



A Freedom Party election campaign placard depicting Islam as a "danger" to the Austrian home. October 2006. © IHF

The first year of implementation of what was considered one of the harshest immigration and asylum regime in the European Union (EU) was presented by the Austrian government as success through "positive statistics," such as decreased numbers of asylum seekers and naturalizations. Individual injustices came to the fore only sporadically and case-specific intervention was sometimes considered, however, no amendments to the restrictive laws were officially proposed.

Human rights obligations were fulfilled most of the time, while those rights that were inadequately fulfilled or violated suggested that there were significant weaknesses in human rights awareness and implementation. The need for improvement in Austria's human rights policies was particularly highlighted in the aftermath of what turned out to be the first publicly known case of torture in Austria since the National Socialist era: a Gambian national was tortured by policemen after he did not consent to his deportation.

As in previous years, the European Court of Human Rights (ECtHR) held that Austria's courts violated the right to freedom of expression, bringing it in second place after Turkey in the number of judgments against states for violations of this right. The court also again found violations of the right to a fair trial, particularly because of lengthy procedures. Furthermore, the prohibition of a protest against a gathering of former members of the *Waffen-SS* was said to infringe the right to peaceful assembly.

In the run-up to the October general election, the country's two right-wing populist parties, the Alliance for Austria's Future (BZÖ) and the Freedom Party (FPÖ), made prominent use of anti-immigrant and xenophobic statements in their campaign activities. Racism, overtly and covertly, particularly against African people remained a problem also in terms of police treatment.

The situation of national minorities continued to be in need of improvement: the "discussion" on bi-lingual topographic signs in Carinthia, home, among others, to a Slovene minority produced a lot of political fervor but did not improve the factual overall situation and implementation of minority rights. Neither the State Treaty ratified in 1955 nor the 30-year-old Ethnic Groups Act (*Volksgruppengesetz*) were fully implemented, especially due to fierce opposition by the right-wing governor of Carinthia, Jörg Haider.

Women faced significant challenges in trying to promote equal opportunities and much remained to be done to ensure that persons with disabilities have equal access to employment. A new act formally ensured this right, but experts held that its implementation required improvement.

Homosexuals were still struggling to have criminal records cleared of entries of the now abolished sodomy provision. Also, a finding of the Constitutional Court invalidated a decree regulating trans-sexuality.

More than ten percent of the Austrian population lived in or on the margins of poverty in 2006. Especially families with more than three children lived at an increased risk of poverty as did single mothers and their children. A decree on child allowance temporarily cut migrant children off state support. Furthermore, more than 160,000 children were reported as living in substandard apartments.

Trafficking in human beings continued to be a concern, particularly the double-victimization of women who were brought to Austria under false pretences, forced to labor as sex workers, and punished if their residence status was invalid.

### **Torture and racially motivated police misconduct**

Black people and other non-Caucasian looking persons appeared to be targeted by police, particularly through a disproportionately high frequency of "routine" police controls. There were consistent reports of police violence against black persons and unprofessional behavior against persons whose first language was not German. Additionally, police interventions with black people regularly lead to reports on "resistance against state authority" (*Widerstand gegen die Staatsgewalt*) with subsequent criminal charges against the victims. There were substantiated allegations on biased court proceedings and concern about the fairness of trials.

Mr. J., - a Gambian national known as "Bakary J."- fell victim to torture by the police.

◆ Mr. J. was to be deported from Vienna Airport in the spring of 2006. After informing the crew aboard the aircraft that he had not consented to the deportation, the procedure was called off. Immediately thereafter Mr. J. was insulted by the accompanying police officers and later taken to a police training facility where several policemen verbally abused him, threatened to kill him, beat him, and knocked him over

by driving a police car into him. He was then taken to the hospital where the reasons for his injuries – later assessed as multiple fractures of facial bones and severe trauma – were stated to be result of "resistance against state authority." Mr. J.'s wife, after finally seeing him, filed a report of ill-treatment and an inquiry was started.

The police officers fabricated a number of stories about the cause for the injuries but were proven wrong by an investigative unit within the Interior Ministry. A subsequent trial, however, only charged them with "tantalizing a detainee" (*Quälen eines Gefangenen*), as the Austrian criminal code does not contain a prohibition of torture - contrary to obligations under the UN Convention Against Torture, which Austria has ratified.

During the trial, the police officers confessed to the facts that had been proven but continued to deny other aspects of the incident such as threats and insults. Possible other counts, particularly for the grave injuries, where not charged; they would have required a jury trial. Three of the policemen were sentenced to eight months probation, one to six months probation. Mr. J. was awarded EUR 300 in damages. There was no public apology and Mr. J.'s prohibition of residence was not repealed. The police's disciplinary proceedings acquitted the officers in the first instance and they continued to serve in the police force as of the end of 2006.

