



Some FPÖ campaign posters from the Vienna local elections clearly linked immigration and criminality. "Foreigners: I understand the concerns of the Viennese", "Criminality: I want to live safely too."
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IHF FOCUS: Freedom of expression; peaceful assembly; independence of the judiciary; ill-treatment and misconduct by law enforcement officials; intolerance, xenophobia and racial discrimination; protection of ethnic minorities; protection of asylum seekers and immigrants; rights of homosexuals; past human rights abuses.

The October 1999 parliamentary elections brought to power a new Government coalition with the extreme right Freedom Party (FPÖ) that is known for discriminatory and racist statements by its leadership, including its former Chair and Governor of the Federal State of Carinthia, Jörg Haider. The new Government was sworn in on 4 February. As a protest against the FPÖ participation in the Government, the other 14 EU member States imposed bilateral "measures"- widely perceived as "sanctions"- on Austria, in practice cutting official relations to the minimum. In the shadow of the debate on the "EU measures" remained many important political, economic and social issues affecting all individuals living in Austria.

The "measures" were lifted in September following the publication of the report by the "Three Wise Men" - Martti Ahtisaari, Jochen Frowein and Marcelino Oreja - whom the EU had charged with the task to look into Austria's Government's commitment to common European values, in particular concerning the rights of minorities,

refugees and immigrants, and to evaluate the political nature of the FPÖ. The report concluded that the Austrian Government was committed to common European values and its respect of the rights of the above-mentioned groups was "not inferior" to that of the other EU member States. However, the report noted that the FPÖ was a right-wing populist party with radical elements, and that it had exploited and enforced xenophobic sentiments in its campaigns. According to the report, FPÖ activities had "created an atmosphere in which openly expressed remarks against foreigners became acceptable, causing feelings of anxiety." The report also criticised the FPÖ's attempts to suppress criticism by the continuous use of libel procedures.¹

Freedom of Expression and the Media

Since the autumn of 1999, there has been a clear general tendency toward more restricted judicial interpretation of freedom of expression versus increased protection of individuals against alleged li-

bel or defamation. Many courts have been occupied by cases filed by Jörg Haider and other FPÖ leaders against journalists, political scientists and journals. Many of them were submitted by the legal office of Dieter Böhmdorfer (& Ghneff), the new FPÖ Minister of Justice and former lawyer of Jörg Haider and the FPÖ.

◆ On 11 May Professor Anton Pelinka, a leading political scientist and former chair of the Austrian Helsinki Committee, was found guilty by the Viennese Criminal Court (*Straflandesgericht*) for having “defamed” the character of Jörg Haider. Pelinka was fined the amount of 60,000 ATS (approximately U.S.\$ 4,500) in a case that was originally brought by Haider’s then lawyer Dieter Böhmdorfer. The basis for the conviction was Pelinka’s statement to Italian television station RAI on 1 May 1999: “In his career, Haider has repeatedly made statements which amount to trivialising National Socialism. Once he described death camps as penal camps. On the whole, Haider is responsible for making certain National Socialist positions and certain National Socialist remarks more politically acceptable.” Pelinka appealed against the sentence.²

◆ In another pending case, Pelinka stated in an CNN interview, which was broadcast on 27 September 1999: “Comparing immigrants to parasites, is what the Nazis did regarding to the Jews. I don’t claim, that Haider is thinking that he will build an Auschwitz-death-camp somewhere for immigrants, but he is using the same prejudices, the same sentiments as the Nazis did to win popular acceptance by exploiting xenophobic racism.” On 24 October a Vienna court acquitted Pelinka of the charges. Haider’s lawyer appealed against the decision.³

After the May court decision, the IHF stated that “the court is in effect helping Haider’s political programme, intimidating any citizen who tries to expose his views for what they are.” It emphasised that the rul-

ing was inconsistent with the case law of the European Court of Human Rights, which has repeatedly ruled that politicians and public figures do not enjoy the same protection against criticism as private individuals.⁴ Following the October acquittal the IHF noted that the many libel cases that occupied Austrian courts showed that something was seriously wrong about the judicial interpretation of libel. It made the point that the question could be posed as to the degree of awareness of judicial officials concerning the jurisprudence of the ECHR, which is a part of Austrian constitutional law. The IHF also said that differences in the judicial interpretation of freedom of speech raised concern about guarantees of this fundamental human right under Austrian law.⁵

In addition, a statement by Justice Minister Böhmdorfer that the idea (stemming from Jörg Haider) of applying criminal law in cases where parliamentarians express criticism of the current Government was “worth considering” was deeply worrying.

