



*Xenophobic and racially motivated graffiti reflected anti-foreign attitudes in Austria.*  
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**IHF FOCUS: freedom of media; judicial system; torture, ill-treatment and police misconduct; conditions in prisons and detention facilities; national minorities; intolerance, xenophobia, racial discrimination and hate speech; asylum seekers and immigrants; homosexuals' rights.**

In April, the Ministry of Justice presented a first draft for a reform of the Criminal Procedure Code (*Strafprozeßordnung*). If adopted in the presented form, it would bring about several important positive changes in the Austrian judicial system, but could also have an adverse effect on the free flow of information in the public interest. The Draft Law on the Security of Information raised similar concerns.

Police violence – particularly towards foreigners – and other misconduct continued to be a central problem. In addition, the media reported on cases of inhuman treatment of inmates in the prison of Stein.

The European Commission against Racism and Intolerance (ECRI) expressed deep concern particularly about the use of racist and xenophobic propaganda in pol-

itics and the police violence towards members of minority groups. In particular, Jörg Haider, former Chair of the Freedom Party (FPÖ, part of the Government Coalition) and current Governor of the federal entity of Carinthia, caused attention due to his defamatory statements against the head of the Jewish community, Ariel Muzicant; his refusal to abide by the Constitutional Court ruling regarding the rights of the Slovene minority in Carinthia; and his proposal to reconsider the Geneva Convention on the Status of Refugees in order to restrict access of asylum seekers to Austria.

The draft for a reform to harmonize legislation regarding the foreigners' right to reside and work in Austria, if adopted in the form presented by the Government, would provide for obligatory courses in the

German language and civics. The failure to attend these courses would lead to the loss of residence permit.

Refugees had increasingly poor chances of receiving asylum status in Austria and the State failed to provide proper care for them.

In addition, restrictions on consensual sexual activity between males remained discriminatory compared to lesbian or heterosexual relations.

### Freedom of Media

The draft amendments to the Criminal Procedure Code<sup>1</sup>, if adopted in the form presented by Justice Minister, Dieter Böhm-dorfer, in April 2001, would affect the work of journalists or reporters when covering lawsuits. According to draft Article 56, a journalist or reporter who discloses information about a third person not directly involved in the case could be sentenced to imprisonment of up to six months if the publication of such information violates the interests of the third person. Such violations could occur, for example, in cases involving audio monitoring on the premises of a third person, which was legal in Austria in 2001.

However, the IHF was concerned that the provision could interfere in journalistic rights and establish criminal liability to journalists.

Article 301 of the current Criminal Procedure Code forbids judges and prosecutors from revealing secret information about court cases. However, the amendments to the Code would extend this prohibition to include the defendant, his/her lawyer and journalists.

In several interviews, the Minister assured that the provision would not be used against journalists who reveal information that is of public interest. According to him, investigations against journalists publishing such information had already been conducted under the present Code, but the proceedings had been terminated in all

cases.<sup>2</sup> Later, he said that the prison sentence for journalists would be deleted from the amendments.<sup>3</sup>

◆ Judicial proceedings were initiated against Green Party Parliamentarian, Peter Pilz, and several journalists for violating Article 301 when they published information about possible involvement of high-ranking FPÖ politicians in the accessing of secret police data.

Soon after the Ministry of Justice had presented its draft amendments to the Criminal Procedure Code, Foreign Minister Benita Ferrero-Waldner presented to the Parliament a draft law on the security of information (*Informationssicherheitsgesetz*). The main aim of the draft law was said to be the protection of military secrets, but parliamentarians and experts warned that the law was so poorly formulated that it could in practice lead to drastic restrictions on the dissemination of information. According to the draft law, authorities, journalists and other persons who disclose classified information would face sanctions if the disclosure impairs Austria's public security, national defence, foreign relations or economic interests. Those violating the law could be punished with a prison sentence of up to one year. Many experts deemed the draft law superfluous because public officials were already prohibited from disclosing professional information of this kind. Violating the provision carried a prison sentence of up to five years.<sup>4</sup>

