

Austria

IHF FOCUS: freedom of expression and the media; judicial system and independence of the judiciary; torture, ill-treatment and police misconduct; conditions in prisons and detention facilities; national and ethnic minorities; intolerance, xenophobia, racial discrimination and hate speech; asylum seekers and immigrants; homosexuals' rights.

The main human rights concerns in Austria in 2002 were freedom of expression, racial discrimination and racially motivated violence, minority rights, and the rights of asylum seekers and immigrants.

While freedom of speech and the media was generally respected in Austria, the frequent application of defamation laws by some politicians against criticism of their activities remained a serious cause for concern. Further, a new law on the security of information was criticized for providing disproportionate punishment for persons who disclose classified information.

In April, three police officers involved in the death of a Nigerian asylum seeker during his deportation to Sofia in 1999 were found guilty of negligent homicide in particularly dangerous conditions, but received lenient sentences.

Non-Austrians representing diverse ethnic and racial backgrounds continued to face discrimination by authorities, particularly the police, as well as in the workplace and in housing. Despite years of discussion and criticism, no proper anti-discrimination law had been adopted in Austria by the end of 2002.

The Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities noted that Austria had adopted important legal guarantees to complete the legal and institutional framework for the protection of national minorities. While Austria had recognized six ethnic minority groups and supported them in various ways to promote their language and culture, there was scope for improvement, particularly in the media sector. The 2001 ruling of the Constitutional Court that ordered the installation of bilingual topographical signs in municipalities with a 10% minority population triggered strong reactions from the political right and remained unimplemented.

New governmental guidelines made worse the situation of asylum seekers from certain countries and led to the eviction of hundreds of people from government-run hostels onto the streets. While publicly promoting better integration of foreigners into Austrian society, it appeared that the government used questionable methods to achieve this end, including compulsory language and civic classes. Failure to attend such classes would potentially result in fines, refusals to extend residence permits, and even to deportation.

The Human Rights Advisory Council (*Menschenrechtsbeirat*) suffered from various weaknesses. The minister of the interior was responsible for the appointment of all of its eleven members and he could also recall them, while NGOs only had the right to nominate five of the eleven members. The fact that the Advisory Council's main office was situated in the premises of the Ministry of Interior could be seen as a form of negative leverage. According to critics, the ministry tried to use this influence, for example, when drawing up new contracts for the members of the Advisory Council's commissions.

On the positive side, in December the Viennese city council adopted the so-called "democracy package" which gave also non-EU citizens the active and passive right to vote at district level, if they have been residents of Vienna for at least five years.

Also, in July the Austrian parliament finally repealed article 209 of the Criminal Code, which had restricted consensual sexual activity of homosexual men in a discriminatory way and had in the past resulted in prison sentences.

Freedom of Expression and the Media

While the Austrian government generally respected freedom of speech and of the press, the broad application of defamation laws tended to discourage reports of police misconduct and also unduly protected politicians from criticism. Particularly the Freedom Party (FPÖ, part of the governing coalition) frequently initiated legal procedures for defamation against journalists, newspapers and periodicals. For example, the Governor of Carinthia and former Chairman of the FPÖ, Jörg Haider, has been engaged in over 350 defamation suits against media outlets and individuals since 1986.

In February, an international public inquiry was held in the parliament into the strained relations between the freedom of press and personality protection. In this inquiry the Minister of Justice, Dieter Böhmendorfer, expressed his opinion that “there is a *de facto* predominance of media power, which must be controlled.” Nearly a year earlier he had said “We have police and the administration of justice, we do not need investigative journalism.”¹

Austria was the last EU member state to abolish its state monopoly on television and radio, which happened on January 1, 2002. However, the press still remained in the hands of two major companies. One of them, Mediaprint, controlled the majority of daily newspapers, while the other, News Group, controlled the majority of magazines.² Additionally, direction of these two companies became interlinked in 2002, which resulted in 63% of the dailies and 100% of the political weeklies being gathered under one roof. This market concentration led to complaints of a print media monopoly.³

The 2001 Law on the Security of Information (*Informationssicherheitsgesetz*) entered into force in January 2002. It regulated the access to and the protection of classified information in the offices of the federal government. An earlier draft version of the law had sparked severe criticism. Some observers feared that journalists would face prosecution and punishment (including possible imprisonment for up to six months) for publishing secret documents received from state officials even if the news was of public interest, e.g. on abuses by public officials. The law as adopted was still criticized for containing some vague formulations and providing for disproportionate sentences and a security test for persons who have access to classified information.⁴

Judicial System and Independence of the Judiciary

Judicial System

In 2002 the Ministry of Justice moved the Viennese Juvenile Court (*Wiener Jugendgerichtshof*) to the Viennese Regional Criminal Court (*Straflandesgericht Wien*). The ministry took this step despite protests from representatives of the Juvenile Court, the Association of Judges and a group of NGOs working with youth. The Juvenile Court, which, among other things, had provided for complete separation of juvenile delinquents from adult offenders, had been an internationally recognized and successful form of jurisdiction for juvenile offenders. The ministry justified the move by the need for more space for the court and promised

¹ *Kompetenz*, “Metternich läßt grüßen!” 4/2002.

