

IHF FOCUS: national human rights protection; freedom of expression and free media; judicial system, independence of the judiciary and the right to a fair trial; ill-treatment, police misconduct and prison conditions; freedom of religion and religious tolerance; rights of persons with disabilities; national minorities (Slovene minority); citizenship; equal rights of women and men; rights of sexual minorities; aggressive nationalism, racism and xenophobia; asylum seekers and refugees; trafficking in human beings.

A series of restrictive amendments to laws pertaining to the status of non-citizens, a high-profile court case highlighting excessive police force leading to the death of a native Mauritanian and the necessity to amend the Constitutional Code to avert the chairpersonship of a member of the Federal Chamber of the National Assembly who labeled *Wehrmacht* deserters as “murderers of their comrades” were some of the major human rights issues in Austria in 2005.

In a year dedicated to the commemoration of – amongst others – the end of National Socialism in 1945, the struggle of the Slovenian minority to enjoy rights, which were granted in the 1955 Vienna State Treaty, including the placement of town signs in both German and Slovenian, continued. Xenophobic campaigning by the far-right continued in the run-up to both the Viennese City Council and in the Styrian regional elections.

Particularly persons with skin color darker than the Austrian average continued to be subject to harassment and other forms of misconduct. An African rape victim was sued for libel after the accused rapist (a security guard) was acquitted and a documentary on a concerted police action called “Operation Spring,” which focused on black people allegedly involved in organized crime, raised fair trial issues.

Media diversity continued to be limited as the high degree of media concentration remained unchanged. An amendment to the Anti-trust Act aimed at alleviating the situation will take effect in 2006 but has no retro-enforceability.

While maintaining a high ranking in the UN’s “Human Development Index,” various reports published during 2005 showed a troubling increase of people living in poverty, in a threshold close to poverty as well as an increase in the number of the so-called “working poor.” Among those disproportionately affected by this development were single mothers and families with many children. Another social concern was addressed by UNESCO in a study published in early September, which revealed that 300,000 Austrians were functional illiterates. Citing difficulties in defining this group as well as problems in determining the exact number, the minister for education, science and culture, Elisabeth Gehrer, denied the figure as “unfounded.”¹

New research showed that gender equality policies had suffered a significant dent since the conservative government took power five years ago, moving the issues under the sole heading of “family policy.”

National Human Rights Protection

The Human Rights Advisory Board (*Menschenrechtsbeirat*, HRAB) continued to monitor the activities of the security services under the command of the Interior Ministry. While the HRAB can issue recommendations to the minister, its overall powers are extremely limited and concerns over its independence are valid as it is placed within the Interior Ministry.²

Freedom of Expression and Free Media

Problems in defending freedom of speech and the high level of media concen-

* Researched and written by Marianne Schulze, with the exception of the section on freedom of religion, which was provided by Human Rights Without Frontiers (IHF cooperating organization).

tration were the main issues with respect to freedom of expression and media freedom.

◆ A judge in the province of Lower-Austria sued the Viennese independent weekly *Falter*³ for defamation (*üble Nachrede*) after its journalist Florian Klenk criticized her acquittal of a security guard who had been accused of having raped a Cameroonian woman in a refugee center (see Ill-treatment and Police Misconduct, below). In the course of the trial various arguments in favor of the woman were pushed aside and the assertion that the woman had previously been seen flirting with the security guard was sufficient to acquit the security guard. The journalist criticized the ruling in an article in *Falter* stating that the judge had insinuated “lowest” motives and appeared to be convinced of the woman’s guilt. The judge in turn sued for libel – under the criminal code – because she felt unjustly accused of racism. The journalist was found guilty of overstepping the permissible boundaries of criticism.⁴ The unusually high penalty of EUR 7,000 was unnecessary according to the judge because a request for information had been filed in parliament. An appeal was underway at year’s end, and Florian Klenk was named Austria’s journalist of the year.⁵

Media concentration continued to be comparatively high as media-conglomerates still dominated the market place. The consortium “Mediaprint” continued to secure vast shares of the newspaper market. It rose to power with disregard for competition laws and political support through the “social partnership” consensus, which dominated Austrian politics until the late 90ies. The daily *Kronen Zeitung*, the “Mediaprint” flagship, reached 44% of the Austrian readership in 2005. Many of its articles reflected xenophobia, sexism, and racism.

The weekly newsmagazine market remained unchanged, too. The conglomerate of the established newsweekly *Profil*

and the 1998 created *Format* remained linked to “Mediaprint.”⁶ Immediate calls for a reform of the Anti-Trust Act, which not all experts shared, will be put in place as of January 2006, particularly strengthening provisions that diversity of media has to be reflected not only in opinions but also ownership.⁷ Thus, Austria’s laws are moving toward being more in line with the generally held opinion that – following the interpretation of article 19 of the ICCPR⁸ – states parties bear a responsibility for ensuring diversity of media both in terms of ownership and opinion.

The TV- and radio-market was similar to that of the printed media. The monopoly of the state-owned Austrian Broadcasting Corporation (ORF) was broken a few years ago but private entities, both for TV and radio, continued to struggle in 2005 to stabilize a decent market share.

