as the relationship of the perpetrator to the victim, geographical location and other factors deemed relevant, such as disability.¹⁵
41. The Austrian government has recognised that a specific form of domestic violence – “tradition-based violence” - may additionally affect women and girls with a migration background.¹⁶ Thus, Austrian legislation provides for the possibility of granting migrant women who have come to the country because of family reunification a separate residence permit to protect them from violence. The residence in Austria of victims of domestic violence or forced marriages has also been eased through the possibility of waiving the burden of proof regarding residence criteria, and granting a residence permit irrespective of them not yet being legally resident in Austria. Measures have been taken to address harmful practices, such as forced marriage and female genital mutilation. However, NGOs active in the field report that implementation is hampered by a lack of information reaching migrant women which would enable them to make use of their rights. Furthermore, language and financial requirements appear to create another barrier for migrant women to claim a separate residence permit in case of spousal abuse.

¹⁴ Concluding comments of the Committee on the Elimination of Discrimination against Women: Austria, 37th session, 15 January-2 February 2007, para 24.

¹⁵ See the Explanatory Report to the Istanbul Convention, no. 76.

¹⁶ <http://www.bka.gv.at/site/6845/default.aspx>.

42. The Commissioner trusts that the authorities will address these remaining gaps with vigour. In this context, he welcomes the information received during his visit that Austria envisages ratifying this autumn the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) signed in May 2011.

Trafficking in human beings

43. Austria is affected by human trafficking as both a transit and destination country due to its geographical location at the centre of Europe. The authorities report that the most frequent phenomena of human trafficking in Austria include human trafficking for sexual exploitation, forced labour as well as slave-like situations of domestic servants of foreign diplomats and child trafficking.¹⁷ The Commissioner welcomes the action taken by Austria against these phenomena, not least through the ratification of the Council of Europe Convention on Action against Trafficking in Human Beings, which has been in force in Austria since 1 February 2008.
44. During his visit, the Commissioner met with the National Coordinator on Combating Human Trafficking who is chairing the respective Task Force already established in 2004 under the auspices of the Foreign Ministry. In May 2007 the Task Force set up the Working Group on Prostitution, an interdisciplinary group of experts which deals specifically with comprehensive policies for improving the situation of sex workers that also counteract human trafficking for the purpose of sexual exploitation and violence. In 2009, Austria introduced special procedures addressing trafficking for the purpose of domestic servitude in diplomatic households. The authorities also seek to combat the vulnerability of migrant women, including asylum-seekers, by improving measures for victim identification in close co-operation with a specialised NGO. Since 1999, victims of human trafficking may be granted a residence permit valid for at least six months.
45. In its 2011 report on Austria, the Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) found that the country had in recent years taken significant steps to combat trafficking in human beings including in relation to prevention, protection of victims and prosecution of traffickers. However, certain remaining gaps have also been identified, including variations in the approach to anti-trafficking amongst the *Länder*, with support infrastructure for victims of violence being more fully developed in Vienna as compared to other *Länder*. An improvement in co-ordination between the federal government and the *Länder* was also found to be necessary. Moreover, the need for a comprehensive and consistent data collection system on trafficking was highlighted. The Commissioner observes that GRETA has also urged Austria to develop a nationwide system for the identification and support of victims of trafficking – particularly child victims - through establishing co-ordination and contacts between relevant authorities.¹⁸
46. In this context, the Commissioner notes that the Ministry of the Interior commissioned a specialised NGO to assist victims of human trafficking throughout Austria. In 2006, police started to screen sex-workers to identify victims of trafficking with the help of indicators developed in co-ordination with this NGO. A specialised NGO-run shelter for female victims of trafficking financed by the government exists in Vienna. The Commissioner commends the efforts made and in particular the strong NGO involvement.
47. As concerns the identification of victims of trafficking, the Commissioner also welcomes the pilot project planned for next year allowing for NGO access to the Federal Reception Centre East at Traiskirchen he visited. He views this measure as an important step to overcome mistrust and help victims to better understand the role of the authorities from the outset, thus eventually leading to improved victim identification. In this respect, the Commissioner notes the increasing

¹⁷ <http://www.bmeia.gv.at/en/foreign-ministry/foreign-policy/human-rights/main-human-rights-issues/combating-human-trafficking.html>.

¹⁸ http://www.coe.int/t/dghl/monitoring/trafficking/Docs/Reports/GRETA_2011_10_FGR_AUT_en.pdf

number of victims identified (251 in 2011 compared to 63 in 2010) and the growing demand for shelter places.