According to the new draft law, it would in practice be possible to imprison journalists who publish secret documents they have received from a state official even if its publication would be of public interest, e.g. on abuses by public officials. Moreover, according to critics, due to the vague formulation of the law, it appeared that any official could declare his/her files "classified" and thus restrict public control of his mandate. Only persons who have passed a security test would have access to

such documents - a fact that could theoretically exclude parliamentarians and even the minister responsible from accessing such files.<sup>5</sup>

### Judicial System

The modification of the Criminal Procedure Code (*Strafprozessordnung*), if adopted in the form proposed by the Justice Minister in April<sup>6</sup>, would bring about important changes in the Austrian judicial system. According to the Justice Minister, it would provide the victims with, among other things, better chances to file cases as plaintiffs (*Privatkläger*), to have earlier access to their files and to require taking up specific evidence in their case. In addition, a suspect would have the right to consult a lawyer already before the initial interrogations, which is not the case in Austria under the present Code. Moreover, socially vulnerable victims of sex crimes or other violence would get the opportunity to receive free legal and psychological support.

Also, the reform would increase the powers of prosecutors and place on them responsibilities previously vested in the investigating judges (*Untersuchungsrichter*). These judges have the task of leading pre-trial proceedings. After the reform, a prosecutor would cooperate closely with law enforcement officials, for example in interviewing suspects and witnesses. The investigating judges would merely operate as watchdogs over the basic rights of the suspects. This function would include dealing with complaints of misconduct by police officers, and the monitoring of house searches and people.

A positive development is the fact that prosecutors would be obliged to substantiate the termination of judicial proceedings, an obligation that they do not have under the present Criminal Procedure Code. This omission has become an issue particularly in politically sensitive cases. On the other hand, according to the amendments, prosecutors would still be appointed by the

Justice Minister, who could thus potentially have at least an indirect say in the proceedings.

### Ill-treatment and Police Misconduct

Human rights organisations continued to receive allegations of ill-treatment and misconduct by Austrian police officers, in particular against foreigners.

In June, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published the findings from its visit to Austria in September 1999 when it visited several police facilities, prisons, a gendarmerie post and a psychiatric hospital. It stated that although it had received a "certain" number of complaints of police ill-treatment, the number was lower compared to its previous visits, and the ill-treatment less serious. In most cases, the victims were male foreigners who were suspected of having committed a crime, and ill-treatment occurred at the time of their arrest or, on some occasions, during interrogation.

The forms of ill-treatment included punches, kicks and slaps on the ears, particularly of handcuffed detainees. Some complained that they had had to wear excessively tight handcuffs for a long period of time. Places of reported ill-treatment were the Security Bureau (*Sicherheitsbüro*) and regional police stations (*Regionalkommissariate*) in Vienna and some police stations in the city of Graz. The CPT denounced the use of excessive force at the time of arrest and emphasized that there can be no justification whatsoever for brutal behaviour on the part of the police as soon as the person being apprehended is brought under control. It noted that despite the decreased number of complaints, the Austrian police "must continue to be vigilant" with regard to this issue.<sup>7</sup>

The CPT noted that one of the most effective measures against police abuse is the investigation of all allegations of such incidents and the punishing of the perpe-

trators. It also noted that people suspected of a crime still did not always have access to a legal counsel while in police custody – despite the Committee’s recommendations during the past ten years.<sup>8</sup>

The fact that most victims of police ill-treatment were non-European foreigners or Austrian citizens of non-European descent was also confirmed by human rights organisations. Many allegations were substantiated with medical certificates issued immediately after arrest. Frequently the officers also used racist language. Only in a few cases have abusive officers been brought to justice and punished. What was even worse was that many of the victims and eyewitnesses faced charges of “resisting state authority” or “defamation”.<sup>9</sup>

In addition to abuse at the time of arrest, those deported from the country were also sometimes ill-treated. According to Amnesty International, such misconduct could be attributed to the absence of regulations for law enforcement officers in such situations. The most prominent and tragic of such cases was that of Nigerian Marcus Omofuma, who died during his deportation from Austria in May 1999.<sup>10</sup>