Freedom of the Media

The existence of parties in the Government with authoritarian tendencies, the perpetuation of a state monopoly over television and an atypical press market concentration were three factors hindering full freedom of the media in Austria in 2000. In its February 2001 report, Reporters sans frontières (RSF) denounced numerous personal attacks against journalists, multiple legal actions against the press and an excessive increase in interventions into the work of editorial staff responsible for political news at the public sector broadcasting media in Austria. There has been a dramatic increase in the number of libel cases and several dailies or weeklies have had dozens of court cases with FPÖ leaders.⁶

Jörg Haider already earlier sued journalists and prominent persons for similar statements as those of Pelinka’s, including Peter Michael Lingens of the journal *Profil*; Hans Rauscher of the newspaper *der*

Standard; and Wolfgang Neugebauer, director of the Documentation Centre on Austrian Resistance (*Dokumentationsarchiv des österreichischen Widerstandes*). The journal *Profil* and the Socialist Youth Association were sentenced in 1999.

Still in 2001 broadcasting was kept under state control in Austria. The State still had a quasi-monopoly over both radio and television, and Government parties were reportedly increasingly intervening in the work of editorial staff responsible for political news at the public sector broadcasting media.⁷

Two press groups owned the majority of titles in a market that had approximately six million readers. A tabloid called *Die Kronenzeitung* had an overwhelming predominance in the country, with about 43 percent of the market share.⁸

◆ Especially the state Radio and Television ORF has been under constant pressure from the new Government. Links to websites critical of the Government published on the Internet-site of the ORF have suddenly disappeared allegedly after intervention from the Government.⁹

◆ University Professor Ruth Wodak from the Institute for Languages of the University in Vienna was asked to give an interview in ORF on her research of racist and anti-Semitic language in public life in Austria and other EU States for the programme "Kunststücke" on 17 February 2001. During a preparatory discussion held on 14 February, with the editor in charge, Wodak asked to use materials from the ORF archives, showing examples from parliamentary debates and televised discussions involving politicians from FPÖ,¹⁰ but was informed by the editor that this had been refused "from above." At this point Ruth Wodak was told by the head of the programme, that she would not be allowed to mention names of politicians, but had to stick to the neutral term "Austrian politicians." The reason given was that these were "explosive times" and that head of

the programme feared for the future of his programme. Wodak claimed that this was the first time she had experienced this kind of censorship in the ORF.¹¹

An important trial on past abuses opened in September, with the accused bringing charges against the media.

◆ In September, Dr. Heinrich Gross¹² the doctor accused of murdering children at Spiegelgrund, the Nazi euthanasia centre in Vienna, brought a private case against Austrian daily *Die Presse* for referring to a documentary about Spiegelgrund and state Television ORF for reporting on allegations relating to Spiegelgrund which he claimed prejudiced his chances of a fair trial. The charges were rejected by the Vienna first instance court but a second instance hearing against *Die Presse* was still pending as of this writing, after Gross's lawyer appealed against the decision. Austrian journalists and commentators expressed concern at Gross's lawyer's use of the Austrian Media Law (Paragraph 6) to claim that the reports in question "insulted the dignity" of Gross.

Peaceful Assembly

Spontaneous demonstrations – not organised by specific organization in order to escape possible fines and retaliation – against the new Government have taken place every Thursday since the new coalition Government was sworn in. In general, the demonstrations have been peaceful with only minor isolated incidents.

On 2 March the existence of a special police unit (*Sondereinheit Kriminaldienst-SEK*) became public, when masked police officers arrested demonstrators, threatening them with weapons and putting them into a civilian car, without identifying themselves as police officers. This unit, who at the time consisted of 55 officers working on a volunteer and unpaid basis and some of whom had also allegedly been involved in ill-treatment, was dissolved at the end July following numerous complaints about

their activities. These incidents were filmed, and made public, and the head of the police admitted that masked police officers had been infiltrating the demonstrations.¹³ Some demonstrators were charged with resistance to state power.