² European Federation of Journalists (IFJ), *European Media Ownership: Threats on the Landscape. A Survey of who owns what in Europe*, www.ifj.org/publications/download/ownerNOV02.pdf

³ “Anfrage der Abgeordneten Dr. Gabriela Moser, Freundinnen und Freunde an den Bundesminister für Justiz betreffend Konzentrationsprozess der Druckmedien, 2484/J XXI.GP, Eingelangt am: 17.05.2001“, www.parlinkom.gv.at/pd/pm/XXI/J/texte/024/J02484_.html

⁴ Parlamentskorrespondenz 13.12.2001 Nr. 894, www.parlinkom.gv.at/pd/pk/2001/PK0894.html See the law at <http://bgbl.wzo.at/pdf/2002a023.pdf> See also IHF, *Human Rights in the OSCE Region: The Balkans, the Caucasus, Europe, Central Asia and North America. Report 2002 (Events of 2001)*, at www.ihf-hr.org

that the separation of juveniles and adults would be upheld in the new premises. It further claimed that the only change in the organization was that there was no longer a separate president of the court.⁵

Independence of the Judiciary

In 2000 several politicians of the FPÖ were accused of having paid police officers to obtain confidential information in order to discredit opponents of the party. In 2002 the investigations against nearly all the suspects in the police and the party were suspended. The only exceptions were a former FPÖ trade unionist, Josef Kleindienst, and the former secretary for the Viennese branch of the FPÖ, Michael Kreissl. Both received suspended sentences of six months. Kreissl appealed the decision. Opposition parliamentarian Peter Pilz claimed that the suspension of investigations was a result of pressure from the FPÖ on the Prosecutor's Office and listed 20 steps, in which the judiciary had systematically obstructed, hindered and manipulated the investigation. He demanded that a parliamentary inquiry commission be set up to look into the issue.⁶

Corruption within the Ministry of Interior

In April, three high-ranking members of the Task Force for the Fight Against Organized Crime (EDOK) were arrested and remained in custody throughout the year. They allegedly protected an informer within the circles of the organized crime even at a time when he was suspected of murder and other grave crimes. They were also under investigation for allegedly having accepted bribes and illegally selling gathered data from the biggest mobile telephone company in Austria.⁷

Torture, Ill-Treatment and Police Misconduct

Following a case in 1999 of death under physical restraint of an unsuccessful Nigerian asylum applicant, Marcus Omofuma, during his deportation to Sofia, the Ministry of Interior completely reviewed its internal procedures regarding deportations. From then on all individuals, whom the police suspect may resort to physical force in order to resist deportation, are deported on chartered rather than on commercial flights. Police are also instructed to stop deportation proceedings if the health of the deportee is at risk.⁸

The Human Rights Advisory Council that was formed in the aftermath of the death of Omofuma drew up a comprehensive set of recommendations regarding future deportations. These recommendations included a ban on coercive means for enforcing deportations if they could potentially endanger the life of the deportees, as well as on subjecting deportees to degrading or humiliating treatment. The Advisory Council criticized the fact that before the tragic death of Omofuma, the officers carrying out deportations had not been appropriately trained and there had been a lack of sufficient regulations on deportations.

- On April 15, three years after the incident, the District Court in Korneuburg found the three police officers escorting Omofuma's deportation guilty of "negligent homicide in particularly dangerous conditions" and sentenced each of them to an eight-month suspended prison term – a sentence, which they were set to appeal. The policemen had forcibly strapped Omofuma to a seat and gagged his mouth with adhesive tape. Witnesses said the police officers used more tape every time he tried

⁵ *Der Standard*, "Desavouierung des Ministers," April 29, 2002.

⁶ *Der Standard*, "Pilz fordert FPÖ zu Untersuchungs-Ausschuss auf," February 11, 2002.

⁷ *Falter*, "Allein mit der Mafia," No. 30, 2002; *Falter*, "Lammfleisch aus Wien," 37/02.

⁸ In its January session, the Parliamentary Assembly of the Council of Europe called for more humane treatment of foreigners awaiting expulsion. It referred to the ten people who had died between September 1998 and May 2001 while being deported from Austria, Belgium, Germany, France, Italy and Switzerland, and recommended banning gags, gas or unwanted tranquilizers as methods of restraint. Furthermore it stated that forced expulsion should be used only as a last resort; that executives carrying it out should be fully trained and assisted by medical and legal professionals; and that expulsion procedures should be transparent. Detention prior to expulsion should be minimal and not in a "prison environment." People who felt they had been ill-treated during expulsion should be able to appeal on the territory of the expelling state. ("Assembly calls for more humane expulsion procedures," at <http://groups.yahoo.com/group/balkanhr/message/3394>)

to scream and tightened the leather belt around his chest. The police officers continue to serve in the police force.

Following the verdict, the Ministry of Justice stated that there were no evidence of “torture of a prisoner resulting in death” which would have provided for a prison sentence of one to ten years and a likely loss of job for the officers.⁹

In a case related to misconduct by an Austrian police officers in the UN Mission in Kosovo (UNMIK), there were suspicions that the Austrian authorities had intentionally helped the officers to escape disciplinary measures.