The latest decision of the European Court of Human Rights (ECtHR) regarding freedom of the press in Austria⁹ once again reflected the court’s long held view that politicians – as public personae – have to face up to more and harsher public judgment than other – nonpublic – persons.

◆ The far-right wing politician, Jörg Haider had sued the newsweekly *Profil* for an article, which had quoted his infamous usage of the term “punishment camps” in the context of concentration camps. The then-leader of the Freedom Party (*Freiheitliche Partei*, FPÖ) felt that the article’s reference to his statement gave the impression that he had violated the National Socialism Prohibition Act (*Verbotsgesetz*), which prohibits *inter alia* the downplaying of the extent of crimes committed by the Nazis and thereby he, Haider, had been slurred. The court – focusing on a particular section of the media act – did not determine further whether the reference was a value judgment or a statement of fact – and acknowledged Haider’s assertion. The ECtHR, in line with previous cases on arti-

cle 10 European Convention of Human Rights (ECHR) on Austria, found a violation of freedom of speech and ruled in favor of the newsweekly.

Judicial System, Independence of the Judiciary and the Right to a Fair Trial

The documentary "Operation Spring"¹⁰ shed light on the problematic trials following the biggest police raid in Austria since World War II.

◆ In 1999 new police powers, including big scale wiretapping and hidden video taping, were used as the basis for a police operation entitled "Operation Spring" to arrest roughly 100 persons, all black people from Africa accused of organized crime. The documentary posed the question whether any of the accused ever stood a chance of having a fair trial given that the quality of the videos used as evidence was poor and some of the language interpretation was not accurate. The accused were sentenced despite the court's inability to state to whom and how many drugs they had allegedly sold. The Ministry for Justice responded to the public discussion following the release of the documentary that it could not interfere in an open court case. The last judgment was handed down at the end of December: four years and nine months for the accused Emmanuel Chukwujekwu.¹¹ This despite the fact that the anonymous "principal witness," who had attended the trial with a motorcycle helmet, had revoked his accusations at a later stage.¹² The peculiarity of allowing anonymous witnesses was introduced by way of article 166 of the code of criminal procedure - a provision, the benefits of which seem to be outweighed by fair trial concerns.

◆ The acquittal of a security guard in the refugee camp Traiskirchen, who had been accused of raping a Cameroonian woman while drunk and on duty led to the *ex officio* law suit for slander against the woman.

The reasoning of the state prosecutor was that "the state prosecution is obliged to initiate preliminary investigations as part of the principle of legality. This is normal procedure."¹³ This kind of alleged "standard procedure" of initiating slander procedures against the accuser once the charges against the accused are dropped continued to give rise to serious concern as it discourages individuals to report cases of misconduct by police and other security officials. The case sparked criticism, which led to a libel suit for one of the journalists (see Freedom of Expression, above).¹⁴

As in previous years, the ECtHR found a violation of the fair trial principle (article 6 of the ECHR) in various cases, the majority mainly due to unreasonably lengthy proceedings.¹⁵

Ill-Treatment, Police Misconduct and Prison Conditions

The case of Cheibani Wague, a Mauritanian asylum seeker who had died in Vienna on 15 July 2003 in a police operation, became subject of a heated debate over the training and responsibility of police officers. As the doctor, paramedics and police who had been on-site were put on trial on alleged "grave negligence" obvious deficiencies in police training came to surface. The trial was allegedly only possible because a resident close to the scene taped the incident. Previously the Independent Administrative Tribunal (*Unabhängiger Verwaltungssenat*, IAT) had found that the "fixation" by the police officers and an emergency physician amounted to unnecessary and unlawful ill-treatment and abuse. Among others, Wague's feet had been held down, he had been pressed down on the ground and been punched. One of the accused had allegedly also "stood" on Wague's torso.¹⁶

The doctor and one police officer were convicted for negligent manslaughter and sentenced to seven months imprison-

ment. The rather low sentences, all of which were appealed, raised a general debate over the severity and proportionality of punishments foreseen by the Austrian criminal code: for example, shop lifters are likely to receive a heftier sentencing than sex-offenders and juveniles receive disproportionately high penalties.

A further disturbing factor was that the trial was based on an amateur video filmed by a neighbor who had observed the police operation. The public was only informed of Wague's death once the tape surfaced a few days after the incident.¹⁷ The fact that both the disciplinary proceedings as well as the criminal court case were already two years in the making sparked criticism from various sides. The United Nations' Committee Against Torture (CAT) expressed concern in its conclusions and recommendations in response to Austria's third periodic report about the "lack of prompt investigation of certain cases of torture and ill-treatment committed by law enforcement officials."¹⁸

Questions over police misconduct were sparked again in December 2005.

◆ A young Iranian who had parked his car illegally was questioned, briefly detained and later found to have strangulation marks around his neck.¹⁹ While the physician at the police station could not find traces of ill-treatment, the University Clinic Vienna documented "clear signs" of strangulation four hours after the incident. The Iranian was released and an inquiry on civil resistance (*Widerstand gegen die Staatsgewalt*) – in accordance with the criminal code – was initiated against him.