Independence of the Judiciary

The professional association of the new Minister of Justice Dieter Böhmdorfer as the former lawyer of the FPÖ and its leader Jörg Haider raised doubts about his neutrality and the genuineness of his conviction to work for human rights and the rule of law. It also raised fears about his possible interference in the course of justice, particularly in the cases involving FPÖ politicians. He was also under suspicion for having used confidential documents in 1996 in a defamation trial for Jörg Haider and Ewald Stadler,¹⁴ FPÖ regional council member in Lower Austria. In addition, in an interview regarding Jörg Haider's possible involvement in criminal activities, Justice Minister Böhmdorfer said publicly that he was convinced about the innocence of his "friend" Jörg Haider.¹⁵

In December 1,300 judges and state prosecutors (two thirds of all) made an appeal protesting against pressure exercised by authorities in the operation of courts. Particularly investigations about some FPÖ members' alleged illegal accessing of secret criminal police data was at the centre of the debate. A dozen law enforcement officials in Vienna, Salzburg and Carinthia were temporarily suspended from duty for allegedly illegally calling up data for FPÖ functionaries from the police data base. The case was still pending as of this writing. The judges' outcry was triggered by the demand of the FPÖ Vice-Chair and Parliamentary Group Leader Peter Westenthaler to have those prosecutors suspended from office who had initiated investigations into the alleged misconduct by the party officials.

The IHF expressed concern over the independence and impartiality of judges in its statement of 18 December and considered

that the judges' and prosecutors' action was an unprecedented warning signal in Austria that politicians ought to take seriously.

Fair Trial and Detainees' Rights

The quality of interpretation for non-German speakers in court was of concern. Even for the most common languages such as English there was a lack of qualified interpreters. The problem was evident also in some IHF-observed trials in August against alleged drug dealers.

In several court sessions involving drug dealing, masked witnesses wearing reflecting glasses who were not mentioned by name – all allegedly for security reasons – gave evidence against alleged African drug dealers. It was claimed that the witnesses were petty criminals organised by the police against profit to give evidence the police wanted to hear to solve the cases.¹⁶ This was done although the European Court of Human Rights has made it clear that basing a process mainly on evidence given by an unidentified witness violates due process standards.

◆ Michel Kabongo, of African origin, was sentenced to five years in prison only on the basis of a statement of an unidentified, masked witness.¹⁷

Ill-Treatment and Misconduct by Law Enforcement Officials

The UN Committee Against Torture considered the second periodic report of Austria in November 1999. It welcomed, among other things, the fact that the Federal Government was required to submit an annual security report to the Parliament; the establishment of an inspection system in accordance with the provisions of Article 11 of the Convention; and modifications to the Criminal Procedure Code and the Basic Rights Complaint Act.¹⁸

The Committee expressed concern about the fact that a definition of torture as provided in Article 1 of the UN Convention against Torture and Other Cruel, Inhuman

or Degrading Treatment was not included in the Austrian penal legislation. Therefore the offence of torture did not appear as punishable by appropriate penalties as required by Article 4(2) of the Convention. The year 2000 saw no improvements in this issue.¹⁹

The Committee also noted that, notwithstanding the entry into force of the 1993 Security Police Act, allegations of ill-treatment by the police were still reported.²⁰ The UN Committee noted that potential complaints of abuse committed by police authorities may be discouraged by the provisions enabling the police to accuse of defamation a person who lodges a complaint against them.

The UN Committee also pointed to insufficient measures of protection of individuals under a deportation order, which were not in conformity with the provisions of Articles 3 (prohibition of *refoulement* to a country where a person could be in danger of being subjected to torture) and 11 of the UN Convention (requirement of systematic review of interrogations rules, instructions and methods and practices for the treatment of arrestees, detainees and prisoners).

Amnesty International also reported of alleged ill-treatment of detainees by police officers, in many instances upon arrest. A large majority of allegations came from non-Caucasian Austrian and foreign nationals. Most reported that they had been subjected to repeated kicks, punches, kneeling, beatings with truncheons and spraying with pepper after being restrained. In many cases the allegations of ill-treatment were supported by medical reports and in some cases the detainees were taken by the arresting police officers to receive medical attention during their initial period in custody. Police officers were also alleged to have used racist language in some instances.²¹

Amnesty International expressed concern that, when formal complaints had been lodged and investigations opened in cases of alleged police ill-treatment, they have been slow, lacking in thoroughness

and often inconclusive. As the UN Committee, Amnesty International expressed concern that people who lodged complaints of ill-treatment against the police ran the risk of counter-charges, such as defamation, resisting arrest or physical assault.²²

There was by the time of writing still no official sanctions with regards to the death of Marcus Omofuma, who died during deportation in May 1999. The dismissal of three police officers involved was suspended in February 2001, before the case had been tried in court.²³

The European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) visited Austria in 2000, but its findings were not published by this writing.