- On February 26, four police officers – including three Kosovo Police Service (KPS) and one Austrian police officer working for the international police unit CIVPOL – were arrested on suspicion of ill-treatment in the course of duty, extraction of a statement under duress, abuse of office and official authority and grave bodily injury. All four suspects were placed in investigative detention and UNMIK immediately undertook to have the immunity of the Austrian police officer lifted. However, the police officer was allegedly taken by fellow Austrian officers across the border into Macedonia, from where he was flown to Austria, all with the knowledge of the Austrian government. The CIVPOL investigators have confirmed that criminal acts occurred, in connection both with the treatment of the Kosovo Albanian prisoner and with the Austrian police officer's exit from Kosovo. An international investigative judge indicted the suspect.¹⁰

Conditions in Prisons and Detention Facilities

In June, the Human Rights Advisory Council expressed its disappointment that as regards the deportation detention of minors none of its earlier recommendations had been taken into account in the suggested amendments to the Foreigners and Asylum Law. The council put special emphasis on its doubt about the use of hand radiography for the estimation of the age of asylum seekers. It called for the abolition of the use of detention in deportation procedures for persons under 14 years old.¹¹

Following a series of suicides in Austrian prisons in 2001, the Ministry of Justice established an expert group to investigate the care of mentally ill inmates. The study, which the ministry wanted to keep secret, cited the existence of an “unprofessional treatment” of mentally ill people. In a separate study on suicides in all 29 prisons in Austria, a group of scientists stated that since 1975 the rate of suicides had been continuously increasing. Paradoxically, one of the reasons cited was the increased use of single cells (which were introduced to improve conditions for inmates) as well as the reduction of places in special psychiatric hospitals without sufficient ambulant psychiatric care.¹²

National and Ethnic Minorities

Under the 1976 National Minorities Act (*Volksgruppengesetz*), six nationalities were officially recognized as minorities: the Croatians, Slovenes, Hungarians, Czechs, Slovaks, and Roma and Sinti. Additionally, under the constitutional Austrian State Treaty (*Staatsvertrag*) of 1955, the Slovene and the Croatian minorities in the federal entities of Carinthia and Burgenland enjoyed special cultural rights and the right to use their language in administration.

⁹ ORF online Heimat Fremde Heimat, "Kurier: Omofuma was not tormented - Judgment is valid," August 1, 2002, at <http://volksgruppen.orf.at/austria/en/home/home.htm>; and Independent Race and Refugee News Network IRR, "Analysis: Deaths during forced deportation," January 3, 2003, at www.irr.org.uk/2003/january/ak000003.html

¹⁰ Amnesty International, "Federal Republic of Yugoslavia (Kosovo): No impunity for the international community," June 18, 2002, at <http://web.amnesty.org/library/Index/ENGEUR700052002?open&of=ENG-AUT>

¹¹ ORF online Heimat Fremde Heimat, "Right of asylum: Human rights advisory council criticizes government bill," June 28, 2002.

¹² Falter, "Rückkehr des Irrenhauses," No. 41, 2002.

The Council of Europe's Advisory Committee on the Framework Convention for the Protection of National Minorities adopted its opinion on Austria on May 16. It noted that Austria had recently adopted important legal guarantees to complete the legal and institutional framework for the protection of national minorities, both at constitutional and sub-constitutional level. It also said that Austria had made particularly commendable efforts in respect of Slovenes and Croats living in Carinthia and Burgenland, notably as regards their status in such fields as media and education.¹³

However, the Advisory Committee also noted that considerably more determined measures were needed to help the Slovenian minority of Styria to preserve its identity, notably in the field of media and participation in public life, and that improvements should be made in the media sector also for the Czech, Slovak and Hungarian minorities.¹⁴

In March, the UN Committee on the Elimination of Racial Discrimination (CERD) stated in its conclusions that it had difficulties in understanding the distinction made by Austria between autochthonous and other minorities and the legal and practical consequences following from this.¹⁵

The Austrian census of 2001 contained new figures on national minorities. Commenting on these figures, the Austrian Minority Center expressed concern about the continuously sinking numbers of Austrian ethnic minorities. According to it, should the federal government fail to take immediate and decisive measures in the fields of minority schools, media and kindergartens, in one or two generations there would be no Austrian minorities at all.¹⁶

For example, in the region of Burgenland the number of those who declared Croatian as their colloquial language had fallen from 19,109 in 1991 to 17,330 in 2001, and the number for Hungarian from 4,973 persons to 4,721 persons, while only the number of the Romani speakers had increased from 122 to 264. Roma in Burgenland called for further promotion of the Romani-language and Roma-culture, including bilingual radio and television programs. The Croatian Academic Club in Burgenland said that the possibility of comprehensive schooling in the Croatian language starting from kindergarten would be necessary in order to ensure the preservation and development of their language.¹⁷

Styrian Slovenes, who were mentioned as a minority in article 7 of the Austrian State Treaty, expressed their hope that they would be fully acknowledged as a minority by the federal state and by the region of Styria as this would result in a seat on the National Minority Advisory Council and in financial assistance.¹⁸

In November the Center of Ethnic Minorities (*Österreichisches Volksgruppenzentrum, ÖVZ*) that represents all six recognized Austrian minorities submitted a complaint to the Austrian Broadcasting Corporation (ORF) for falling short of the ORF statutes when it failed to broadcast programs for the Czech, Slovak, Roma and the Styrian Slovene minorities. Also, the programs for the Croat, Hungarian and Carinthian Slovene minorities were qualified as being insufficient.¹⁹ The ORF cited budget problems and failed promises on the part of the federal government. It stated the same reasons for ending co-operation with the successful private Slovenian language "radio dva" in Carinthia as of the end of 2002, which had angered many minority representatives.