◆ In May 1999, 25-year-old Nigerian asylum seeker Marcus Omofuma died while being deported by three Austrian police officers. He was allegedly gagged and bound “like a mummy” with adhesive tape. In May, results of a third autopsy conducted by a German specialist appeared to reinforce the findings of the initial autopsy in Bulgaria that Omofuma had died of asphyxia. A second autopsy in Austria had suggested that because of an undetected respiratory-related hearing defect, it could not be said with the required certainty that there was a causative link between the gagging of Mr Omofuma and his death. No trial date was set for the three accompanying police officers who faced charges of ill treatment leading to death. They were allowed to return to office work in February. In January 2002, the Independent

Administrative Panel found that the police officers had used unlawful means.<sup>11</sup>

◆ During the night of 8 to 9 April, a gendarme reportedly ill-treated a Romanian woman at a police station in Aschach/Steyr. The District Hospital in Steyr lodged an official complaint against the gendarme because of this alleged physical assault. Two gendarmes had arrested her because she did not have identification papers with her when walking with her Austrian husband through the town.<sup>12</sup>

The police allegedly sometimes used excessive force against demonstrators during regular anti-government demonstrations.

◆ In late May, the Independent Administrative Tribunal (*Unabhängiger Verwaltungssenat*) in Vienna upheld the allegations of a 25-year-old demonstrator that he was ill-treated by police officers on 4 February during an anti-government demonstration. He alleged that several police officers had knocked him to the ground with their batons, and that they repeatedly hit him as he lay on the road, causing him to sustain multiple injuries. The police officers subsequently arrested the man and charged him with breach of peace and attempting to resist state authority. He was released shortly before 11 a.m. the next day. The police officers denied the charges. However, a photographer from the Austrian Press Association had photographed the incident, reportedly clearly capturing the police officers on film in the act of repeatedly striking the man with their batons as he lay on the ground.<sup>13</sup>

◆ On 22 February, a demonstration turned violent and resulted in more than 40 arrests. Some participants threw bottles and other objects at police officers, injuring several of them. However, the police not only used excessive force against the perpetrators but also against peaceful demonstrators.<sup>14</sup>

The establishment of an independent Advisory Board for Human Rights (*Menschenrechtsbeirat*) was expected to bring about changes in the absence of accountability of police brutality. In its first activity report, its Chair, Gerhart Holzinger, stated that some improvements had taken place, but noted at the same time that many problems still remained. Since its establishment in 1999, the Advisory Board had given 92 recommendations to the Ministry of the Interior on how to improve law enforcement in respect of human rights, and had published two reports – one on the problems in connection with deportations and one on minors in custody awaiting deportation.<sup>15</sup>

### **Clandestine Procedure**

By law, law enforcement officials were not permitted to engage in *agent provocateur* activities in order to gather evidence. In addition, the European Court of Human Rights has ruled in a case related to drug trafficking that public interest cannot justify the use of evidence obtained as a result of police incitement.<sup>16</sup> However, such activities were part of law enforcement in Austria. In the fight against drug trafficking, police officers often infiltrated into the drug scene under false identity in order to gather insider information and then arrested the drug dealers. Police officers even provoked individuals into committing crimes and the perpetrators were then convicted on the basis of evidence collected during *agent provocateur* activities.

Austria has already been sentenced once by the European Court of Human Rights because neither a court of justice nor the defence had been given an opportunity to interview the officers directly involved in these activities.<sup>17</sup>

### **Conditions in Prisons and Detention Facilities<sup>18</sup>**

In February, an IHF delegation visited two police jails in Vienna. In its findings it cited shortcomings regarding the detention

of people awaiting deportation in police jails and pointed to other problems concerning the treatment of prisoners. The number of detained people in the police jails at the time of the visit was 361, two thirds of them awaiting deportation. Fifteen of them were juveniles.

The inmates generally complained about communication problems, as many did not understand the procedure. The Ministry of Interior made legal and social assistance by NGOs for people awaiting deportation possible, but the extent of assistance was insufficient. Medical care and the provision of hygienic articles were regarded by many inmates as being insufficient. In one of the two sites, there were insufficient provisions for recreational and outdoor exercises.<sup>19</sup>

According to the police commander, 27 people were on a hunger strike at the time of the visit in protest of their imprisonment.