48. The Commissioner is also aware of criticism expressed towards the application of domestic criminal law, resulting in what are perceived as excessively lenient sentences in view of the severity of the crime. He was thus pleased to be informed during this visit that relevant EU legislation will soon be transposed into domestic law, resulting in higher minimum sentences.

V. Human rights of older persons

49. Austria, like many European countries, is gradually developing into a demographically ageing society. The proportion of those under the age of 14 will fall from its current level of around 16% to 14.2% in the year 2030 and to 13.6% in 2050. The number of 15-59 year olds will also decrease from 62% of the total population to 55.2% in 2030 and to only 52.7% in 2050. At the same time, the proportion of those over 60 will increase from around 22% to 30.6% in the year 2030 and to 33.7% in 2050, these figures being in line with the general trend in Europe. Among older people there will be a particular increase in the very old (80 years and older): from 366,000 currently to 590,000 in 2030 and to just under a million in 2050. These figures compare with an overall population that currently stands at 8.3 million citizens.
50. In his meeting with the Federal Minister for Labour, Social Affairs and Consumer Protection the Commissioner noted that the authorities are aware of the challenges ahead. Currently, the ministry co-ordinates numerous activities in the context of the “European year for active ageing and solidarity between generations”, an initiative of the European Union for 2012. A multitude of information is available on a specific website “aktualtern2012”, focusing on different topics, including employment, health and dignity and participation.
51. To strengthen the participation of older persons in relation to issues affecting them, the Federal Senior Citizens Advisory Council, based in the Federal Ministry and established pursuant to the Federal Act on the Promotion of the Interests of the Older Generation (Federal Senior Citizens Act) provides for an institutionalised forum of dialogue between political decision makers and representatives of senior citizens' organisations.
52. Studies and analyses are commissioned on a regular basis by the authorities on the living conditions of older people in Austria. Such research includes, for example, a study on Gender Mainstreaming in Senior Citizens Policy and the Senior Citizens Report 2000.¹⁹
53. A government-commissioned survey (“*Attacks, violence and aggression against older people*”) published in 2009 indicates in particular that violence against older persons remains a problem. According to the survey, which reviews the experiences of 247 experts in Austrian counselling and advisory centres, 26% of cases of violence against older persons originated in the private sphere of families and the neighbourhood. This is followed by 12% each for events occurring in homes and institutions or in public places. The survey thus indicates that persons close to older people constitute - in relative terms - the greatest danger for them.²⁰ Further work was done resulting in a June 2012 study on violence against older persons. This new study aims at improving information and statistics as well as assessing and presenting measures for intervention and prevention.²¹

¹⁹ http://www.bmask.gv.at/siteEN/Specialist_public/Senior_Citizens/Research_into_old_age/.

²⁰ The full study is available under http://www.bmask.gv.at/cms/site/attachments/6/7/0/CH2228/CMS1314964723243/uebergriffe_gewalt_und_aggressi_on_gegen_aeltere_menschen.pdf.

²¹ See Prävention und Intervention bei Gewalt gegen ältere Menschen, available under http://www.bmask.gv.at/cms/site/attachments/3/2/0/CH2275/CMS1314805959138/praevention_und_intervention_bei_gewalt_gegen_aeltere_menschen_kompl.pdf.

54. In order to address violence towards older persons, the Federal Ministry for Labour, Social Affairs and Consumer Protection has produced a number of publications. In 2009, a brochure on the recognition of violence was published and distributed to doctor's practices, pharmacies and hospitals. In 2010, a brochure on dementia and violence was published. In 2011, a significant focus was made on the provision of consulting services regarding abuse of older persons, including through the provision of further training and qualifications to advisers working in facilities and organisations frequented by older persons who are seeking advice on violence.
55. As regards housing and accommodation, the Commissioner notes that in order to improve the quality of services in homes for older persons and nursing homes, the National Quality Certificate for Old People's Homes and Nursing Homes has been established. Furthermore, since October 2006 a new scheme of so-called "senior citizen flats" makes it more attractive for limited-profit housing associations to offer such flats to senior citizens by excluding the right of family members to take over the tenancy *inter vivos* or upon death. Pursuant to Section 12 of the Landlord and Tenant Act (*Mietrechtsgesetz, MRG*), three prerequisites have to be met by the limited-profit housing association in order to be able to offer this type of accommodation: a) the individual flats and the common areas of the building must cater for the needs of older persons; b) upon conclusion of the contract, the housing association has to agree to provide a basic supply of social services for older persons to the tenant (such services need not necessarily be provided by the housing association itself, but have to be made available to the tenant for an additional fee); and c) at the time of the conclusion of the rental contract the main tenant of the senior citizen flat must be 60 years of age or older.
56. Other areas in respect of which concerns were raised during the Commissioner's visit include age discrimination on the labour market and the review of budget lines resulting in the allocation of fewer resources for social services. In this latter respect, upon his visit to Baumgartner Höhe Otto-Wagner-Hospital and Care Centre the Commissioner witnessed a visible commitment to providing a high standard of services in the field of geriatric medicine. In order to avoid regression on standards achieved, envisaged budget cuts should be carefully assessed for their impact on the particularly vulnerable group constituted by older persons in need of services.