¹³ Advisory Committee on the Framework Convention for the Protection of National Minorities, "Opinion on Austria, adopted on 16 May 2002," at www.coe.int

¹⁴ See above.

¹⁵ CERD, *Concluding observations of the Committee on the Elimination of Racial Discrimination: Austria.21/05/2002. CERD/C/60/CO/1. (Concluding Observations/Comments)*, at

[http://193.194.138.190/tbs/doc.nsf/\(Symbol\)/CERD.C.60.CO.1.En?Opendocument](http://193.194.138.190/tbs/doc.nsf/(Symbol)/CERD.C.60.CO.1.En?Opendocument)

¹⁶ ORF online Heimat Fremde Heimat, "National Minority Center: Austria in two generations without ethnic groups," September 7, 2002.

¹⁷ ORF online Heimat Fremde Heimat, "First ethnic census results from Burgenland show more Roma," August 27, 2002; "Roma want comparable standards to Croats and Hungarian in Burgenland," April 11, 2002; and "Kristijan Karall for continuous schooling in Burgenland Croatian," August 10, 2002.

¹⁸ ORF online Heimat Fremde Heimat, "Branko Lenart hopes for acknowledgment of the Styrian Slovenes and a seat in the advisory council for ethnic groups," May 4, 2002.

¹⁹ ORF online Heimat Fremde Heimat, "Austrian ethnic minorities raise complaint against ORF," November 9, 2003.

In 2001, the Constitutional Court gave the Austrian parliament until the end of 2002 to bring the National Minorities Act into line with the State Treaty and provide for the installment of bilingual topographical signs in municipalities with 10% of minority members. This decision triggered a vehement reaction by the FPÖ governor of Carinthia, Jörg Haider, who ordered that no new bilingual topographical signs be posted in Carinthia while the FPÖ announced that it would undertake a plea for the annulment of the Constitutional Court decision. Governor Haider also threatened to replace the already existing bilingual signs with German-language signs, to stop the Slovene-language state-television programs from broadcasting in Carinthia, to close down bilingual kindergartens, and to hold a referendum on the language issue.²⁰

Such a reaction led to a series of “consensus conferences” between the different parties under the guidance of the Federal Chancellery.²¹ The conferences discussed various proposals without reaching an agreement and set up a working group working under the leadership of the Federal Chancellery and consisting of representatives of the Carinthian government, the Slovenian ethnic minority, and the Kärntner Heimatdienst, which is usually considered to be a right-wing organization. The working group was vested with the task of compiling a list of localities based on a catalogue of criteria in which bilingual signs would be placed,²² but it could not reach a consensus: the issue remained unresolved by the end of 2002.

Intolerance, Xenophobia, Racial Discrimination and Hate Speech

The CERD expressed its concern about a significant number of allegations that had been brought to its attention reflecting the existence of racist and xenophobic attitudes among some sections of the population in Austria. It was further concerned about allegations of racist incidents involving police officers and other state employees. It recommended that Austria strengthen existing educational measures for civil servants who deal with issues involving foreigners.²³

ZARA, a Viennese NGO that offers counseling for victims and witnesses of racist incidents, released with eight other NGOs a joint report entitled *Racism Report 2002*.²⁴ The report found that persons representing diverse ethnic and racial backgrounds continued to face widespread discrimination by government officials, particularly the police, as well as in workplaces and in housing. The report cited 170 examples representing the structure of racism in everyday life in Austria.

According to ZARA, there have been no improvements in the field of non-discrimination and inter-ethnic relations in Austria since the publication of its first report in 2000. The NGO urged that Austria’s immigration policy be reviewed; a reformed and an honest integration concept be adopted; and a comprehensive anti-discrimination package be passed, including changes to the administrative law and the Penal Code.

According to the Documentation Centre of Austrian Resistance (DÖW), the Austrian right-wing extremists intensified their activities in 2002.²⁵

²⁰ ORF online Heimat Fremde Heimat, “Carinthian Freedom Party calls for annulment of Constitutional Court decision on bilingual signs,” January 17, 2002.

²¹ While the Council of Europe’s Advisory Committee on the Framework Convention for the Protection of National Minorities welcomed the plan to hold a “consensus conference,” it had in mind that representatives of the federal authorities, the *Land* of Carinthia, and the Slovene minority would be brought together to discuss the implications of the Constitutional Court ruling with a view to identifying solutions that could be accepted as widely as possible relating to road signs in the Slovenian language. It noted that it was especially essential to consult the Slovene minority on this matter “because, as it emerges from the wording of article 11, paragraph 3 of the Framework Convention, the existence of a sufficient demand by the minority concerned is an element that has to be considered.”