Conditions in Prisons and Detention Facilities and Prisoners' Rights²⁴

According to media reports, conditions in the Linz prison amounted to inhuman treatment and punishment. Its "special cells" had no windows and they were ice cold in the winter. Officially, the windows were taken away in order to avoid the inmates hurting themselves. According to at least one inmate, the prisoners were put into the cells in their underwear and were even hosed with cold water, sprayed with pepper and beaten with truncheons. Windowless cells were also reported in Vienna/Favoriten where one prisoner infected with HIV claimed he had been refused medical treatment "for economic reasons." Another was allegedly not hospitalised for the same reason. The director of the facility said the prisoner could have undergone the same treatment in another prison. Allegedly one prisoner was tied up by his arms and legs to his bed for one night. The conditions were partially confirmed by authorities.²⁵

◆ On 3 May Arise Ibekwe died after five days in jail, following a drug raid. He had swallowed drugs, leading to poisoning, which was not discovered in time.²⁶

Protection of Ethnic Minorities²⁷

Since 1976, the Austrian legislation has recognised six national minorities: the Croats (about 30,000), Slovenes (about 20,000), Hungarians (about 20,000), Czechs (about 10,000), Slovaks (about 1,000), and Roma and Sinti (122).²⁸

On the basis of the Austrian State Treaty of 1955 the Slovene and Croatian minorities in the Federal States of Carinthia, Burgenland and Styria are expressly recognised and they are granted specific cultural rights, particularly regarding schooling.

Austria ratified the Framework Convention for the Protection of Minorities on 31 March 1998 and it came into force in July 1998. At its ratification Austria made a declaration in which it stated that the term "national minorities" within the meaning of the Framework Convention was understood to designate the above-mentioned groups mentioned in the 1976 Law on National Minorities (*Volksgruppengesetz*) and which live and traditionally have had their home in Austria and which are composed of Austrian citizens with non-German mother tongues and with their own ethnic cultures.²⁹

On 19 March 2000 the Constitutional Court decided that a limitation of education in the Slovene language in Carinthia was not in line with the specific provisions of the State Treaty. The Court ruled that there must be equality between the two languages - German and Slovene - in elementary school education in the minority schools. This judgement was, however, not fully implemented in 2000.

On 23 May the Government issued a decree that the official names of Burgenland municipalities with Hungarian and Croat minorities were to be bilingual. As a result, 260 bilingual sign-posts showing the names of villages were set up in 51 Burgenland villages.³⁰

On 31 May the Government proposed a specific provision to the Constitution regarding minorities. The provision - as adopted by the Parliament and in force since 1

August - reinforced the protection of the minorities. It prescribed that the fact of German being the official language did not affect the specific rights granted to linguistic minorities, and that the State recognised its traditional linguistic and cultural plurality which was represented in its autochthonous national minorities. It added: "Language and culture, existence and preservation of these national minorities must be respected, secured and promoted" (Article 8.1 and 2 of the Constitution).

This provision was, however, criticised by minorities for not expanding the number of the recognised minority groups and for its mere declaratory nature.³¹

In a 14 June ordinance, which came into force in October, rules were introduced about the use of the Hungarian language by members of the Hungarian minority in contacts with authorities.

The most important step in recent years towards safeguarding the rights of the Slovenes and Croats in Austria was the October 2000 decision of the Constitutional Court according to which the Carinthian regulation on the official language was unconstitutional. According to the Carinthian regulation, a municipality with a 10.4-percent Slovene minority was not allowed to use the Slovenian language as another official language in administrative affairs. The decision affected several municipalities with Slovene minorities. However, Article 7(3) of the State Treaty provides that members of the Slovene and Croatian minorities can use their mother tongues as an official language when dealing with administrative bodies and courts in the Federal States of Burgenland, Carinthia, and Styria. The authorities had based their 25-percent threshold on the 1976 Law on National Minorities which, according to the Constitutional Court, was too high. As a result, the Parliament is to amend the law on national minorities accordingly. In addition, the communities have to set up bilingual geographical signs in the above-mentioned municipalities.³²

Minorities criticised the lack of legal regulations on the status of minority language programmes in the public media, the representation of their members on the board of the national television and radio (ORF), the absence of bilingual forms and other legal documents, lack of translations of legislation, insufficient public support for minority media, cultural and educational activities and minority-language care of the elderly and sick.³³

◆ In August Radio MORA, a private radio station broadcasting in several minority languages, went off the air due to lack of financial resources.³⁴

Intolerance, Xenophobia and Racial Discrimination³⁵

In 2000, Austria still had no legal provisions for redress for discriminatory acts or behaviour that was based on racial, gender, ethnic or religious motives.

Also, public officials who abused their authority were rarely disciplined. The European Roma Rights Centre (ERRC, IHF co-operating organization), in its letter of 28 August concerning the situation of Roma in Austria stated that Austrian courts were reluctant to rule police officers guilty of racially motivated crimes. Even judges made racist statement, e.g. that most drug dealers were Africans.