Later in the year, media attention focused on the reports of five deaths of inmates in the largest Austrian reformatory prison in Stein, which had occurred within a short period of time: three inmates committed suicide, one died of a heart attack and another of intestinal obstruction while being tied down by his arms and feet to a bed over night – a practice forbidden in Austria since 1993. Inmates claimed that those who had violated prison regulations, but also newcomers and mentally ill or unstable inmates who were suicidal, had been held in isolation cells in the basement of the facility for several days. One cell, generally known as the “sauna cell”, was allegedly excessively heated and inmates were held there naked (“to prevent suicides”) with no facilities other than a mattress, and sometimes even without anything to drink.<sup>20</sup>

The authorities first labelled the allegations as “absurd”. Later, it was stated that the “correction cells” would be closed down as of July. The Ministry of Justice set up an ex-

pert commission to investigate the situation of mentally endangered prisoners. In its findings, the commission drew attention particularly to the insufficient psychiatric care of mentally disturbed or ill inmates: in four facilities, there was no psychiatric care at all. In the prison of Stein, 70% of the inmates, who had recently been in medical care, were found to be mentally disturbed or unstable, but their care was inadequate due to the shortage of professional staff. The commission also pointed to the lack of opportunities for physical exercise and work and the overburdening of the prison personnel who had to deal with an increasingly complex prison population. The experts' report was not officially published but it was leaked to the media.<sup>21</sup>

### **Intolerance, Xenophobia, Racial Discrimination and Hate Speech<sup>22</sup>**

In its April report, the European Commission against Racism and Intolerance (ECRI) stated that racism, xenophobia and discrimination particularly affected immigrants, asylum-seekers and refugees, but also Austrian nationals of immigrant background. According to ECRI, most of the existing legal provisions aimed at combating racism and discrimination did not provide for effective protection against these phenomena. "Of deep concern is the use of racist and xenophobic propaganda in politics," ECRI stated and added that behaviour of the police vis-à-vis members of minority groups was also of special concern.<sup>23</sup>

In fact, in recent years, racist and xenophobic statements and acts seem to have been largely tolerated, also in political life. This has especially been the case since the 1999 parliamentary elections, which brought to power the populist far-right Freedom Party (FPÖ), that used in its election campaign placards carrying anti-immigrant slogans, including a call to stop "overforeignization".<sup>24</sup>

In addition, in 2001, no general anti-discrimination law was adopted to provide

for remedies, for example, against discrimination in the labour market and in accommodation facilities.

### **National Minorities**

Under the 1976 Law on National Minorities (*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. Under Article 7 of the State Treaty, bilingual topographical signs were to be installed in municipalities with mixed population. However, according to the Law on Minorities, these minorities had to make up 25% of a municipality in order to have bilingual topographical signs.

On 13 December 2001, in a groundbreaking decision, the Constitutional Court ruled that the 25% principle was unconstitutional. It decided that in municipalities with more than a 10%-minority, the topographical signs should be bilingual.<sup>25</sup>

This decision triggered a vehement reaction by the Governor of Carinthia, Jörg Haider. In the summer of 2001, he had already abruptly closed down three Slovene-language primary schools in Carinthia. Following the decision of the Constitutional Court, the Governor ordered that no new bilingual topographical signs be posted in Carinthia. He also threatened to replace the already existing bilingual signs with German-language signs, to stop the Slovene-language state-TV programmes from broadcasting in Carinthia, to close down bilingual Kindergartens, and to hold a referendum on the language issue. Furthermore, he demanded that only the German-language version of topographical names be used for the signs on motorways to Slovenia.

In protest of the Constitutional Court ruling, the Governor required that proceedings be initiated to dismiss the Chair of the Constitutional Court, Ludwig Adamovich, from his office for “unworthy and unpatriotic” behaviour, because Adamovich denied having discussed the issue of bilingual topographical signs with the Slovene President Kucan in November and had refused to discuss this issue with Mr Haider. Eventually, Mr Adamovich himself asked the Court to decide whether proceedings for his dismissal should be initiated. On 7 January 2002, the Court decided not to initiate such proceedings.<sup>26</sup>

Chancellor Wolfgang Schüssel (the Austrian People’s Party, ÖVP) stated that everyone had to respect and implement the ruling of the Constitutional Court. Vice Chancellor, Susanne Riess-Passer (FPÖ), did not directly comment on the issue, but criticized the manner in which the judges of the Constitutional Court were appointed as political.