At www.humanrights.coe.int/minorities/Eng/FrameworkConvention/AdvisoryCommittee/Opinions/Austria.htm

²² ORF online Heimat Fremde Heimat, “Bilingual signs: Tomorrow two drafts will be discussed,” July 11, 2002; and “Conference on bilingual signs: Working group will specify localities with bilingual signs,” July 12, 2002.

<http://volksgruppen.orf.at/austria/en/home/home.htm>

²³ CERD, op.cit.

²⁴ See www.zara.or.at/01_05.html

²⁵ ORF online Heimat Fremde Heimat, “DOEW: Right-wing extremists in Austria intensify activities,” March 7, 2002.

- In August, police carried out a major operation against right-wing extremists in Vienna, Lower Austria and Styria. Weapons, handguns, explosives, national socialist writings, and a scanner which put a trace on the police radio were found.²⁶
- In December unidentified vandals devastated 40 graves in the Muslim part of the city cemetery of Linz. For the second time in the space of a few months they smashed and pulled up gravestones.²⁷
- The memorial plaque for Sinti, Lovara and Roma deported by the Nazis in Vienna-Favoriten, was destroyed in October. It had been damaged several times by racist graffiti.²⁸

In May, a vigilance committee (*Bürgerwehr*) was set up by the FPÖ in the city of Graz with the aim of launching patrols against street drugs dealers. The vigilantes, led by an army officer, would photograph and record drug-related incidents which were becoming a serious problem in Graz. The initiative caused a storm of criticism for interfering in responsibilities that belonged to the law enforcement and for potentially targeting all Africans on the streets of Graz as drug dealer suspects.

Severe allegations were made that a new special police against drug dealing in Graz had treated people of African origin in a humiliating and discriminatory manner. Its members had exclusively and arbitrarily subjected Africans to controls and arrests, and, for example, carried out body searches during which the suspects had to undress in the middle of the street, in restaurants, in shops, and in refugee hostels.²⁹

Positively, starting in November in Vienna, a project-team Police and Africans, consisting of an African, a police officer and a human rights expert, offered the possibility of consultations and information free of charge. The stated purpose was to improve the strained relationship between police and Africans and to open up a platform for dialogue between Africans and the population.³⁰

Anti-Discrimination Legislation

In its March session, the CERD reiterated its recommendation to Austria to introduce general legislation prohibiting racial discrimination in all its forms. It stated that the legislation in place to combat racism was not adequate to combat discrimination effectively.³¹

According to the EU anti-discrimination directive (2000/43/EC),³² each member state must have effective legislative provisions on the bases of race or ethnicity by July 2003. A draft for an anti-discrimination law, compiled by the Ludwig Boltzmann Institute for Human Rights, was published already in 2001 but no such legal draft had been submitted to parliament as of the end of 2002. Also with respect to a second EU directive, on "Establishing a general framework for equal treatment in employment and occupation,"³³ which has to be implemented by December 2003, no legal draft had been submitted to parliament as of the end of 2002.

²⁶ ORF online Heimat Fremde Heimat, "Strasser does not exclude further steps against right-wing extremists," August 12, 2002.

²⁷ ORF online Heimat Fremde Heimat, "Vandalenakt bei Moslem-Gräbern auf Linzer Stadtfriedhof," January 2, 2003.

²⁸ ORF online Heimat Fremde Heimat, "Destruction of the memorial plaque for deported Sinti, Lovara and Roma in Vienna-Favoriten," October 30, 2002.

²⁹ ORF online Heimat Fremde Heimat, "Graz: Protestschreiben gegen die Vorgehensweise der Sonderkommission zur Bekämpfung des Drogenhandels," January 14, 2003.

³⁰ The project "Police and Africans" is carried out in cooperation with Africans living in Austria, the Federal Ministry of Interior, the Viennese Police, the Society for Threatened Peoples in Austria, and the University of Vienna.

ORF online Heimat Fremde Heimat, "Consultations and information in the context of the project 'Police and Africans'", October 31, 2002.

³¹ CERD, op.cit.

³² "Council directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin," at

http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32000L0043&model=guichett

³³ See,

http://europa.eu.int/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32000L0078&model=guichett

In April, the UN Human Rights Committee found that the limitation provided by the Industrial Relations Act (*Arbeitsverfassungsgesetz*) of the entitlement to stand for election to the relevant work-council (*Betriebsrat*) to Austrian nationals or citizens of the EU or other European Economic Area (EEA) countries, includes a violation of article 26 of the International Covenant on Civil and Political Rights. It found that the complainant had been subjected to unjustified discrimination, as “it is not reasonable to base a distinction between aliens concerning their capacity to stand for election for a work-council solely on their different nationality.”³⁴ Similarly, as early as 2001 the European Committee of Social Rights (ECSR) of the Council of Europe had found this provision to be an infringement of the European Social Charter.³⁵

Asylum Seekers and Immigrants

Asylum Seekers

In May, the Independent Federal Asylum Tribunal (*Unabhängiger Bundesasylsenat, UBAS*), the second instance in asylum proceedings, published its report on 2000 and 2001. In these two years the UBAS had completed a total of some 11,000 proceedings. It stressed that of increasing concern was the growing workload related to the substance of asylum applications, which substantially prolonged the handling of each asylum case. As the number of new cases the UBAS took on each year was between 6,000 and 6,700, which was up to 35% beyond its capacity, the backlog of cases was 7,600 as of May 2002.³⁶