◆ On 9 August an Austrian court again ruled that police officers had acted correctly when in April 1996 a riot squad stormed the flat of a Romani woman Violeta Jevremovic, physically abused her, insulted her ethnic origins and arbitrarily detained her for one night, leaving her children - all minors - to fend for themselves.

In addition to being loath to find police officers guilty of breaches, including racist abuse, Austrian courts often placed undue weight on officer testimony against Roma.

The ERRC further feared that the Austrian police itself was infected by racism on a systematic basis. Numerous cases of

alleged police misconduct against black people took place in 2000. In many cases the victims were insulted with discriminatory vocabulary, and some of them ill-treated so badly that they had to be hospitalised.

In the field of employment, foreigners faced numerous disadvantages based on complex legal provisions. The Council of Europe's Commission against Racism and Xenophobia (ECRI) criticised in its report on Austria, that "as compared to Austrian citizens, non-citizens are more likely to be employed on short-term contracts, earn on average lower wages, and may have curtailed access to unemployment benefits. In addition, their rather uncertain position in the labour market due to the system of work permits leads many non-citizens to accept working conditions that Austrian citizens would refuse, since loss of a job may imply losing a work permit and insufficient income may affect the right of residence in Austria." It concluded, "such unequal conditions on the labour market are discriminatory and may also lead to an increase in xenophobic attitudes amongst the general public."

Foreigners still had no right to the publicly owned apartments, which were reserved for Austrian nationals only.³⁶

Protection of Asylum Seekers and Immigrants

In 2000, Austria had an immigration quota of 8,518. The number of asylum seekers decreased by 9.1 percent compared to 1999 and totalled 18,280 persons. Only 1,002 applicants were granted asylum.³⁷

Austria was the only country in the EU that applied a quota system for family reunification.

◆ A family father from Kosovo, who had been living in Austria for eight years, had a job and an apartment big enough for the whole family (wife and three children aged 5, 8 and 13) wanted to bring his family to Austria because of the difficult situation in his

home country. Due to the quotas, he would have to wait 2-3 years to be granted family reunification, at which time the oldest child would have turned 15 and consequently be too old to be granted reunification.³⁸

In December the Parliament decided that the immigration quota for 2001 will remain the same as in 2001, i.e., 8,518 persons.³⁹

Insufficient State Support

One of the main problems of the Austrian asylum policies and practices was the fact that state support (*Bundesbetreuung*) was not granted to all asylum seekers. Only a few people benefited from it. The report of the EU "Three Wise Men" also criticised this fact and recommended that the Government guarantee a minimum financial support to all asylum seekers.

As access to the labour market in Austria was still prohibited for asylum seekers, especially those who did not receive state support continued to depend on financial aid delivered by NGOs. Although the new Minister of the Interior Ernst Strasser promised to change legislation in order to open the labour market for asylum seekers, no steps were taken to this end by the end of 2000.

The insufficient state support led in certain cases to a situation where no one took responsibility for asylum seekers, including their medical care

◆ The seven-month old Kosovar refugee baby, Samuel Bardhi, died of pneumonia after having been sent back and forth between Carinthia and Lower Austria in October. Following the expiration in June of an agreement between the Federal Government and the Federal States to share the costs of refugees not longer eligible for financial support, Jörg Haider threatened in September to send the refugees out of Carinthia to the state refugee camp Traiskirchen. The family of four travelled up to Lower Austria on a ticket paid by Carinthia, but had to wait for five hours out-

side the centre before they were even let inside. The following day they were sent back to Carinthia in a car with a broken window, so the baby spent the trip in a draft. The baby died on 28 November. Shortly after the funeral, the father was placed in custody awaiting deportation.⁴⁰

Conditions for Individuals Awaiting Deportation⁴¹

Many people awaiting deportation complained to the IHF about the arbitrary rules they felt to be exposed to, including impolite and aggressive treatment by prison guards.

The Advisory Board on Human Rights (*Menschenrechtsbeirat*) recommended in its report⁴² to the Minister of the Interior that measures be taken to fulfil international standards in order to improve the conditions of minors awaiting deportation in detention centres (*Schubhaft*). Some hundred minors have been among the annual total of some 15,000 people in detention awaiting deportation. According to the statistics of the Ministry of Interior, as of August 2000, 366 minors were in detention, 136 of them were between 14 and 16 years of age.⁴³ Many were kept in single cells, a violation of the standards set forth by the European Committee for the Prevention of Torture (CPT). There was a lack of adequate places which could serve as options to detention measures.