## Asylum Seekers and Immigrants

### *Asylum Seekers*<sup>27</sup>

The number of submitted asylum applications increased from 18,284 in 2000 to 30,135 in 2001. The growth could be attributed to the high number of asylum seekers coming from Afghanistan (12,957, in 2000: 4,205.). However, the number of positive decisions remained almost the same as in 2000, i.e. 1,114 (in 2000: 1,002).<sup>28</sup>

The “safe third country” principle remained in force, on the basis of which applications of asylum seekers who entered Austria via any of its neighbouring States were not investigated on their merits and the individuals were returned to those countries. This happened despite the fact that the asylum procedures in the neighbouring countries, which were not members of the European Union still, did not fulfil even the stringent standards followed in Austria. The Independent Federal Asylum

Review Board (*Unabhängiger Bundesasylsenat*, UBAS), the second instance body in asylum issues, has in nearly all cases regarded those countries as unsafe.<sup>29</sup>

Local human rights organizations criticized the insufficient care by state authorities of asylum seekers. The authorities turned away asylum seekers from the refugee camp Traiskirchen (run by the federal authorities) despite the fact that only 1,000 of the 3,000 places were occupied. Also, parishes near the camp no longer offered refuge to asylum seekers, which some of them had done previously.<sup>30</sup> According to the Austrian Section of Amnesty International, only one third of all asylum seekers enjoyed state support (the so-called *Bundesbetreuung*). The rest was taken care of by private organizations, which demanded that federal authorities take responsibility for the asylum seekers during the entire asylum procedure. Those who were not under federal care lacked, for example, health insurance and thus did not have a right to medical care. The Federal Government and the entities of the Federal State could not come to an agreement about whose responsibility the care of asylum seekers was. By law, there was no general right to accommodation, meals and medical care at the cost of the State for asylum seekers.<sup>31</sup> Similarly those persons who received a negative decision on their asylum request, but could not be expelled to their country of origin, which was devastated by armed conflicts or violence, did not enjoy many basic social rights such as the right to work. All this led to precarious situations, with many foreigners being on the streets.<sup>32</sup>

Many asylum seekers awaiting deportation were held in prisons, a practice that has been criticized by human rights organisations and the CPT for years. The CPT pointed particularly to the situation of minors awaiting deportation, which was not in line with European human rights standards. It recommended to the Government to en-



sure that minors under 16 years of age are not to be held imprisoned, but should be able to stay in facilities that are appropriate to their age and level of development.<sup>33</sup> The number of unaccompanied minors who seek asylum has dramatically increased in the past few years.<sup>34</sup> Only about one third of them were taken care of by the State, others had to rely on non-governmental organisations for assistance.<sup>35</sup> Even minor asylum seekers from Afghanistan were not necessarily granted asylum.

Family members of foreigners who stayed illegally in Austria were also kept in detention. A decision to lock up an asylum seeker or immigrant was taken without a court decision, and the time in police custody could last as long as six months. Furthermore, many of the facilities where the deportees were held were not suitable for long-term detention (due to, e.g. the lack of sanitary facilities).<sup>36</sup>

In the autumn of 2001, comments by Carinthia's Governor on Austria's refugee policy instigated a heated debate. He proposed that the contents of the Geneva Convention on the Status of Refugees be reconsidered, and that refugees should rather be taken care of in the surroundings of their original home than to allow them to enter Austria. The Governor's statements were strongly denounced by the ÖVP representatives of the Government, human rights NGOs and the UNHCR.

The Ministry of the Interior planned the establishment of a new, accelerated asylum procedure by which a decision could be made within two weeks – the Minister himself had initially aimed at a 48-hour deadline. At the same time, asylum seekers would be divided into three groups: those with the prospects of a positive decision, those who could expect to receive a negative decision and those whose cases need further investigation. The new accelerated procedure would be used for the first group of applicants.<sup>37</sup> Such a procedure was heavily criticised by human rights

NGOs for not allowing for a proper investigation of individual cases.