The highest court in the asylum procedure, the Administrative Court, also expressed its concern that asylum matters made up 15% of its cases (in 2001) and thus consumed too much of its capacities. An average procedure of an asylum case before the court took 304 days. In October 2002 there was a backlog of 1,405 old cases. Three quarters of the cases were decided in favor of the asylum seekers.³⁷

A private German company European Homecare, was hired by the Ministry of Interior to provide return consultation to asylum seekers. On November 5, the daily *Kurier* reported that European Homecare had been instructed by the ministry to give asylum seekers the impression that their asylum procedure had been completed unsuccessfully, when in fact they still had the possibility to appeal.³⁸

There were plans to partly privatize the state-run refugee centers. According to information from the Ministry of Interior, European Homecare and a consortium of the Red Cross, Caritas, Diakonie and Volkshilfe had made offers to take over part of the care for asylum seekers, but no final decision could be reached during the year.³⁹

Federal Care of Asylum Seekers

In Austria there were no provisions to guarantee a minimum level of federal care to all asylum seekers during the whole asylum procedure. Only about one third of all asylum seekers enjoyed this protection, with another third having to rely on the support of NGOs and the remaining third being without any support at all.

³⁴ UN Human Rights Committee, Seventy-fourth session, 18 March - 5 April 2002, CCPR/C/74/D/965/2000, April 29, 2002.

³⁵ European Parliament, *Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, Report on the human rights situation in the European Union (2001) (2001/2014(INI))*, December 12, 2002.

³⁶ In 4,357 cases the first-instance dismissals were upheld, in 1,372 cases they were referred back to the lower authority, and in 740 cases refugee status was granted. *Republik Österreich, Unabhängiger Bundesasylsenat, Tätigkeitsbericht für die Jahre 2000 und 2001* at www.ubas.gv.at/ar0001de.pdf

³⁷ ORF online Heimat Fremde Heimat, “Monday 4th Austrian asylum day: heavy loaded VwGH,” October 27, 2002.

³⁸ ORF online Heimat Fremde Heimat, “Excitement about directive of the Ministry of the Interior in asylum affairs,” November 5, 2002.

³⁹ ORF online Heimat Fremde Heimat, “Austrian refugee centre to remain in Traiskirchen,” January 2, 2002.

In April, the EU interior ministers agreed on minimum standard for the reception of asylum seekers, including appropriate accommodation and supply. According to the EU, whether asylum seekers are allowed to work or not can be decided by each member state.⁴⁰ In Austria, asylum seekers were not allowed to work.

A new Ministry of Interior guideline took effect on October 1, barring access to state-run shelters to asylum seekers from the EU candidate countries, and to asylum seekers from Armenia, Azerbaijan, Georgia, Macedonia, Nigeria, Turkey and Yugoslavia during the time their appeals were under consideration. This decision led to hundreds of people being evicted from those shelters onto the streets, immediately filling emergency accommodation set up by relief organizations.

NGOs and the opposition party heavily criticized the new guidelines for pushing people into illegality and demanded its withdrawal. Amnesty International called for more resources for asylum proceedings, and suspected that the decision of the Ministry of Interior might be unlawful, unconstitutional and in violation of the European Convention on Human Rights (ECHR).⁴¹ The relief organization Caritas lodged a complaint against the new asylum directive in the Constitutional Court as a violation of the constitutionally guaranteed principle of equality.⁴² The Human Rights Advisory Council also criticized the guidelines and recommended that the legal framework regarding federal care be brought in line with human right standards, the Austrian Constitution, and other laws. It emphasized that guarantees of assistance are necessary throughout the whole asylum procedure to those applicants who need it, irrespective of their citizenship or their chances of success in the asylum procedures. It also referred to future EU guidelines that would provide for such rights to all asylum seekers.

The UNHCR on several occasions expressed its concern about the growing number of homeless refugees and pointed out that the asylum procedure cannot be conducted properly when asylum seekers are without an address and cannot be reached. It also noted that the main refugee center at Traiskirchen was designed for 3,000 people but that only 1,000 were allowed in. Moreover, it criticized the excessively long asylum procedures and the overburdening of the Federal Asylum Tribunal.⁴³

- In early November, a Viennese district court ruled in favor of an Azerbaijani asylum seeker whom the Ministry of Interior had wanted to remove with his family from a government-run shelter. The court ordered that the family must remain in federal care up to the final asylum decision. The ministry announced that it would appeal the decision.

In March the CERD also expressed concern about the considerable number of asylum seekers being denied public assistance. It recommended that the government ensure the provision of basic and equal assistance to all asylum-seekers, without distinction of race or ethnic and national origin.⁴⁴

Juvenile Asylum Seekers

About 80% of unaccompanied juvenile asylum seekers could be taken care of by the newly established system of clearing houses. These were special accommodation and care centers for unaccompanied child asylum seekers in six houses across Austria. These clearing houses were run by NGOs with funding from the European Refugee Fund (EFF), the Ministry of Interior, and local authorities. They were intended to give the minors the possibility to rest, to receive medical and psychological examinations, and to look for further housing and care possibilities. According to the NGO SOS-Menschenrechte, the main problems were the lack of institutions where the minors could stay after leaving the clearing houses, and the lack of

⁴⁰ ORF online Heimat Fremde Heimat, "EU Ministers of the Interior agree on minimum standards for residence of asylum seekers," April 25, 2002.