VI. Conclusions and recommendations

National system for promoting and protecting human rights

57. The Commissioner appreciates the commitment of the Austrian authorities to improving their domestic human rights architecture, not least with the help of the procedures established during the Universal Periodic Review. In this context he encourages the authorities to further enhance and ensure the systematic and regular participation of civil society. He recommends that the experience gained be used for furthering the debate on the action plans on specific human rights aspects that are already in place, but also for developing an overarching human rights action plan. In this connection, the attention of the Austrian authorities is drawn to the Council of Europe Commissioner's *Recommendation on systematic work for implementing human rights at the national level*.²²
58. The Commissioner welcomes the strengthening of the Austrian Ombudsman Board notably through the ratification of the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT). He calls on the

²² The *Recommendation on systematic work for implementing human rights at the national level*, CommDH(2009)3 by Thomas Hammarberg, Commissioner for Human Rights, Strasbourg 18 February 2009 provides further information and is available under <https://wcd.coe.int/ViewDoc.jsp?id=1408617&Site=&BackColorInternet=B9BDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679>.

Austrian authorities to pursue the necessary efforts to bring the Austrian Ombudsman Board into compliance with the Paris Principles.

59. The Commissioner welcomes the commitment of the Austrian authorities to combating all forms of discrimination and racism. He encourages them to step up efforts and improve data collection on racism and discrimination. He further believes that ratification by Austria of Protocol No. 12 to the ECHR on the general prohibition of discrimination would usefully complement domestic protection against discrimination. The Commissioner also recommends that Austria ratify the Additional Protocol to the Revised Social Charter providing for a System of Collective Complaints.
60. The Commissioner recommends that the authorities further strengthen their efforts to effectively combat racism and discrimination, and strengthen their National Action Plan on Integration in this regard by providing a separate chapter with concrete measures on the fight against racism.
61. The Commissioner strongly encourages the Austrian authorities to keep their legal and institutional framework against discrimination under close review. Affording the same level of protection across the different grounds of discrimination should be a priority. An effort towards harmonisation and streamlining would also be highly desirable with respect to the many institutions involved in the implementation of antidiscrimination and equality legislation. Strengthening the Ombud for Equal Treatment and the Office of the Federal Ombudsman for Disabilities by allowing it to take part in court proceedings as well as enhancing the independence of the Independent Monitoring Committee should also be considered.

Human rights of asylum-seekers

62. While the Commissioner is aware that further reform of the asylum system might be necessary, he recommends that the Austrian authorities work towards reducing the complexity of the current system. Involving NGOs from the outset at all levels of discussion, providing regular information and allowing easy access to places of reception and detention would promote transparency and trust.
63. The Commissioner recommends that the Austrian authorities consider extending the access of asylum-seekers to the labour market. In addition, while commending that since the last reform of 2011, free legal aid is in principle available for asylum-seekers, he notes that quality appears to vary. In this regard the allocated fee appears to be a risk factor as it is rather low taking into account that all costs including transportation and translation services must also be covered and no increase is awarded for cases that are potentially more time consuming. Further efforts would be desirable to ensure that free, independent and confidential legal counselling and representation is ensured during the entire asylum procedure and thereafter, including the deportation procedure.
64. Noting that the basic needs of asylum-seekers are satisfied, the Commissioner encourages the authorities to ensure that accommodation facilities offer adequate living standards throughout the entire country. In this regard, he calls upon the authorities to follow up on allegations of substandard conditions and verify that asylum-seekers are not subjected to unsafe and unhygienic circumstances.
65. The Commissioner reminds the authorities that care and accommodation of unaccompanied and separated asylum-seeking children ought to be provided in line with international standards as enshrined in the UN Convention on the Rights of the Child. The best interests of the child should be the primary consideration in all decisions. In this context, the Commissioner urges the authorities to ensure that all unaccompanied minors are systematically and without undue delay appointed a guardian throughout their entire stay in Austria.
66. The Commissioner urges the authorities to review material conditions in pre-deportation facilities as a matter of priority to address long-standing concerns. In order to enhance human rights

protection and reduce the risk of *refoulement*, the current time limit of one week for appeals against a deportation under the Dublin II regime should be extended to two weeks in line with the general time limit for deportation cases. Moreover, the Commissioner reminds the authorities that pre-deportation detention should only be applied when it is thoroughly justified and for the shortest period of time, in order to secure a deportation that can be effected in the immediate future.

