

Contribution to the report of the Office of the High Commissioner for Human Rights regarding challenges faced and best practices applied in integrating human rights into national strategies and policies to fight against corruption, including those addressing non-State actors, such as the private sector:

#### **A. Contribution by the Austrian Federal Bureau of Anti-Corruption (BAK)**

Corruption is, in a very general way, the abuse of entrusted power for private gain.<sup>1</sup> It is a complex phenomenon, which can be analysed from different perspectives (legal, economical, sociological, psychological, etc.) and can be categorised in different ways (grand, petty, systemic, etc.). No matter which form corruption takes, it has a strong potential to deteriorate societies and cost people freedom, health and money. The negative impact of corruption on the enjoyment of human rights has been recognized and addressed on several occasions and in various fora. In short, it seems appropriate to state that the fight against corruption can be considered a fight for human rights.

##### National Anti-Corruption Strategy (NACS)

Pursuant to Article 5 of the United Nations Convention against Corruption, Austria developed a national anti-corruption strategy, the so-called "National Anti-Corruption Strategy" (NACS). This strategy provides an essential strategic framework for a holistic approach to prevent and combat corruption. The NACS is a result of the cooperation between the federal ministries, the Austrian regions, civil society and other relevant institutions and stakeholders. Above all, the protection and the furtherance of human rights are inherent in the structure and goals of the Austrian NACS. All individual measures that are being implemented by so-called "Action Plans" support this objective. Via periodic revisions and updates, which generally follow a two-year cycle, new developments can be integrated.

##### Austrian Federal Bureau of Anti-Corruption (BAK)

The Austrian Federal Bureau of Anti-Corruption (BAK) was established in 2010, based on the Federal Act on the Establishment and Organization of the Federal Bureau of Anti-Corruption (BAK-G). It has nationwide jurisdiction in the prevention of and fight against corruption. To tackle corruption in a holistic way, the BAK follows a 4-pillar approach: Prevention – Education – Law Enforcement – Cooperation. According to the Austrian constitution, the BAK is bound to act within and respect the applicable legal framework, therefore upholding all relevant human rights obligations. Beyond the legal sphere, the respect for human rights is part of the BAK's institutional identity and is also reflected in its Mission Statement: "Integrity – Objectivity – Discretion – Trust and Appreciation" are values which form the cornerstones of the organisation and guide its daily work.

Two specific tasks of the BAK, as mentioned above, concern "prevention" and "education". They focus on the (scientific) analysis of corruption phenomena, corruption prevention advisory

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<sup>1</sup> According to Transparency International and others.

services and the development of tailor-made and targeted prevention measures, complemented by education through information transfer as well as awareness-raising campaigns. Preventive measures are among the most effective means in combating corruption and avoiding the negative impact on the enjoyment of human rights.<sup>2</sup> By incorporating these important strands into the BAK's overall portfolio, it distinctively serves the cause of protecting human rights.

With regard to the cooperation between the Austrian BAK and national human rights institution, reference is made to the BAK statement from 16 November 2015 in response to the previous OHCHR-questionnaire.<sup>3</sup>

#### Commission for Legal Protection

Furthermore, a Commission for Legal Protection, according to the BAK-G (sections 8 and 9), was established as a special form of legal protection. It is an independent body not bound by instructions and subject to official secrecy. The Commission investigates all allegations concerning the activities of the Federal Bureau that are not manifestly unfounded if the persons concerned do not have a legal remedy at their disposal. The establishment of such an independent commission further reflects the BAK's legal and institutional commitment to human rights. At the same time, the commission's work can be regarded as an additional layer in the system of human rights protection.

### **B. Contribution of the Federal Ministry for the Civil Service and Sport**

#### The public administration

Most public services in Austria are provided by government staff at the federal, Land (i.e. provincial) and municipal (i.e. local) level. Collectively, these levels of government are commonly referred to as "public administration". The Federal Ministry for the Civil Service and Sport is responsible for the employment law of the federal public servants, whereas each province and even municipalities have their own employment laws.

The federal civil service staff is employed either on a statutory or on a contractual basis. Statutory civil servants are employed by virtue of a sovereign act called "appointment" (as a rule, appointment is for life), whereas contractual public employees have an employment contract. The legal status of contractual public employees is comparable to that of salaried employees in the private sector. However, their employment contract and remuneration are based on specific federal laws.

#### Legal provisions to prevent corruption

There are many employment law provisions that serve to prevent corruption, especially regarding

- oath of office,

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<sup>2</sup> Cf. Human Rights Council, The negative impact of corruption on the enjoyment of human rights, 18 July 2019, UN doc. A/HRC/RES/41/9, op. 6 and 8.

<sup>3</sup> Austrian statement on the OHCHR questionnaire on corruption and human rights, November 2015 - Statement of the BAK, 16<sup>th</sup> November 2015, BMI-IA1000/0086-IV/BAK/2/2015.

- general duties of civil servants,
- conflict-of-interest rules,
- reporting obligations,
- protection against prejudicial treatment,
- additional occupations,
- prohibition of the acceptance of gifts,
- termination of employment (“post public employment”) and
- duties of retired civil servants.