Prompted by long-term allegations of questionable treatment of immigrants and asylums seekers awaiting deportation in Austrian jails, an IHF delegation, composed of representatives of the Hungarian Helsinki Committee and the IHF Secretariat in Vienna, visited on 2 February 2001 two Austrian police jails, Rossauer Lände and Hernalser Gürtel, to look into conditions there. The total number of their inmates was 361, two thirds of whom were people awaiting deportation (187 men and 43 women). Fifteen juveniles were among them.

The IHF generally criticised the detention of people awaiting deportation in po-

lice jails because it gave the impression that the inmates were criminals, and recommended alternative means of detention and control that are less intrusive on freedom of movement.

While the IHF was received positively and in a co-operative way by representatives of the Ministry of the Interior and the responsible commander of the Viennese police jails, the IHF's request to visit prisons in Vienna and Linz was denied by the Ministry of Justice for "lacking legal grounds to do so" because "the condition in prisons is sufficiently controlled by various institutions..."

The IHF cited shortcomings regarding the detention of people awaiting deportation, including insufficient possibilities for telecommunication, inadequate medical care, difficulties in understanding the legal procedure, lack of information about the house rules (particularly for illiterate persons), insufficient legal advice, and shortage of articles concerned with personal hygiene. Some prisoners reported that access to the telephone was only permitted once or twice a week. In general, possibilities for activities left a great deal to be desired, including outdoor activities which were not always observed.

The Ministry of the Interior had contracts with NGOs (*Schubhaft-Sozialdienst*) to care for legal and social assistance for people awaiting deportation. Despite consultations on three afternoons per week, these organizations were apparently not able to fulfil the needs for individual assistance and legal advice.

The communication problem also obstructed proper medical assistance. In a makeshift way, inmates served as interpreters for each other. Medical assistance was offered every morning.

The IHF delegation talked with three prisoners who had been on hunger strike for eight, ten and eleven days, respectively, and who had been released at the recommendation of the responsible physician because of their poor physical condition. One of them said that he had not drunk any-

thing for three days, was shivering all over his body and seemed completely exhausted and weak. The total number of hunger strikers was 27, according to the police commander. The medical doctor's role in deciding on inmates' fitness to be kept in prison was crucial. Several inmates criticised the quality of the medical assistance, particularly at the police jail at Hernalser Gürtel. For economic reasons necessary medicine would not be prescribed and painkillers were prescribed instead of more thorough medical examinations.

◆ On 20 February 2001, the Independent Administrative Senate of Higher Austria decided that two Russians had been held in custody illegally and ordered their release. The two men had been detained since 4 February 2000 immediately after arriving in Austria from Chechnya. Both had filed an asylum claim on the day of arrival. Responsible authorities had failed to fulfil the necessary procedural measures to order a deportation but still continued to hold the men in custody - in violation of article 69 of the Alien's Law.⁴⁴

In a positive ruling of 12 January 2001, the Administrative Court (*Verwaltungsgerichtshof*) decided that it is forbidden to return asylum seekers from Austria as long as their asylum procedure is pending.⁴⁵

Rights of Homosexuals

Article 209 of the Criminal Code remained in force and was executed despite the fact that both the European Parliament and the UN Human Rights Committee had on several occasions urged Austria to repeal the article. The article prescribes 18 years as the age of consent for sex between gay men, compared to 14 years for heterosexuals and lesbians. In 2000, around one dozen homosexuals were imprisoned on the basis of Article 209

◆ On 16 March, a raid took place in a night sauna in Vienna. The police officers ordered its immediate closure due to "immoral same sex" activities. The guests were

ordered to leave the place, and some magazines were also confiscated.⁴⁶

◆ In July, Michael Wodicka (20) from Vienna was convicted for breach of Article 209 because he had had, when he was 19, gay sex with a 16 year-old boy. It did not matter that it was a consenting sexual relationship and that the court established that it was the 16 year-old boy who took the initiative for this relationship.⁴⁷

◆ August Sulzer was sentenced to one year in prison under Article 209 for “stroking” the genitals of a young man. He had been confined into an institute for abnormal criminals.⁴⁸ In 2000, the detention was prolonged by the court for another year without either the psychiatrist or the judge meeting the accused face-to-face. This decision was appealed, and due to massive protests Sulzer was finally released in January 2001.⁴⁹