Based on the public accounts available, latent xenophobia and racism still appeared to be prevalent among the police. The few reports on police brutality available in the media more often than not included a foreigner.²⁰

A finding of the Constitutional Court voiding substantial provisions of the 2003

Asylum Act instigated yet another reform of this sensitive matter. For example, the possible "treatment" of hunger strikers was a subject for public debate for a few weeks when the news broke that an asylum seeker on hunger strike died in detention. The new Asylum Act, which came into force in 2006 (see Asylum Seekers, below), contains a new provision allowing to forcefully feed hunger strikers.

◆ On 4 October, the 18-year-old Gambian Yankuba Cessay died in the police detention facility (*Polizeianhaltezentrum*, PAZ) in Linz, Upper Austria during a hunger strike. The interior minister admitted that "basic" medical supervision had been provided but that this had not included psychological support.

◆ In other fatal incidents, Mohamed Benissa alias Ben Habra Sahraoui committed suicide in the Viennese police detention facility in February, in August one detainee, Andrzej Galaz, died after being attacked with a kitchen knife by a fellow detainee.²¹

While there were many causes for such fatalities, it appeared that the conditions in the detention facilities played a crucial contributing factor. The European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) described their conditions as "unacceptable." Apart from a complete lack of a suitable regime for persons whose asylum application was rejected, the facility provided neither any form of occupation nor did it allow the detainees to move around freely. Basically, they were being held in prison-like cells for at least 23 hours per day. The CPT report urged the Austrian government to take immediate steps to alleviate the situations in the detention facilities "as a matter of priority."²²

In response to a request for information submitted by members of the Federal Chamber, the minister of justice conceded

that the number of prisoners was unusually high, that the “current utilization and the resulting proportion of personnel and inmates affected the overall security situation negatively.”²⁵

Freedom of Religion and Religious Tolerance²⁴

The Austrian constitution provides for freedom of religion and the government generally respects this right in practice. The relations between the state and religions are mainly governed by the Law on Recognition of Churches and religious Communities (1874) recognized by the state, the Law on the Status of Religious Confessional Communities (1998) and the Law on Associations (2002.)

Before 1998, Austria made a distinction between two categories of religions: legally recognized religious communities and non-recognized religious communities (associations). This system flouted the fundamental principle of equal opportunities for religious communities and citizens. After many years of legal battles, Jehovah’s Witnesses managed to qualify for state recognition,²⁵ but in 1998, Austria hastily revised its legislation and thereby barred their access to the higher category.

The 1998 law aggravated the discriminatory character of the pre-existing legislation by creating three categories of religions: legally recognized religious societies (*gesetzlich anerkannte Religionsgesellschaft*), confessional communities (*Bekennnismgemeinschaft*) and associations (*Verrein*). The law also imposed new criteria on religious groups to achieve the highest status: a 20-year period of existence (at least 10 of which must have been as group organized as a religious confessional community) and membership of one-thousandth of the country’s population (approximately 16,000 people), a requirement that effectively excludes all new applicants – except Jehovah’s Witnesses –

from the access to the first category. The new and stricter obligations did, however, not affect 9 of the 13 state-recognized religious societies previously registered in the upper category with far less than 16,000 members. In addition, the state recognized the Coptic Orthodox Church with only 1,633 members in 2003, outside the realm of the new regulation normally imposed to new candidates.²⁶

In 2005, there were 13 legally recognized religious societies. Four of them had more than 16,000 members.²⁷ The other nine had a membership ranging from less than 15,000 to about 1,300.²⁸ Ten religious groups were admitted in the category of confessional communities²⁹ on the basis of the new requirements introduced by the 1998 law.³⁰

Confessional communities and other religious groups registered as mere associations enjoyed fewer rights than legally recognized religious societies, thereby impairing their members ability to fully enjoy their individual and collective rights. As “associations” they were: denied the right to engage in a number of public or quasi-public activities; not eligible to receive state subsidies for the wages and education of their clergy, and for their private schools; denied fiscal advantages; not permitted to teach religion at public schools; subject to a numerical quota for the issue of visas for foreign religious workers to act as ministers, missionaries or teachers; in many cases stigmatized as harmful sects/cults.

A number of non-recognized religious groups were considered by official bodies as sects, which society should be warned and protected against. The operation of a Documentation and Information Center on Sects (established under the under 1998 law) was controversial and seen as a measure to reinforce the climate of societal discrimination and intolerance against minority religions. Also controversial was the establishment and operation of a Fe-

deral Office of Sect Issues and other similar offices at the state level with funding from public funds. The financing by the Ministry for Social Security and Generations and the City of Vienna of the Society against Sect and Cult Dangers (GSK) has also been questioned. In addition, several provinces had offices that provided information on “sects” and “cults.” Members of stigmatized confessional communities and other religious associations were reported to be discriminated against at school, by courts, etc. because they were labeled as “sect” members.³¹ Positively, the website of the Family Office of the Government of Lower Austria no longer included a presentation that negatively characterized many religious groups.