Civil servants are obliged to obey to general official duties especially laid down in § 43 of the Civil Servants Employment Act 1979 (Beamtendienstrechtsgesetz 1979 – BDG 1979, Federal Law Gazette No. 333/1979) in consideration of the general observance of the principle of the rule of law and in order to ensure the integrity, transparency and accountability of the civil service. In this context, they shall perform their official duties personally and conscientiously, with loyalty, dedication, impartiality and due regard to the law, using the means available to them. Civil servants shall consistently act in such a way as to maintain the public’s trust in the objective performance of their official duties. When performing their official duties, civil servants shall support and inform parties to an extent compatible with official interests and the impartial exercise of their office.

§ 53a of the Civil Servants Employment Act 1979 regulates a better protection for civil servants, especially towards their employer, against retaliation or disadvantages in their employment relationship, when they report in good faith certain moments of reasonable suspicion or cases of corruption.

§ 53a of the Civil Servants Employment Act 1979 reads as follows:

*Protection against prejudicial treatment*

*§ 53a. A civil servant who, pursuant to § 53 para. 1, reports in good faith a reasonable suspicion of an offence listed in § 4 para. 1 of the Federal Act on the Establishment and Organisation of the Federal Bureau of Anti- Corruption [Bundesgesetz über die Einrichtung und Organisation des Bundesamts zur Korruptionsprävention und Korruptionsbekämpfung - BAK-G, Federal Law Gazette No. 72/2009)] shall not suffer any prejudicial treatment at the hands of a representative of her/his employer in consequence of such a report. The same shall apply if a civil servant makes use of her/his right to report in accordance with § 5 of the Federal Act on the Establishment and Organisation of the Federal Bureau of Anti- Corruption.*

The Civil Servants Employment Act 1979 comprises these and further provisions. However, the mentioned provisions are also applicable to contractual public employees via § 5 of the Act on Contractual Public Employees (Vertragsbedienstetengesetz 1948 – VBG, Federal Law Gazette No. 86/1948) or according to provisions identical in content.

Culpable breaches of these duties are prosecuted by disciplinary law or sometimes even criminal law.

#### Disciplinary measures

Due to the different legal status of civil servants and contractual public employees, special disciplinary provisions apply for civil servants. The newly founded Federal Disciplinary Authority will start its work on 1st July 2020 and will be responsible for such cases, which are currently handled by a disciplinary commission of a department.

Against decisions of a disciplinary commission or, starting from 1st July 2020, decisions of the Federal Disciplinary Authority, an appeal to the Federal Administrative Court (Bundesverwaltungsgericht) is admissible. The parties of the proceedings before the Federal Administrative Court are entitled to file for final complaint at the Supreme Administrative Court (Verwaltungsgerichtshof).

A disciplinary commission or, starting from 1st July 2020, the Federal Disciplinary Authority is not responsible for disciplinary orders against contractual public employees. They may file an action against a disciplinary order issued by a personnel authority to the courts for labour and social matters.

#### Audits

Compliance with the depicted regulations is also subject to irregular audits of the Austrian Court of Audit (Rechnungshof) and the competent internal audit division of a department.

#### Education and training programmes

In particular, the federal administration academy of the Federal Ministry for the Civil Service and Sport offers education and training programmes – some of the wide variety of offers also have a special focus on the prevention of corruption – for civil service staff. Basic training is obligatory for all public officials.

Additionally, many departments, such as the Federal Ministry of Finance, the Federal Ministry of Defence, the Federal Ministry of the Interior (in special the competent Federal Bureau of Anti-Corruption) and others, offer special trainings on the topics of professional ethics and of duties of public servants.

#### Code of conduct

The code of conduct „Die VerANTWORTung liegt bei mir“ („The RESPONSibility rests with me“) for all public officials is available in English via the following link:

[http://oeffentlicherdienst.intra.gv.at/moderner\\_arbeitgeber/korruptionspraevention/infos/VerhaltenskodexEnglish\\_2012\\_druck.pdf?6wd872](http://oeffentlicherdienst.intra.gv.at/moderner_arbeitgeber/korruptionspraevention/infos/VerhaltenskodexEnglish_2012_druck.pdf?6wd872)

This code of conduct to prevent corruption was first edited in 2008 and then adopted in 2012. This code elucidates provisions of national criminal law as well as federal civil service employment law. However, it does not create any new provisions. Especially, it explains the standards that public servants have to observe in their daily professional activities. It provides examples of required

behaviour and such contrary to duty. This code of conduct for civil servants is applicable across all government departments and local authorities.

The code of conduct is currently under review by the Coordinating Body for Combating Corruption involving all stakeholders under the lead of the Federal Ministry for the Civil Service and Sport. This is apparent from the fact that this code of conduct is applicable across all government departments and local authorities. It is only one of the preventive measures the Federal Ministry for the Civil Service and Sport notified for the "Aktionsplan 2019-2020" ("Action Plan 2019-2020") of the NACS.

The responsibility for revising the current code of conduct is entrusted to five special working groups comprising inter alia experts from the ministries, the provinces, towns and cities, the Public Service Union, the Union of Municipal Employees and Transparency International – Austrian Chapter.

On the basis of the existing code of conduct, each department may issue standards of conduct or own codes of conduct for the public servants employed in the particular department.