Human rights of persons with disabilities

67. The Commissioner encourages the Austrian authorities in their efforts to draw up a plan to improve the practical enjoyment of human rights by persons with disabilities in Austria. This plan should be instrumental to the effective implementation of the UN CRPD and draw extensively from the Council of Europe Disability Action Plan 2006-2015.²³ As highlighted in an Issue Paper published by his predecessor in 2008 on the subject, the Commissioner underlines that the strategy should be an integral part of an overarching effort towards systematic human rights work, and include in particular: a high level of political support and allocation of adequate budgetary resources; concrete measures, indicators and attribution of responsibilities; thorough involvement of all concerned actors during the entire process; effective evaluation; and the gathering of the necessary data to monitor progress.²⁴
68. Securing thorough involvement of civil society groups and the communities concerned at all stages of the decision-making processes is particularly crucial. It is also important to ensure that the monitoring mechanisms designated to promote and monitor the implementation of the UN CRPD in Austria reflect the principles relating to the status and functioning of national institutions for protection and promotion of human rights, as required by Article 33 of the Convention.
69. The Commissioner underlines the need to ensure that in all areas covered by the plan, the applicable standards are adhered to in all *Länder*.
70. The Commissioner calls on the Austrian authorities to ensure that progress continues to be made in establishing an inclusive education system that would ensure the full development of the human potential of people with disabilities and their effective participation in society, in accordance with Austria's obligations as a state party to the UN CRPD. Current trends appearing to indicate an increase in the number of children with disabilities attending special schools should be examined and appropriate remedial action taken, including as necessary the allocation of adequate resources.
71. The Commissioner calls on the Austrian authorities to make progress in the field of securing the enjoyment by people with disabilities of their right to live independently and be included in the community. Pursuant to Article 19 CRPD, Austria is under an obligation to take effective and appropriate measures in this field, including by ensuring that persons with disabilities are not obliged to live in a particular living arrangement and have access to a range of community-based support services, including the personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community.
72. It is particularly important that a comprehensive action plan on de-institutionalisation be drawn up in close consultation with the representatives of persons with disabilities. The action plan should commit all authorities with competence in this field to a credible timetable for phasing out institutions and for the parallel establishment of community-based alternatives. The Austrian authorities can find further useful guidance in this field in the Commissioner's Issue Paper on "*The*

²³ Recommendation Rec(2006)5 of the Committee of Ministers to member states on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015.

²⁴ *Human Rights and Disability: Equal Rights for All*, CommDH/Issue Paper(2008)2, Strasbourg, 20 October 2008, available on the Commissioner's website <https://wcd.coe.int/ViewDoc.jsp?id=1355349>.

right of people with disabilities to live independently and be included in the community”, published in June 2012.²⁵

73. Accessibility of the built environment and the availability of general community services and facilities to persons with disabilities is another area where resolute action is required by the Austrian authorities at all levels. The Commissioner underlines that accessibility of general services is crucial for the implementation of the right to live in the community, since it reduces the need for individualised support measures for persons with disabilities.
74. The Commissioner strongly encourages the Austrian authorities to pursue their efforts towards establishing a system of supported decision-making for persons with psychosocial or intellectual disabilities, in accordance with Article 12 of the UN CRPD and the Council of Europe’s 2006-2015 Action Plan. The Commissioner’s Issue Paper published in April 2012 on legal capacity for persons with intellectual and psychosocial disabilities could provide the Austrian authorities with further assistance to support reform in this area.²⁶ It is particularly important to ensure that persons are not automatically deprived of their rights because of an impairment or disability or due to being subjected to guardianship. Austria needs to develop supported decision-making alternatives for those who want assistance in making decisions or communicating them to others, which should be easily accessible for those in need and provided on a voluntary basis.
75. The Commissioner furthermore underlines that procedures interfering with a person’s legal capacity must be accompanied by appropriate and effective procedural safeguards to protect against abuse, including the right to be heard in person, the right to appeal and a periodic review of the relevant decisions in line with the Strasbourg Court’s case law and ensuring that the requirements of Article 12 of the UN CRPD are fully met.
76. The Commissioner calls on the Austrian authorities to consider strengthening the Federal Disability Ombudsman Office by enhancing its capacity to raise awareness of the rights of people with disabilities among the communities concerned and society at large, and expanding its competencies. This could include providing it with a right to demand information from all administrative entities and to participate in court proceedings. The Commissioner believes that such measures would reduce the barriers complainants with disabilities face today when alleging discrimination. In line with Article 13 of the UN CRPD, access to justice for persons with disabilities could also be improved by further supporting persons with disabilities and their organisations to stand up for their own rights
77. The Commissioner calls upon the authorities to close the current gap in domestic legislation by extending the legal representation of patients’ ombudspersons for all cases of death during or in the aftermath of an institutionalisation. The Commissioner believes that it is necessary to address the current lacuna as a matter of priority by amending the respective domestic legislation in line with the European Convention on Human Rights and the Strasbourg Court’s case law as well as the UN CRPD.²⁷