The NGO Forum against Anti-Semitism reported more than a hundred anti-Semitic incidents in 2005, such as physical attacks (four cases), name-calling, graffiti/defacement, threatening letters and phone calls, anti-Semitic internet postings, and property damage.³²

Muslims complained about incidents of every-day discrimination and verbal harassment. Positively, the Ministry of Education, Science, and Culture policy document of June 2004 concerning the wearing of the headscarf remained in force: it reminded all schools under its jurisdiction that the wearing of the headscarf was protected by the right to freedom of religion under the Constitution and the ECHR, and stated that any attempt to ban it was unlawful.

Rights of Persons with Disabilities

A new Equal Treatment for Persons with Disabilities Act (*Behindertengleichstellungsgesetz*) was adopted and will protect the rights of persons with disabilities as of 1 January 2006. It foresees the protection from all forms of discrimination, including direct and indirect. Also, relatives – as outlined in the act – fall under the protection of the anti-discrimination clause.³³

While the rights and obligations provided by the act also apply to the private sector, various barriers may hamper the effectiveness of the law: the act contains provisions with prolonged temporary arrangements and overly ambiguous terms, thus creating uncertainty and loopholes. There are still a number of additional laws and decrees to be negotiated and put in place before the legal ground for the full protection of persons with disability is theoretically laid.³⁴

The new act also creates an office for the advocacy of the equality of persons with disability. The former deputy prime minister, the veterinarian Herbert Haupt was appointed to be the first advocate.³⁵ His selection raised criticism about the transparency of the selection process and the criteria used to find a suitable advocate.³⁶

National Minorities

The Slovene Minority

The issue concerning the full recognition of minorities remained a major issue and was highlighted in a dispute between the most affected province, Carinthia, the Constitutional Court and politics.

As the European Commission against Racism and Intolerance (ECRI) cited in its latest report, the “Governor of Carinthia is reported to have played a particularly active role (...) in connection with his open refusal to implement rulings of the Constitutional Court that accord certain rights to members of this group.”³⁷ Previously the said court had declared certain parts of the Ethnic Minority Act (*Volksgruppengesetz*) unconstitutional because of the limitation of the right to bilingual topographic signs to communities with more than 25% members of an autochthonous minority.³⁸ While this requirement, set out in article 7 of the 1955 State Treaty has been implemented in other provinces, most notably Burgenland, the dispute in Carinthia has been going on for years. Jörg Haider, who

is also governor of Carinthia, has been using the ongoing debate on bilingual topographic signs to overtly criticize the findings and legality of the findings of the Constitutional Court.

Various films were released during 2005 documenting the ongoing dispute, among them "Artikel 7 – Unser Recht!" ("Article 7 – Our Right!")³⁹ and "F.A.Q. – Frequently Asked Questions."⁴⁰ Efforts to have the former broadcast on state television – which had supported the production financially – as part of the 50-year commemorations of the State Treaty in 2005, failed.⁴¹

Citizenship

An overhaul of the Citizenship Act (*Staatsbürgerschaftsgesetz*) formed part of the amendments of all acts pertaining to the rights of aliens (*Fremdenrechtspaket*), including *inter alia* the Alien (Rights) Act (*Fremdengesetz*) and the Asylum Act (*Asylgesetz*). The Citizenship Act, which did not pass the Federal Chamber in time to take effect as originally intended on 1 January 2006 makes increasingly restrictive changes to an already relatively rigid law, thus placing Austria among the countries with very stringent requirements for acquiring citizenship.⁴²

The act's requirements for length of residence were increased substantially, so were the provisions for a test on German language ability and knowledge of Austrian history were introduced. Comments critical of the proposal, which was drafted by the Ministry of the Interior in conjunction with the Ministry of Justice, were submitted by the Prime Minister's Office for Constitutional Affairs (*Verfassungsdienst*), amongst others.⁴³

Equal Rights of Women and Men

The data collected by the Office of the Ombudsperson for Equal Treatment Opportunities for Women and Men re-

vealed that a total of 1,081 gender discriminatory job postings were reported to the office in 2004. Also, the office received 4,147 inquires regarding sexual harassment and counseled 541 cases.⁴⁴ In the ombudsperson's opinion, it was impossible to draw conclusions from that data.

The bi-annual report on the social situation (*Sozialbericht*) published by the Federal Ministry for Social Security, Generations and Consumer Protection disclosed that women were at a 14% higher risk of falling below the poverty line than men.⁴⁵ Austria continued to have a relatively high gender income gap, according to some information the third highest within the old EU member states.⁴⁶

Also, a shadow report submitted to the United Nations' Committee on the International Covenant on Economic, Social and Cultural Rights (ICESCR) ahead of consideration of the third and fourth periodic report of the Austrian government under the framework of the convention, stated *inter alia* that the government's policy on increased flexibility of working arrangements was having predominantly bad effects on women in part time positions.⁴⁷ Furthermore, women were principally affected by the so-called working poor phenomenon: 52% of working women with children under the age of 15 did not earn enough to secure a minimum standard of living.⁴⁸

A growing concern is the number of female pensioners living below the poverty line: low income creates low pension benefits and with cutbacks on social support regimes, many women face retirement on the verge of or in poverty.