### *Immigrants*

For foreigners from outside the EU, there existed two separate laws regulating on the one hand their residency, and on the other hand anything regarding their status vis-à-vis labour law. This resulted in a situation where many foreigners with a residency right were not necessarily granted a work permit. The first work permit was issued for one year and concerned one employer only, which obstructed the employees from changing work place and put them in a vulnerable situation where they could easily be abused by employers.<sup>38</sup>

The Government has decided annually on quotas for residence permits and family reunification for non-EU foreigners. These quotas for 2001 were 8,518 of which 5,490 were cases of family reunification. However, in August 2001, there were some 11,000 applications for family reunification pending, and it was expected that the backlog would only be solved by the end of 2003.<sup>39</sup>

When taking office in February 2000, the Government declared that its key principle in immigration policy was to integrate those foreigners already living in Austria rather than to allow new immigration. To that end, the Government presented the first draft of the so-called Integration Agreement (*Integrationsvereinbarung*) in the autumn and decided on a revised version of it in early 2002. According to this agreement, newly arrived non-EU foreigners would be obliged to attend a compulsory course in the German language and civics. If they failed to do so, they would soon have to pay for participation in such classes themselves. After two years, they would be faced with monetary sanctions and, finally, their residence permit would be withdrawn. Also, foreigners who have lived in Austria for a longer time would be obliged to participate in such a course if



they were unemployed: a refusal would lead to a cut in their unemployment payment.<sup>40</sup>

Critics noted that the withdrawal of a residence permit violates the jurisprudence of the European Court of Human Rights. The law reform would leave untouched many disadvantages already provided by the law, including the quota system for work permits and non-enjoyment of many social rights such as the right to live in apartments owned by municipalities and to receive social subsidies available to citizens. Further, critics pointed out that genuine integration cannot be imposed from above and that the Agreement violates the European standards on the right to family and private life as well as the principle of equality among foreigners.

### Homosexuals' Rights

Article 209 of the Austrian Penal Code remained in force throughout 2001, despite criticism by inter-governmental and non-governmental organizations. Article 209 stated: "A man over 19 years of age who engages in same-sex relations with a person who has attained the age of 14 but not yet the age of 18 shall be punished with imprisonment from six months to five years". This restriction on consensual sexual activity between males was considered discriminatory compared to lesbian or heterosexual relations and, therefore, constituted an arbitrary interference with the right to privacy. The legal minimum age for consensual sexual activity of heterosexuals and lesbians was 14.<sup>41</sup>

Since the introduction in 1971 of Article 209, around 1,000 persons have been prosecuted and sentenced on the basis of this provision, approximately 10-40 each year. In 2000, 10 people were convicted.<sup>42</sup>

◆ In January, August Sulzer was released from prison following international protests. Mr Sulzer was sentenced in 1999 to one

year in prison and placed in an institute for mentally abnormal criminals for an indefinite period of time under Article 209 for caressing the genitals of a young man. The sentence was based on a psychiatrist's statement that diagnosed chronic alcoholism, which, according to the information from the International Lesbian and Gay Association, was exaggerated. The expert report concluded that due to this disorder and the criminal record of the defendant (one previous conviction for a sexual offence), further offences with grave consequences had to be expected. In 2000, the court had prolonged the detention for another year without either the psychiatrist or the judge meeting the accused face-to-face.<sup>43</sup>

◆ On 14 February, Franz L, who is in his thirties, was arrested after the Vienna Regional Criminal Court issued a warrant based on information from the police that he was allegedly engaged in a sexual relationship with a 15-year-old adolescent. The police took the juvenile from school and subjected him to a nine-hour interrogation about Franz L. during which he confirmed the sexual relationship but said that all sexual contact had been consensual. Also, Franz L. was interrogated thoroughly and he confessed to his sexual relationship with the 15-year-old, as well as sexual relations with three other adolescents within the past three years, who all were over 14 years of age. On 16 February, Franz L. was transferred to the Court's prison house, and a judge imposed detention on remand for danger of repetition.<sup>44</sup> He remained in detention until 27 February when a judge at the Vienna Regional Criminal Court (*Landesgericht für Strafsachen Wien*), which had issued the original arrest warrant and had authorized his detention thereafter, released him under mounting international pressure.<sup>45</sup>