Past Human Rights Abuses

Restitution

Legislation to establish a fund to pay compensation to about 150,000 survivors of Nazi forced labour was adopted by the Parliament on 7 July 2000. The Government and the business community will raise a total of ATS 6 billion (approximately U.S.\$ 408,5 million) for this purpose. There will be three categories of recipients: slave workers in concentration camps who will receive ATS 105,000 (U.S.\$ 7,148) each, forced labourers in business and industry (ATS 35,000 or U.S.\$ 2,382), and forced labourers in agriculture (ATS 20,000 or U.S.\$ 1,361). Children were classed in the same category as their parents. Women who gave birth to a child or were forced to undergo an abortion will get ATS 5,000 (U.S.\$ 340) extra compensation. The law can, however, only enter into effect when the Government and business have raised the necessary money and when the U.S. guarantee that no further class actions will be brought against Austrian companies.⁵⁰

After months of negotiations during 2000, on 18 January 2001 Austrian and U.S. Government officials and representatives of the organizations of victims clinched an accord on compensation for victims of Nazi “aryanisation.” The Austrian Parliament adopted the accord on 31 January 2001. Ariel Muzikant, President of the Vienna Jewish Community, pointed to still open questions in connection with the return of “aryanised” property: the agreement concerned only “aryanised” immobile property and not all property that is now held by public authorities. Moreover, he and Moshe Jahoda, Chair of the Claim Conference in Austria, were excluded from the parliamentary committee discussing this matter. For the above reasons, Muzikant initialled but did not sign the document.⁵¹

Experiments on Humans During Nazi Era

On 21 March, the trial opened in Vienna against Dr. Heinrich Gross, doctor at the Nazi Euthanasia centre “Am Spiegelgrund” (now a psychiatric hospital, Baumgartner Höhe) in Vienna between 1941 and 1945, on nine counts of murder relating to children killed at the centre during his employment there. The hearing lasted 20 minutes, before being postponed “indefinitely” by judge Karlheinz Seewald. The court heard that a medical examiner considered Gross showed “advancing brain decay” (before the trial began, defense lawyers had argued Gross was mentally unfit to stand trial). This judgment was much criticised after Gross gave an interview the same day to Austrian television in which he appeared far more lucid than in court. A second examination by a Swiss psychiatrist in June, however, concurred with the opinion of the first examiner. On 1 February 2001, Seewald was replaced by another judge, Thomas Kreuter, who ordered yet another medical examination of Gross. By March 2001, no date had been set for the trial to continue, and Gross remained free.

In all, some 700 children are believed to have died at Spiegelgrund after a “treat-

ment" which included starvation, induced hypothermia, injections which induced severe vomiting and muscle pain, and the administering of a strong medication which the charges against Gross claim accelerated the deaths of the children. "Lung infection" was often given as the cause of death on certificates signed by Spiegelgrund medical staff, including those of the nine children Gross stands accused of murdering.

Heinrich Gross, whose superior at Spiegelgrund, Dr. Ernst Illing, was sentenced to death after WWII for crimes committed at Spiegelgrund, was first sentenced to two years' hard labour for manslaughter in 1950. His appeal against this verdict led the second instance court to recommend that the case be reopened to consider more serious charges against Gross. Despite this, the State Prosecutor's Office

decided to close the case. In 1953 Gross joined the Social Democratic Party (SPÖ) and in 1955 he returned to Spiegelgrund to work as a psychiatrist. From 1960 until the time the investigation of murder charges began in 1998, Gross was also one of the most successful court psychiatrists in post-war Austrian history.

Gross had retained the brains of some of the Spiegelgrund children, which he used for research purposes during his post-war career. He was given his own research institute and in 1975 was awarded one of Austria's highest honours, the "Cross of Honour for Science and Art, 1st Class," which he retains as of this writing, despite appeals to President Klestil from survivors and relatives of victims of Spiegelgrund for this to be rescinded.

Endnotes

- ¹ *Report by Martti Ahtisaari, Jochen Frowein and Marcelino Oreja, Adopted in Paris on 8 September 2000.*
- ² IHF, "Austrian Scholar Convicted for Telling the Truth About Haider: A Threat to the Freedom of Expression," press release, 23 May 2000.
- ³ IHF, "Academic's Acquittal in Haider Defamation Case a Positive Sign: Concerns Over Freedom of Speech in Austria Remain," press release, 25 October 2000.
- ⁴ IHF, 23 May 2000.
- ⁵ IHF, 25 October 2000.
- ⁶ Reporters sans frontières (RSF), "Journalists Under Attack from Populist Right Eing," press release, 23 February 2001. Report available at www.rsff.org
- ⁷ *Ibid.*
- ⁸ *Ibid.*
- ⁹ TV Media, 16 February 2000.
- ¹⁰ Examples of such statements: "Every Bushnegger will in the future have the possibility to treat his colleagues in Austria" (Haider about the new Law on Doctors), *Der Standard*, 13 October 1998. Helene Partik-Pablé, FPÖ candidate for the local elections in Vienna 2001, stated in a debate in Parliament in 1999, that "Blacks (*Schwarzafrikaner*) do not only look different, they also are different, in the way that they are particularly aggressive," *Tiroler Tageszeitung*, 20 May 1999.
- ¹¹ Botschaft Besorgte Bürger, 12 May 2000.
- ¹² See Past Abuses: Experiments on Humans.
- ¹³ *Ibid.*
- ¹⁴ *Profil*, 30 October 2000.
- ¹⁵ *Falter*, No. 44/2000.
- ¹⁶ *Falter*, No 26/2000.
- ¹⁷ *Ibid.*
- ¹⁸ *Concluding Observations of the Committee against Torture: Austria*. 12/11/99. A/55/44, paras.46-50.