A comparative study on gender mainstreaming found that gender mainstreaming policy, the implementation of which is required by way of EU policy guidelines and pertinent directives, had been used as a means of cutting down existing resources and limiting structures aimed at ensur-

ing and increasing equality between women and men.⁴⁹

An awareness raising campaign by the Ministry for Health and Women focusing mainly on equal sharing of domestic work and child care between men and women raised some eyebrows as well as questions about its substance. According to the web site of the said ministry, the 2002 census had revealed that women spent 62% of their working time with domestic chores, while men only devoted 21% of their time to such matters.⁵⁰

Two cases of domestic violence were submitted for consideration to the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW). The government was accused of "not having taken all necessary steps to protect women against violence" as both women were subjected to multiple forms of abuse and subsequently killed by their husbands.⁵¹

Rights of Sexual Minorities

The criminalization of consensual sexual conduct between men younger than 19 years-of-age continued to be an issue. An amendment in 2002 abolished a section in the criminal code (§ 209) prohibiting sexual conduct between an adult and a person under 19 years-of-age of the same sex, which was both inconsistent with long standing ECHR rulings and was declared inconsistent with the equal treatment clause by the Austrian Constitutional Court⁵² because the significantly higher age requirement for homosexuals was unjustified.

Despite the legal amendments, 1,434 women and men were still on record in the national criminal registry for offences under the abolished section. Both MPs and the federal president called for an amnesty law and an immediately effective redemption for those found guilty until 2002. The request was turned down by the minister for justice.⁵³ Also, the replacement for § 209 criminal code, § 207 b is

being applied too frequently according to members of parliament.⁵⁴

Aggressive Nationalism, Racism and Xenophobia

In light of events celebrating the 60th anniversary of the end of National Socialism, there were cases of denial of historic facts blended with nationalism, racism and xenophobia.

◆ In the Federal Chamber of the parliament, the chairperson-to-be, Siegfried Kampl of the Alliance for the Future of Austria (*Bündnis Zukunft Österreich*, BZÖ)⁵⁵ stated in April that *Wehrmacht* deserters were "murderers of their comrades" ("*Kameradenmörder*"). He added that after 1945 a "brutal persecution" of Austrian Nazis had taken place, pointing out that 99% of Austrians had been members of the National Socialist Party.⁵⁶

Partly because he was to assume the chairmanship of the chamber on 1 July, Kampl was pressured to resign. After initially agreeing to do so, he announced in late May that he would in retrospect rephrase his assertions but stood by the content. Subsequently the Constitutional Code had to be changed – with qualified majority – to avert Kampl's becoming chairperson.

It should also be noted that *Wehrmacht* deserters were not given any recognition for their suffering and courage respectively.

Also in April, another member of the Federal Chamber, John Gudenus, stated in a TV-news-magazine that taboos should be questioned and the existence of gas chambers should be verified scientifically. The federal president, Heinz Fischer, urged Gudenus to resign.⁵⁷ Gudenus, who had previously resigned as a MP due to similar statements, resigned from the Federal Chamber and the FPÖ. Subsequently his immunity was lifted and a criminal investigation was initiated under the Prohibition Act. A trial is expected for the first half of 2006.

◆ The British historian David Iving, who has become infamously famous for Holocaust-denial was arrested on charges dating back to 1989 while visiting the province of Styria for a lecture. He was tried for denial of National Socialism in accordance with the Prohibition Act in early 2006 and sentenced to three years imprisonment.

In autumn the election campaign for the City Council of Vienna was used as a platform for xenophobic slurs by the FPÖ. This kind of populism brought the far-right-wing party, now lead by Heinz-Christian Strache after Jörg Haider split off with all ministers to form the BZÖ, some 15% support from the electorate. The slogans were in particular directed against persons of Muslim faith. Similarly, the election campaign in the province of Styria was used as a platform for xenophobic advertisements.

In its annual report 2005 ZARA (*Zivilcourage und Anti-Rassismus-Arbeit*), the Vienna based counseling center for victims and witnesses of racism, listed 1,105 racist incidents.⁵⁸

Asylum Seekers and Refugees

The new Asylum Act, which entered into force on 1 January 2006, is among the strictest in the European Union. Among others, it determines "aliens" in a narrow sense, thereby breaching the binding standards set by the Geneva Convention. The Austrian office of the United Nations High Commissioner for Refugees (UNHCR), commenting on the draft legislation, detected "blanket mistrust" ("*pauschales Misstrauen*") against aliens in the proposed amendment.⁵⁹

The radical overhaul of the Asylum Act was a manifestation of the increasingly restrictive trend in Austria's approach to foreigners and persons in need of protection in particular. As the director of Caritas Vienna, a Catholic relief organization, summarized the development: "The Asylum

Law is about protecting human beings on the run and not about protecting from human beings on the run."⁶⁰

One of the Asylum Act's major goals, the reduction of asylum cases, was achieved prior to the coming into force: asylum applications decreased by 8,5% 2005 compared to 2004.⁶¹

In addition to the already mentioned forced feeding of people who subject themselves to hunger strike, the amended Asylum Act also drastically decreases the liberty of movement of asylum seekers, demanding that they be within reach of the authorities without exception. The various measures aim at averting alleged abuse of asylum and increase the likelihood of detention and subsequent deportation significantly.