⁴¹ ORF online Heimat Fremde Heimat, "ai demands more resources for asylum proceedings," October 14, 2002.

⁴² ORF online Heimat Fremde Heimat, "Adamovich: Part of the new asylum guideline seems problematic," October 27, 2002.

⁴³ ORF online Heimat Fremde Heimat, "UNHCR is concerned about Austria's new asylum policy," October 1, 2002; and "Austrian refugee centre to remain in Traiskirchen," January 2, 2002.

⁴⁴ CERD, op.cit.

apprenticeship places. The NGO also cited problems of family reunion despite the fact that more than 10% of the young people had family members in EU countries.⁴⁵

Immigrants

According to a study published in March,⁴⁶ Austria had the worst integration rate compared to five other EU countries (Netherlands, Belgium, France, Germany, and Great Britain). In four of the five dimensions inspected, Austria scored the worst: family reunion, access to the labor market, enjoyment of civil rights, and access to citizenship.

On July 9, the parliament passed an amendment to the Austrian Aliens Act (*Fremdengesetz*). It included the introduction of the so-called integration contract, which foresees compulsory German lessons⁴⁷ and civic classes for all foreigners who have arrived in Austria after January 1, 1998 without reinforced residence. Citizens of the EU or the European Economic Area (EEA) and so-called key position holders, as well as immigrants who already had appropriate German knowledge, can be exempted from the courses. The exemption reasons have to be assessed by the respective residence permission office. According to estimates, some 18,000- 30,000 immigrants in 2003 might be obliged to fulfill the conditions of the integration contract.

Failure to attend the prescribed classes could lead to fines, to refusals to prolong residence permits, or even to deportation. The state will pay half of the course fee to those who successfully complete the courses within the first eighteen months.⁴⁸

The new plans were met with extensive criticism by human rights organizations for imposing too many duties on immigrants and creating an atmosphere of insecurity. The organizations emphasized that the integration of immigrants requires not only efforts from the migrants but also measures from the state. It further pointed out that punishments were unsuitable measures to promote integration; that immigrants also needed rights and not only duties; and that the planned compulsory 100 hours of language lessons would in any case be too few to teach the language sufficiently.⁴⁹ The Viennese Integration Fund (*Wiener Integrationsfonds, WIF*) called the planned “integration contract” an “integration dictate of the federal government.” It stressed that migrants were highly motivated to learn German voluntarily. In 2002, around 15,000 migrants attended German courses on a voluntary basis in Vienna alone.⁵⁰

New immigrants who wanted to stay in Austria for longer than six months were additionally obliged to produce a health certificate. A regulation of the Ministry for Social Affairs listed eleven diseases that had to be covered by the health certificate, including tuberculosis and hepatitis.⁵¹

In January, the European Training Center for Human Rights and Democracy (ETC) in Graz reminded the Austrian authorities that a quota system for family reunion, practiced by Austria, contradicted article 8 of the ECHR. According to this article, everyone has the right to respect for his or her private and family life. It said that Austria has to grant an unlimited residence right to members of the core family of the immigrants.⁵²

⁴⁵ ORF online Heimat Fremde Heimat, “Clearing house in Traiskirchen cared for 720 juvenile asylum seekers,” July 22, 2002.

⁴⁶ Conducted by the European Center for Welfare Politics and Social Research together with the Institute for Higher Studies. See, “Austria is last in European ‘integration index’”, March 6, 2002

⁴⁷ The German language course has to include 100 hours. One of the institutions providing German language courses, according to the Club International in Vienna, was that 200 to 250 hours was necessary before progress could be seen.

⁴⁸ The course is supposed to cost around 350 Euro, depending on the organization conducting the course.

⁴⁹ ORF online Heimat Fremde Heimat, “Symposium ‘Language and Integration’ signs ‘Favoritner Resolution’”, February 22, 2002; and “Austrian Catholic Action: integration contract is not sufficient,” February 24, 2002.

⁵⁰ ORF online Heimat Fremde Heimat, “Vienna Integration Fund: ‘Residential citizenship’ instead of ‘Integration dictate’”, February 25, 2002; and “15.000 Migranten besuchten 2002 in Wien freiwillig Deutschkurse,” January 5, 2003.

⁵¹ Ministry for Social Affairs, “Immigrants need health certificates for residence permit as of 2003,” December 5, 2002.

⁵² ORF online Heimat Fremde Heimat, “Quota for family reunion against human right convention,” January 5, 2002.