- ¹⁹ Ibid.
- ²⁰ Ibid.
- ²¹ Amnesty International, *Austria: The Alleged Ill-treatment of Detainees*, 23 February 2000.
- ²² Ibid.
- ²³ *Wiener Zeitung*, 6 February 2001 in UNHCR Pressespiegel of 6 February 2001.
- ²⁴ See also Protection of Asylum Seekers and Immigrants: Individuals Awaiting Deportation.
- ²⁵ *Falter*, "Spritz ihm was!", No. 47/2000.
- ²⁶ *Der Standard*, 10 May 2000.
- ²⁷ Unless otherwise stated, based on *Report by Martti Ahtisaari, Jochen Frowein and Marcelino Oreja, Adopted in Paris on 8 September 2000*.
- ²⁸ According to the 1991 census, based on the use of languages. Other estimates cite much higher figures for different groups, e.g. Croats 42,000, Slovenes 50,000, Hungarians 20,000-30,000, Czechs 15,000-20,000, Slovaks 5,000-10,000 and Roma 25,000.
- ²⁹ Framework Convention on Protection of National Minorities; <http://conventions.coe.int/treaty/EN/DeclareList.asp?NT=157&CM=8&DF=12/09/00>.
- ³⁰ Austrian Government, "Minority Rights Widened," 23 May 2000. It must be noted, however, that it took Austrian Governments 45 years to pass the appropriate law as the right to have topographic names also in minority languages was already anchored in the Treaty of Vienna of 1955.
- ³¹ "Kurzdarstellung einiger prägnanter Punkte zur Situation der Minderheiten in Österreich aus der Sicht der Burgenlandkroaten," August 2000.
- ³² Franjo Schruiff, "Sperrklausel Aufgehoben: Der Verfassungsgerichtshof hebt Einschränkungen im Minderheitenrecht die 25%-Sperrklausel auf – die Folgen für Gesetzgebung und Verwaltung, *Stimme von und für Minderheiten*, No. 37/IV 2000. The original decision at <http://www.vfgh.gv.at/vfgh/presse/V91-99.pdf>
- ³³ "Kurzdarstellung einiger prägnanter Punkte zur Situation der Minderheiten in Österreich aus der Sicht der Burgenlandkroaten," August 2000.
- ³⁴ Ibid.
- ³⁵ Based on the letter for the European Roma Rights Center to the "Three Wise Persons," 28 August 2000.
- ³⁶ *Der Standard*, 12 January 2001.
- ³⁷ UNHCR Mediaservice, 30 January 2001.
- ³⁸ *Salzburger Nachrichten*, 29 December 2000.
- ³⁹ *Austria Today*, 19 December 2000.
- ⁴⁰ *Format*, 18 December 2000.
- ⁴¹ Based on IHF, "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 2000.
- ⁴² Bericht des Menschenrechtsbeirates zum Problem "Minderjährige in Schubhaft," 11 July 2000.
- ⁴³ *Tiroler Tageszeitung*, 14.8.2000
- ⁴⁴ SOS Menschenrechte, "Unabhängige Verwaltungssenat bestätigt: Russen rechtswidrig in Schubhaft, 21 February 2001.
- ⁴⁵ UNHCR, "Asylwerber dürfen künftig weder zurück- noch abgeschoben werden," 12 January 2001.
- ⁴⁶ Botschaft Besorgte Bürger, 12 May 2000.
- ⁴⁷ Homosexuelle initiative Wien (HOSI), February 2001.
- ⁴⁸ HOSI, press release, 22 January 2001.
- ⁴⁹ Ibid.
- ⁵⁰ Austrian Government, "Law on Reconciliation Fund Passed Unanimously," 19 July 2000.
- ⁵¹ *Neue Zeit*, 1 February 2001.