Trafficking in Human Beings

Following an amendment to the criminal code (article 104 a), human trafficking for the purpose of sexual exploitation, removal of organs or the exploitation of manpower is prohibited since 2004. This amendment was welcomed also by the United Nations Committee on the Rights of the Child in its concluding observations.⁶² As an investigative report in the weekly *Falter* revealed, however, in 2005 many of the clients of under-age trafficking victims continued to go unpunished for their conduct.⁶³

The NGO Counseling, Education and Assistance for Female Migrants (LEFÖ) - stated that many of the trafficking victims became double victims as they were criminalized for alleged offences in connection with their being trafficked women, such as illegal prostitution and falsification of documents.⁶⁴

Endnotes

- ¹ See Request for Information by Members of the Federal Chamber of Parliament, 2349/J-BR/2005, also available online www.parlament.gv.at/pls/portal/docs/page/PG/DE/BR/J-BR/J-BR_02349/fname_049616.pdf and the response from the Minister for Education, Science and Culture, 2159/AB-BR/2005, available online www.parlament.gv.at/pls/portal/docs/page/PG/DE/BR/AB-BR/AB-BR_02159/imfname_052808.pdf.
- ² For details, see IHF, *Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2005 (Events of 2004)*, at www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=4057. The website of the HRAB can be accessed at www.menschenrechtsbeirat.at.
- ³ *Wiener Stadtzeitung Falter*, 11 May 2005.
- ⁴ *Hin & Her*, Daniel Glattauer, "Gestik und Aussehen," No. 3, 2005, 15; *Der Standard*, "Kritik an Richter: Falter zu 7.000 Euro Entschädigung verurteilt," 12 December 2005, <http://derstandard.at/?url=/?id=2272575>.
- ⁵ *Der Österreichische Journalist*, 12 May 2005, 3.
- ⁶ Harald Fidler, *Im Vorhof der Schlacht*, 155 ff.
- ⁷ Kartellgesetznovelle 2006, in particular §§ 10 & 13 (2) Kartellgesetz (Anti Trust Act).
- ⁸ See General Comment No. 10 on Article 19 (Freedom of opinion) by the Human Rights Committee, in particular para. 4, also included in the Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, HRI/GEN/1/Rev.7; for an interpretation of the General Comment see in particular Vojin Dimitrijevic, former member of the Committee, "The Roles of the Human Rights Committee, Vortrag vor dem Europe Insitut der Universität des Saarlanfes," in *Vorträge, Reden und Berichte aus dem Europainstitut*, Nr. 37, 10, also available at www.europainstitut.de/euin/schrift/download/nr37.pdf.
- ⁹ *Wirtschafts-Trend Zeitschriftenverlags GmbH v. Austria*, ECtHR 58547/00, 27 October 2005.
- ¹⁰ *Snittpunkt*, Film by Tristan Sindelgruber and Angelika Schuster, at www.operation-spring.com.
- ¹¹ *Der Standard*, 30 December 2005.
- ¹² See also the questions of members of parliament to the minister of justice, "Parlamentarische Anfrage," 3592/J XXII.GP, 8 November 2005 and 3601/J XXII.GP, 10 November 2005, at www.parlament.gv.at.
- ¹³ As quoted in the questions of members of parliament to the minister of justice, "Parlamentarische Anfrage," 3073/J XXII.GP, 25 May 2005, at www.parlament.gv.at.
- ¹⁴ See ORF, "Vergewaltigungsoffer droht Verleumdungsklage," at <http://oe1.orf.at/inforadio/51024.html>.
- ¹⁵ *Osinger v. Austria*, No. 54645, 24 March 2005; *Hanak v. Austria*, No. 70883/01, 22 December 2004; *Kern v. Austria*, No. 14206/02, 24 February 2005; *Zuckerstatter and Reschenhofer v. Austria*, No. 76718/02, 24 February 2005; *Blum v. Austria*, No. 31655/02, 3 February 2005; *Geyer v. Austria*, No. 69162/01, 7 July 2005; *Jancikova v. Austria*, No. 56483/00, 7 April 2005; *Novisky v. Austria*, No. 34983/02, 24 February 2005; *Riepl v. Austria*, No. 37040/02, 3 February 2005; *Osinger v. Austria*, No. 54640/00, 3 February 2005.
- ¹⁶ See IHF, *Human Rights in the OSCE Region: Europe, Central Asia and North America, Report 2005 (Events of 2004)*, at www.ihf-hr.org/documents/doc_summary.php?sec_id=3&d_id=4057, and Amnesty International Austrian Section, "Ausgewählte Schlaglichter," 14 November 2005, at www.amnesty.at/fokus/oesterreich/wague_Schlaglichter.pdf.
- ¹⁷ *Ibid.*