Women’s rights

78. The Commissioner welcomes the efforts underway in Austria to promote gender equality and close the gender pay gap and underlines the need to evaluate the measures that are being

²⁵ “*The right of people with disabilities to live independently and be included in the community*”, CommDH/IssuePaper(2012)3, Strasbourg 13 March 2012, available on the Commissioners’ website <https://wcd.coe.int/ViewDoc.jsp?id=1917847>.

²⁶ “*Who gets to decide? Right to legal capacity for persons with intellectual and psychosocial disabilities*”, CommDH/IssuePaper(2012)2, Strasbourg 20 February 2012, available on the Commissioners’ website, <https://wcd.coe.int/ViewDoc.jsp?id=1908555>.

²⁷ The Commissioner’s Third Party Intervention in the case of *The Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* (Application No. 47848/08), CommDH(2011)37, Strasbourg, 14 October 2011, provides further information and is available under http://www.coe.int/t/commissioner/Activities/3PIntervention_en.asp.

implemented for their effectiveness. He calls upon the authorities to make good-quality full-time childcare available as a matter of priority. He encourages the authorities to intensify awareness raising measures in the educational environment with a view to more effectively combating gender stereotypes. With regard to family reunification, the Commissioner invites the Austrian authorities to review the current quota system as well as the income requirements to ensure that they do not place a disproportionate burden on families and in particular on women.

79. The Commissioner encourages the Austrian authorities to continue combating violence against women and domestic violence and recommends the speedy ratification by Austria of the Council of Europe Convention on Violence against Women and Domestic Violence (Istanbul Convention). Reliable statistics are necessary to allow for better evaluation of measures taken and identification of further initiatives needed in particular to strengthen victim protection and the prevention of violence. Continuous training of law enforcement officials on all levels is key to effective prevention, protection and prosecution alike. The Commissioner urges the authorities to take into account the vulnerability of migrant women and ensure that legislative measures already taken reach this group.
80. The Commissioner welcomes the actions taken by the Austrian authorities to counter trafficking in human beings. He calls upon the Austrian authorities to step up their measures for victim identification, notably ensuring that child victims will be speedily identified and supported. Furthermore he recommends assessing current policies with a view to implementing better safeguards for detained irregular migrants to avoid the deportation of victims of trafficking. A common standard of victim assistance including appropriate support infrastructure across the country should also be provided for.

Human rights of older persons

81. The Commissioner observes that the Austrian authorities are mindful of the main challenges facing older persons in Austria and have already taken a number of measures to address them. Yet the Commissioner considers that Austrian society at large needs to be more aware of the diversity of this group and consequently the need for different measures. While many older persons stay healthy and fit and wish to participate in public life and gainful employment, others become fragile and thus vulnerable. Opportunities for and protection of the ageing individual must both be provided, enabling older people to lead a decent life and play an active part in society according to their choices, as provided for by Article 23 of the Revised European Social Charter. The more the ageing population increases, the more necessary it is to ensure that social protection systems, health care, housing policies and also anti-discrimination legislation, including on the labour market, take the older persons fully into consideration.
82. The Commissioner welcomes the commitment of the Austrian government to investing in more and better services for older people. He recommends scrutinising social protection, health care and housing policies with a view to ensuring the full participation of older people and thus enhancing suitability. The Commissioner is aware of the particular vulnerability of older people requiring services and care and underlines the importance of an adequate number of skilled staff throughout the country as well as strengthening existing control mechanisms and ensuring regular inspections in all care institutions.
83. Continuous monitoring of existing laws, their implementation and control mechanisms with a view to enhancing the protection of older persons against violence and neglect should be considered. The Commissioner recalls that adequate safeguards must be taken to protect those living alone and in isolated areas.