Intergovernmental organizations, including the European Parliament and the UN Human Rights Committee have on

several occasions called on Austria to abolish Article 209. On 5 July 2001, the European Parliament adopted its report and resolution on the respect of fundamental rights in the European Union in 2000.<sup>46</sup> In its paragraph 80, the Parliament once more called on Austria to repeal Article 209 and to immediately release from prison all those jailed under this law.<sup>47</sup>

In December, the Constitutional Court declared inadmissible the proposal of the higher court (*Oberlandesgericht*) in Innsbruck to review whether Article 209 was in line with the Austrian Constitution. The decision not to deal with the issue was the fact that the Constitutional Court had declared in 1999 that the article did not violate the Constitution.

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## Endnotes

<sup>1</sup> See Judicial System.

<sup>2</sup> According to Justice Minister Dieter Böhmdorfer in ORF Report, 8 May 2001.

<sup>3</sup> ZiB interview with Justice Minister Dieter Böhmdorfer, 7 May 2001.

<sup>4</sup> "Journalismus unterbinden," *Falter* 44/01.

<sup>5</sup> *Ibid.*

<sup>6</sup> See the draft amendments at [www.justiz.gv.at/gesetzes/download/strafproz\\_vorverf.pdf](http://www.justiz.gv.at/gesetzes/download/strafproz_vorverf.pdf)

<sup>7</sup> CPT, *Bericht des Europäischen Ausschusses zur Verhütung von Folter und unmenschlicher oder erniedrigender Behandlung oder Strafe (CPT) an die österreichische Regierung anlässlich seines Besuches in Österreich vom 19. bis 30. September 1999*, CPT/Inf(2001)8, Strassbourg, 21 June 2001.

<sup>8</sup> *Ibid.*

<sup>9</sup> Amnesty International Austrian Section, [http://www.amnesty.at/cgi-bin/direkt.pl?docu=../presse/afghanistan\\_2.html](http://www.amnesty.at/cgi-bin/direkt.pl?docu=../presse/afghanistan_2.html)

<sup>10</sup> *Ibid.*

<sup>11</sup> Amnesty International (AI), *Freedom from Racial Discrimination*, 9 March 2001, at <http://web.amnesty.org/ai.nsf/Index/IOR410032001?OpenDocument&of=COUNTRIES\AUSTRIA>; and *Concerns in Europe*, January-June 2001.

<sup>12</sup> AI, *Concerns in Europe*, January-June 2001.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> Amnesty International Austrian Section, [http://www.amnesty.at/cgi-in/direkt.pl?docu=../presse/afghanistan\\_2.html](http://www.amnesty.at/cgi-in/direkt.pl?docu=../presse/afghanistan_2.html)

<sup>16</sup> In the case of Teixeira de Castro v. Portugal, 9 June 1998, the Court ruled that the "use of undercover agents had to be restricted and safeguards put in place even in cases concerning fight against drug trafficking – public interest could not justify use of evidence obtained as a result of police incitement," at <http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=0&Action=Html&X=214085958&Notice=0&Noticemode=&RelatedMode=0>

<sup>17</sup> Windisch v. Austria, 27 September 1990, at <http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=0&Action=Html&X=214091642&Notice=0&Noticemode=&RelatedMode=0>