- ¹⁸ Committee Against Torture, *Conclusion and Recommendations of the Committee Against Torture on Austria, 35th Session, November 2005, CAT/C/AUT/CO/3/CPR.1*, 24 November 2005.
- ¹⁹ *Der Standard*, "Misshandlungsvorwurf gegen Polizisten: Würgespuren nach Parkvergehen," 14 December 2005, at <http://derStandard.at/?id=2275539>.
- ²⁰ See, in particular, cases involving the use of firearms, in Nowak/Lubich, "Report on the Situation of Fundamental Rights in Austria in 2004," CFR-CDF/AT/2004 and the further progress of proceedings involving the discussion of police action in 2005.
- ²¹ Response to an information request by members of parliament, "Parlamentarische Anfrage," 2748/AB XXII. GP, 20 May 2005, at www.parlament.gv.at/pls/portal/docs/page/PG/DE/XXII/AB/AB_02748/FNAMEORIG_042014.HTML.
- ²² CPT, *Report to the Austrian Government on the visit to Austria carried out by the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment from 14 to 23 April 2004*, 21 July 2005, CPT/Inf/ (2005) 13, at www.cpt.coe.int/documents/aut/2005-13-inf-eng.pdf
- ²³ See the response to an information request by members of the Federal Chamber ("Parlamentarische Anfrage") by the minister of justice, 2163/AB-BR/2005, 9 December 2005, at www.parlament.gv.at/portal/page?_pageid=908,973990&_dad=portal&_schema=PORTAL.
- ²⁴ Provided by Human Rights Without Frontiers (HRWF, IHF cooperating organization).
- ²⁵ In 1997, Jehovah's Witnesses were denied recognition as a religious society under the 1874 Law. They filed a complaint with the European Court for Human Rights in 1998, arguing that the group had not yet been granted full status as a religious entity in the country under the law, despite a two-decade struggle. The case was still pending at the end of 2005.
- ²⁶ Human Rights Without Frontiers, Int., *Religionsfreiheit, Intoleranz und Diskriminierung in der Europäischen Union (Österreich 2003-2004)*, p. 32, 2004, at www.hrwf.net.
- ²⁷ The Roman Catholic Church, the Islamic Religious Community, the Lutheran and Presbyterian Churches (Evangelical Church, Augsburg and Helvetic Confessions) the Eastern Orthodox Churches (Russian, Greek, Serbian, Romanian and Bulgarian).
- ²⁸ The Old Catholic Church, the Austrian Buddhist Religious Association, the Jewish Religious Association, the New Apostolic Church, the Church of Jesus Christ of Latter-day Saints (Mormons), the Armenian Apostolic Church, the Coptic Orthodox Church, the Syrian Orthodox Church and the Methodist Church.
- ²⁹ Groups must have at least 300 members to qualify for the status of confessional communities. According to the Ministry of Education and Culture, as of July 2005, thirteen movements had introduced an application: the Church of Scientology and the Hindu Mandir Association withdrew their applications. The Hindu Mandir Association reapplied under the name Hindu Religious Community and was granted the new status. The application of Sahaja Yoga was rejected in 1998.
- ³⁰ Jehovah's Witnesses (23,206 members), the Federation of Free Christian and Pentecostal Congregations (7,186 members) and, with a smaller membership, the Federation of Evangelical Congregations, the Church of the Seventh-Day Adventists, the Hindu Religious Society, the Federation of Baptist Congregations, the Christian Movement for Religious Revival, the Baha'i Religious Community, the Mennonite Free Church and the Pentecostal Community of God.
- ³¹ See, for example, child custody in the case *Hoffman v. Austria* at the European Court of Human Rights.