On the positive side, in December the Viennese city council adopted the so-called “democracy package” which gave non-EU citizens the active and passive right to vote on a district level if they have been residents of Vienna for at least five years. As a result, in the next Viennese elections, due to be held in 2006, an expected number of 100,000 immigrants will be able to cast ballots, at least at the district level.⁵³

Following 15 years of negotiations between the Islamic religious community and the city of Vienna, it was finally agreed that the Islamic community will get its own graveyard in 2003. According to statistics, the Islamic community in Vienna had approximately 105,000 members, making it the second largest legally recognized community in the capital.⁵⁴

The CERD welcomed the recent establishment of several bodies in Austria to assist immigrants. Among these is the Immigrants Fund, to which immigrants can turn when they need advice in their native language on integration-related matters.⁵⁵

Homosexuals’ Rights

On July 10, following the Constitutional Court's judgment of June 21, the Austrian parliament finally repealed article 209 of the Criminal Code⁵⁶. This article had provided for a different age of consent (18) for men engaging in same-sex relations from that for people in lesbian or heterosexual relations, where the legal minimum age for consensual sexual activity was 14. The amendment came into force on August 14.

Meanwhile, cases were pending at the European Court of Human Rights on the basis of convictions under article 209. In January 2003, the European Court pronounced judgments on two cases. In both of these the court held unanimously that there had been a violation of article 14 (prohibition of discrimination) taken in conjunction with article 8 (right to respect for private life) of the ECHR. In the first case a man had been convicted in 1996 for consensual homosexual relations with unidentified young men aged 14 to 18 and sentenced to an eight-month suspended prison term. In the second case a man had been convicted in 1997 for having had on one occasion consensual oral sex with a 15-year-old. He had been sentenced to six months of suspended imprisonment.

In a third case the court also held that there had been a violation of articles 14 and 8, and ordered the Austrian state to pay the applicants pecuniary damages in the amount of €15,000 plus expenses for non-pecuniary damage. One applicant had claimed, for example, to have suffered from the fact that he had to hide his homosexuality. He feared that he would be stigmatized by society should his sexual orientation become known. The court also noted “that a decision or measure favorable to the applicant is not in principle sufficient to deprive him of his status as a victim unless the national authorities have acknowledged [...] and then afforded redress for the breach of the Convention.”⁵⁷

Following the ruling of the Austrian Constitutional Court some NGOs and interest groups of homosexual men demanded full rehabilitation and financial compensation from the state of Austria for the more than 1,500 persons affected. On June 26, the Platform Against Art. 209 claimed that the persons affected would still have their criminal records, that convictions under the article would still be upheld, and that the mitigation or release of imprisoned persons would still be rejected.⁵⁸

- In August the Regional Court of Korneuburg refused to set free a man behind bars solely on the basis of article 209 although both the man and the state prosecutor had applied for his immediate

⁵³ ORF online Heimat Fremde Heimat, “Viennese parliament decides right to vote for immigrants,” December 13, 2002.

⁵⁴ ORF online Heimat Fremde Heimat, “Radio danube dialog with Mr. Al-Rawi from the islamic community in Vienna,” February 27, 2002.

⁵⁵ CERD, op.cit.

⁵⁶ *Bundesgesetzblatt*, No. 134, 2002.

⁵⁷ European Court of Human Rights, *L. and V. v. Austria* (Application No. 39392/98 and 39829/98), judgment, Strasbourg, January 9, 2003, at <http://hudoc.echr.coe.int/Hudoc2doc2/HEJUD/200301/1-v.%20v.%20austria%20-%2039392jv.ch1b%2009012003e.doc>

⁵⁸ Platform Against Art. 209, “Austria is free (soon)! Constitutional Court Strucks Down anti-gay Art. 209,” June 24, 2002, at www.rklambda.at/dokumente/news/News-en-PA-020624.pdf

release. The court sent the man into an institution for mentally abnormal offenders, and argued that the juvenile partner of the man was “more dull” than other adolescents and therefore the “deed” would still be an offence under the new Art. 207b.⁵⁹ The Vienna Appeals Court confirmed this decision in September. During surgery the man died in the night of December 18.⁶⁰

According to the Platform Against Art. 209, the police did delete the data of some but not all persons convicted on the basis of article 209, but only upon application and payment of costs.⁶¹

In February 2003 the Platform Against Art. 209 together with Amnesty International Austria repeated in a press conference the need for an amnesty law with respect to victims of article 209, including full rehabilitation and the deletion of their criminal offences.⁶²

⁵⁹ Platform Against Art. 209, “Despite the Repeal of the Law. Victim of Art. 209 Will Not be Released,” August 28, 2002, at www.rklambda.at/dokumente/news/News-en-PA-020823.pdf

⁶⁰ Platform Against Art. 209, “Despite the Repeal of the Law. Victim of Art. 209 Keeps Detained in Institution for Mentally Abnormal Offenders,” December 12, 2002, at www.rklambda.at/dokumente/news/News-en-PA-021213.pdf; and “Platform Against Art. 209 Denounces. Victim of Art. 209 Had to Die in Institution for Mentally Abnormal Offenders,” December 23, 2002, at www.rklambda.at/dokumente/news/News-en-PA-021223.pdf

⁶¹ Platform Against Art. 209, “Despite the Repeal of Art. 209. Graz Police Refuses Deletion of Data on Gay Men,” December 12, 2002, at www.rklambda.at/dokumente/news/News-en-PA-021212.pdf

⁶² Platform Against Art. 209, “Trotz Straßburger Urteilen: §209 - Kein Ende des Unrechts, at www.rklambda.at