- <sup>18</sup> Unless otherwise noted, based on "IHF Visit to Prison Jails Hernalser Gürtel and Rossauer Lände: Visit to Austrian prisons subordinated to the Ministry of Justice not allowed for 'lack of legal grounds'", 8 February 2001.
- <sup>19</sup> In the police prison in Hernalser Gürtel, recreational and outdoor exercises were made possible only every other day for about 45 minutes in an overly small courtyard.
- <sup>20</sup> *Falter*, 26/01, 27/1 and 29/1,
- <sup>21</sup> The report can be accessed at [www.falter.at](http://www.falter.at)
- <sup>22</sup> See also chapter on Police Violence and Protection of National Minorities.
- <sup>23</sup> The European Commission against Racism and Intolerance (ECRI), "The Commission against Racism publishes new reports on Albania, Austria, Denmark, 'the Former Yugoslav Republic of Macedonia' and the United Kingdom," 3 April 2001, at [http://press.coe.int/cp/2001/219a\(2001\).htm](http://press.coe.int/cp/2001/219a(2001).htm).
- <sup>24</sup> See IHF open letter Vice-Chancellor Susanne Riess-Passer und Chancellor Wolfgang Schüssel, 6 March 2001, at <http://www.ihf-hr.org/appeals.htm/010306.deutsch.htm>
- <sup>25</sup> VfGH, G213/01/, V62/01 ua, 12 December 2001. According to the 1991 census, 14 municipalities of Carinthia have a Slovene minority of more than 10%.
- <sup>26</sup> VfGH, DV1/01, 7 January 2002.
- <sup>27</sup> See also Conditions in Prison and Detention Facilities.
- <sup>28</sup> SOS Menschenrechte Österreich, "2. Teil der Integrations- und asylpolitische Bestandsaufnahme zu zwei Jahren ÖVP-FPÖ-Regierung," 1 February 2002.
- <sup>29</sup> Asyl in Not, at [www.asyl-in-not.org/rechtslage/oesterreich/oesterreich/htm](http://www.asyl-in-not.org/rechtslage/oesterreich/oesterreich/htm)
- <sup>30</sup> SOS Mitmensch, [www.sos-mitmensch.at/aktuell/html](http://www.sos-mitmensch.at/aktuell/html)
- <sup>31</sup> Amnesty International Austrian Section, [www.amnesty.at/cgi-bin/direkt.pl?docu=../uebersicht/main.html](http://www.amnesty.at/cgi-bin/direkt.pl?docu=../uebersicht/main.html)
- <sup>32</sup> SOS Mitmensch, [www.sos-mitmensch.at/aktuell/html](http://www.sos-mitmensch.at/aktuell/html)
- <sup>33</sup> CPT, op.cit.
- <sup>34</sup> According to the UNHCR, in 2000, 553 asylum seekers under the age of 18 were in Vienna only. UNHCR, "Trends in Unaccompanied and Separated Children Seeking Asylum in Europe, 2000."
- <sup>35</sup> Gerhad Wallner, "Kompetenzzentrum für minderjährige Flüchtlinge," *Falter*, 18/01.
- <sup>36</sup> Terezija Stoisits, "World Conference against Racism, racial Discrimination, Xenophobia and Related Intolerance, Durban, 31.8.-7.9.2001: Bilanz über die Situation in Österreich." *Die Presse*, 19 October 2001.
- <sup>37</sup> *Die Presse*, 19 October 2001.
- <sup>38</sup> Terezija Stoisits, op.cit.
- <sup>39</sup> *Kleine Zeitung*, 14 August 2001.
- <sup>40</sup> *Die Presse*, 6 February 2001.
- <sup>41</sup> AI, "Austria: Restrictions on Consensual Sexual Activity," 26 February 2001, at <http://web.amnesty.org/ai.nsf/Index/EUR130012001?OpenDocument&of=COUNTRIES\AUSTRIA>
- <sup>42</sup> 2001 statistics were not available at the time of writing.
- <sup>43</sup> The European Region of the International Lesbian and Gay Association, ILGA-Europe, "Human Rights Violations Against Homosexuals in Austria, presented to the OSCE Implementation Meeting on Human Dimension Issues, Warsaw, 17-27 October 2000," ; Information from Homosexuelle initiative Wien (HOSI), 20 February 2002.
- <sup>44</sup> AI, "Austria: Restrictions on Consensual Sexual Activity," 26 February 2001.
- <sup>45</sup> AI, *Concerns in Europe, January-June 2001*.
- <sup>46</sup> Doc. A5-0223/2001
- <sup>47</sup> HOSI, 20 February 2002.