- ³² Forum gegen Antisemitismus, at www.fga-wien.at.
- ³³ For details of the act and annotations, see, for example, www.gleichstellung.at/rechte/bgstg.php.
- ³⁴ Ibid.
- ³⁵ Federal Ministry for Security, Generations and Consumer Protection, "BM Haubner: Herbert Haupt wird Behindertenanwalt," 23 December 2005, at www.bmsg.gv.at/cms/site/news_einzel.htm?channel=CH0008&doc=CMS1135347703207 (last visited 3 January 2006).
- ³⁶ See Bizeps Info Online, "Haupt: Vertrauen kann man nur gewinnen durch positive Arbeit," 28 January 2006, at www.bizeps.or.at/news.php?nr=6629 (last visited February 3, 2006) as well as "Massive Kritik an Haupt hält an", 18 February 2006, www.bizeps.or.at/news.php?nr=6698 (last visited 20 February 2006).
- ³⁷ See European Commission Against Racism and Intolerance, *Third Report on Austria*, CRI (2995) 1, released 15 February 2005, p. 22, at www.coe.int/T/E/human_rights/ecri/1-ECRI/2-Country-by-Country_approach/.
- ³⁸ See judgment of the Constitutional Court, Verfassungsgerichtshof (VfGH), G 213/01, 13. December 2001, at www.vfgh.gv.at.
- ³⁹ See Navigatorfilm, Parlamentarische Anfrage und ORF-Reaktion, 28 February 2006, at www.artikel7.at.
- ⁴⁰ See Film.at, F.A.Q, at www.film.at/f_a_q_frequently_asked_questions.
- ⁴¹ See Österreichische Liga für Menschenrechte, *Menschenrechtlicher Befund für Österreich 2005*, p. 17.
- ⁴² Ibid.
- ⁴³ Stellungnahme, Bundeskanzleramt-Verfassungsdienst, 16. September 2005, BKA-601.283/0001-V/A/5/2005, www.parlinkom.gv.at/pls/portal/docs/page/PG/DE/XXII/ME/ME_00340_22/fname_052481.pdf (last visited 3 February 2006).
- ⁴⁴ Data provided by the Office of the Ombudsperson for Equal Opportunities for Women and Men.
- ⁴⁵ Ministry for Social Security, Generations and Consumer Protection, *Bericht über die soziale Lage*, 2005, p 213.
- ⁴⁶ See Background document "Commission staff working paper revised following bilateral and EMCO meetings," COM (2005) 13 final.
- ⁴⁷ See FIAN Österreich und Evangelische Entwicklungszusammenarbeit (Hsg.), *Umsetzung der Internationalen Konvention über wirtschaftliche, soziale und kulturelle Rechte in Österreich, Kommentar zum 3. und 4. Staatenbericht der österreichischen Bundesregierung anhand von ausgewählten Themen*, September 2005, p. 37.
- ⁴⁸ Ibid.
- ⁴⁹ See Mageeq Project, Birgit Sauer/Karin Tertinegg, "Policy Frames and Implementation Problems: The Case of Gender Mainstreaming," at www.mageeq.net/docs/austria.pdf.
- ⁵⁰ Request for information by a member of parliament, 3622/JXXII. GP, 16 November 2005, at www.parlament.gv.at/pls/portal/docs/page/PG/DE/XXII/J/J_03622/imfname_052050.pdf.
- ⁵¹ *Falter*, "Wenn der Staat versagt," No. 26, 2005.
- ⁵² See Judgment of Constitutional Court, G6/02, 21 June 2002.
- ⁵³ See response request for information by a member of parliament by the minister for justice, 3079/AB XXII. GP, 8 December 2005, at www.parlament.gv.at/pls/portal/docs/page/PG/DE/XXII/AB/AB_03079/fname_047070.pdf, and request for information by a member of parliament, 3162/J XXII. GP, at; see also "Federal President urges Pardon," at www.

- rklambda.at/dokumente/news_2005/News-en-BP-050625-Antw-PA-050915.pdf.
- ⁵⁴ Ibid.
- ⁵⁵ Alliance for the Future of Austria (*Bündnis Zukunft Österreich*, BZÖ), a self described "movement," which split from the Austrian Freedom Party (*Freiheitliche Partei Österreichs*, FPÖ) after massive losses in elections.
- ⁵⁶ See Minutes of the 720th Session of the Federal Chamber, page 125, second paragraph, www.parlament.gv.at/pls/portal/docs/page/PG/DE/BR/BRSTZ/BRSTZ_00720/fname_orig_044485.html
- ⁵⁷ See ORF, "Deutliche Worte gegen Gudenus," at www.orf.at/050428-86389/index.html?url=http%3A//www.orf.at/050428-86389/86360txt_story.html.
- ⁵⁸ ZARA et al., *Racism Report 2005*, at www.zara.or.at/materialien/rassismus-report/rassismus-report-2005.pdf.
- ⁵⁹ UNHCR, *Stellungnahme zum Entwurf für das Bundesgesetz, mit dem das Asylgesetz 2005 und das Fremdenpolizeigesetz 2005 erlassen sowie das Bundesbetreuungsgesetz, das Personenstandsgesetz, das UBASG und das EGVG geändert werden*, 5 April 2005, at www.unhcr.at/pdf/1143.pdf.
- ⁶⁰ Quoted in *Hin & Her*, "Die Kuschelgesetze," No. 2, 2005, p. 7.
- ⁶¹ See ORF/Volksgruppen, "Zahl der Asylanträge sinkt weiter," <http://volksgruppen.orf.at/integration/stories/43751/>.
- ⁶² *Committee on the Rights of the Child, Concluding observations: Austria*. 31/03/2005. CRC/C/15/Add.251. (Concluding Observations/Comments) CRC/C/15/Add.251, 31 March 2005, at [www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/ae2760331a273f7bc125702f0032bdf5?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/ae2760331a273f7bc125702f0032bdf5?OpenDocument).
- ⁶³ *Falter*, "Einfach Hinklatschen," No. 34, 2005.
- ⁶⁴ LEFÖ, *Implementation of the International Covenant on Economic, Social and Cultural Rights in Austria – Comments to the Third and Fourth Periodic Report of the Republic of Austria based on Selected Issues, Part I: Fulfilment of Domestic Obligations*, pp. 61/62.