### **Migrants and asylum seekers**

Effective since 1 January 2006, Austria started to implement the 2005 Aliens regime (*Fremdenrechtspaket*), consisting of new stringent regulations aimed at decreasing the number of immigrants, asylum seekers and naturalizations. The effects of the new regime were described by human rights NGOs as "excessive." The tendency of the already common practice to focus on clarifying the identity of a per-

son entering the country rather than the reasons for their escape, was cemented in the new procedure. Asylum seekers and especially traumatized persons were affected dramatically by the implementation of the new regime.

The number of persons held in detention prison (*Schubhaft*) rose sharply. Criticized by the Council of Europe's Committee for the Prevention of Torture as "unacceptable," persons were being held in a facility that essentially resembled a prison without having committed a crime. The new law allowed for persons to be held up to ten months immediately after they had applied for asylum. Also, a provision, which the government stated it had not implemented, allowed for "curative treatment" (*Heilbehandlung*), a euphemism for forced feeding, if the deportation was imminent and the person was on hunger strike.

The Independent Federal Asylum Council, the appellate body for asylum applications, repealed almost 5,000 decisions of the first instance. Said to struggle with a substantial backlog, the council was given more resources to accelerate the proceedings. Nevertheless, NGOs reported that persons were being deported before their appeals had been heard and decided.

A number of dramatic individual cases highlighted the effects of the regime, including babies who were forced to leave the country to apply for residence status, the deportation of families with children who seemed fully integrated in their communities as well as academics who were forced to leave the country under the new laws. Furthermore, a private initiative, Marriage Without Borders ("Ehe ohne Grenzen"), highlighted the possible and actual

deportation of partners and other effects, which resulted in violations of the right to private and family life.

In addition, the amended Citizenship Act significantly increased the period of permanent residence in Austria required for naturalization, and provided for immigration tests to be passed to become eligible. The new legislation has generally been criticized both as not being in line with Austria's humanitarian tradition, and falling short of international human rights standards.

### Intolerance and hate speech

Over the past few years acceptance of racist and xenophobic rhetoric in Austrian politics has grown without facing vigorous and unreserved denunciation by the political establishment. During the election campaign in the fall of 2006, some political forces - especially the FPÖ and the BZÖ - deliberately sought to boost their support by appealing to popular fears and apprehensions about immigrants, asylum seekers and minority members.<sup>1</sup>

- ◆ FPÖ placards featured slogans accusing asylum seekers and migrants of undermining social security, scorning those who do not speak German properly and depicting Islam as a danger to the "Austrian home" (see photo).

- ◆ BZÖ claimed that one million immigrants resided in Austria, of whom at least 30% were illegal residents and should be "returned" - that is deported - within three years. Furthermore it falsely stated that half of Austria's prisoners were non-citizens and that criminal conduct was particularly high among asylum seekers.<sup>2</sup>

## SOURCES FOR FURTHER INFORMATION:

### Organizations:

- ✦ Austrian League for Human Rights (Österreichische Liga für Menschenrechte), at [www.liga.or.at](http://www.liga.or.at)
- ✦ Amnesty International Austria, at [www.amnesty.at](http://www.amnesty.at)
- ✦ ZARA, at [www.zara.or.at](http://www.zara.or.at)
- ✦ Asylkoordination Österreich, at <http://asyl.at/>
- ✦ SOS Mitmensch, at [www.sosmitmensch.at](http://www.sosmitmensch.at)

### Publications:

- ✦ Liga für Menschenrechte, *Menschenrechtlicher Befund 2006 für Österreich*, 7 December 2006, at [www.liga.or.at](http://www.liga.or.at)
- ✦ Women's NGO Platform, *NGO Shadow Report Austria*, October 2006.
- ✦ ZARA, *Racism Report 2005*, at [www.zara.or.at](http://www.zara.or.at) (a new report is scheduled for March 2006)
- ✦ NGO Platform Forum Asyl, *Wahrnehmungsbericht 2006*, 1 December 2006
- ✦ Arbeiterkammer, *Frauenbericht 1995-2005*, 2 March 2006, at <http://wien.arbeiterkammer.at/www-397-IP-26965.html>
- ✦ *Gewichteter Jahresbericht der Kommissionen des Menschenrechtsbeirats*, at [www.menschenrechtsbeirat.at](http://www.menschenrechtsbeirat.at)

## Endnotes

- <sup>1</sup> See also IHF, "Austria: Tactics in Election Campaign Raise Broader Concerns about Racist and Xenophobic Discourse in Politics, 20 September 2006," at [www.ihf-hr.org/viewbinary/viewdocument.php?download=1&doc\\_id=7044](http://www.ihf-hr.org/viewbinary/viewdocument.php?download=1&doc_id=7044).
- <sup>2</sup> APA, "Westenthaler startet orangen Anti-Ausländer Wahlkampf," 30 May 2006.