

## Austria

**IHF FOCUS: freedom of expression and the media; judicial system; torture, ill-treatment and police misconduct; freedom of religion; national and ethnic minorities; intolerance, xenophobia and racial discrimination; asylum seekers.**

The central human rights concerns in Austria in 2003 included infringements on the freedom of the media, racial discrimination and racially motivated assaults, minority rights, and the rights of asylum seekers.

The European Court of Human Rights (ECtHR) continued to consider and rule on several defamation cases resulting from the apparent inability of Austrian politicians—particularly those representing the right-wing Austrian Freedom Party (FPÖ)—to face criticism. The case flow was facilitated by Austrian legislation that theoretically provided for prison sentences for defamation. In addition, there were reports that Austrian public radio and television, ORF, was subjected to pressure by the FPÖ and the other governmental coalition partner, the conservative People's Party (ÖVP).

Racial discrimination and racially motivated incidents were of serious concern. The lack of appropriate legislation to address them, and the lenient sentences handed down by courts for racially motivated crimes did not help the fight against racism and intolerance. The death of an African, as a result of what appeared to be inadequate conduct by the police and emergency doctors, was at the center of criticism.

The October amendments to the asylum law were aimed at accelerating the processing of asylum claims, but they also significantly restricted the rights of asylum seekers, opening up avenues for violations of the Geneva Convention on the Status of Refugees.

The dispute over minority rights continued, with authorities failing to abide by a ruling of the Austrian Supreme Court. The law on religious communities was inherently discriminatory and measures were taken to present minority religions in a questionable light.

## Freedom of Expression and the Media

Freedom of speech and of the media were safeguarded under the Constitution, and the government generally respected these rights in practice. The main concerns in the field of free expression were the media concentration, alleged pressure exerted on the public radio and television ORF, and the defamation provisions in the Criminal Code.

There were signs that the parties that formed the government coalition, the ÖVP and the FPÖ, were exerting continuing pressure on public radio and television, ORF. Critics claimed that the pressure could be seen in programming policies, especially regarding newscasts and the choice of guests for political talk shows.<sup>1</sup> However, the most vehement criticism was targeted at ORF's personnel policy, which was said to effectively result in the attempt to replace politically liberal or left-oriented employees with those who were pro-government.<sup>2</sup>

The high media concentration in Austria resulted in a lack of diversity in reporting. Two companies, Media Print and News Group, controlled the country's market of daily newspapers and magazines.<sup>3</sup>

---

<sup>1</sup> *Der Standard*, "Unabhängigkeit, die sie meinen: FPÖ und ORF, 5 April 2003; Institut der Kommunikationswissenschaft der Universität Salzburg," *Bericht zur Lage des Journalismus in Österreich—Ein Qualitäts-Monitoring, Erhebungsjahre 2002/2003*, at <http://www.kowi.sbg.ac.at/journalistik/vojournalistik/Journalismusbericht/Journalismusbericht%202003.pdf>

<sup>2</sup> *Der Standard*, "ÖVP will ORF zu Parteifernsehen machen" and "Im ORF droht totale Machtübernahme durch ÖVP, 25 Februar 2004; *Falter*, "Ein Land sieht schwarz," November 2002, at [http://www.falter.at/print/F2002\\_48\\_1.php](http://www.falter.at/print/F2002_48_1.php)

<sup>3</sup> Media-Analyse, "1. Halbjahr 2003," at <http://www.media-analyse.at/frmdata103.html>.

In a positive development, the monopoly of the ORF was lifted in 2002 when the media regulatory body, known as KOMM Austria, permitted private television stations. In June 2003, the first private Austrian TV channel, ATV Plus, could be received nationwide through cable networks and house antennae.

Austrian legislation dealt with defamation both under the Media Act and the Criminal Code. Section 6 of the Media Act provided for the strict liability of the publisher in cases of defamation; the victim could thus claim damages from the publisher. Article 111 of the Criminal Code prescribed a fine or a prison sentence of up to 12 months for defamation.<sup>4</sup>

In 2003, several cases were pending before the ECtHR against Austria, in which the court had to assess and balance the conflicting interests between freedom of expression under article 10 of the European Convention on Human Rights (ECHR) and safeguards against defamation. Many of the cases involved FPÖ politicians who felt that they had been defamed by their critics. As in previous years, the court emphasized that politicians inevitably and knowingly lay themselves open to close scrutiny of their words and deeds by journalists and the public at large and must consequently display a greater degree of tolerance than other people.

- On 13 November, the ECtHR ruled that Austria was in violation of article 10 of the ECHR when convicting the publishing house *News (News Verlagsgesellschaft)* and Hans-Henning Scharsach, the owner and publisher of the weekly magazine *News*, for defamation. At issue was a 1995 article published in *News* under the heading “Brown instead of Black and Red?”<sup>5</sup> The article discussed whether it was possible and desirable to form a coalition government with the FPÖ under the leadership of Jörg Haider. As one of the reasons against such a coalition the article mentioned FPÖ’s specific view of history, referring to the failure of some FPÖ politicians to distance themselves from National Socialism, and calling them “old closet Nazis” (*Kellernazi*, i.e., clandestine National Socialists). One of the politicians mentioned was Ms. Rosenkranz, a well-known Upper-Austrian FPÖ politician. Ms. Rosenkranz sued *News* under the Media Act, and in June 1996 Scharsach was convicted of defamation under article 111 of the Criminal Code and sentenced to pay a fine of ATS 60,000 (€4,360) or to serve 20 days’ suspended imprisonment in default. The publishing house *News* had to pay ATS 30,000 (€2,180) in compensation under the Media Act. In March 1997 the Vienna Court of Appeal upheld the lower court’s judgment. The ECtHR found that the Austrian courts had failed to take sufficient account of the political context in which the impugned term “closet Nazi” was used. Moreover, Ms. Rosenkranz, as a politician and member of a regional parliament, had to bear the criticism contained therein. The passage at issue was, therefore, of a political nature on a question of public interest at that time. The ECtHR further noted that Ms. Rosenkranz was the wife of a well-known right-wing politician, who was the editor of a magazine considered to be extreme right-wing and she had never publicly dissociated herself from her husband’s political views but had criticized the Prohibition Act, which banned National Socialist activities.<sup>6</sup>

---

<sup>4</sup> *Verlagsgruppe News v. Austria*, Application No. 62763/00, 23 October 2003, at <http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=1&Action=Html&X=322144208&Notice=0&Noticemode=&RelatedMode=0>.

<sup>5</sup> In the Austrian context, “brown” refers to National Socialists, “black” to the ÖVP and “red” to the Socialist Party (later renamed to the Social-Democratic Party).

<sup>6</sup> *Scharsach and News Verlagsgesellschaft v. Austria*, Application No. 00039394/98, 13 November 2003, at <http://hudoc.echr.coe.int/hudoc/ViewRoot.asp?Item=0&Action=Html&X=322103410&Notice=0&Noticemode=&RelatedMode=0>.

## Judicial System

In 2003, the Austrian government presented a draft reform of the country's Criminal Code<sup>7</sup> and Criminal Procedure Code<sup>8</sup>. The Criminal Procedure Code was adopted in March 2004 while the Criminal Code remained pending in parliament.

The new Criminal Procedure Code provides for an extensive revision of the old code, part of which goes back as far as 1873. The preliminary proceedings are restructured. Victims' rights are improved through measures such as expanding the right to information about the proceeding, easier access to legal aid and the right for victims of violence and sexual abuse to have psychological and legal assistance during proceedings.

While the above-mentioned novelties have been welcomed and widely accepted, some parts of the draft have been opposed by some experts and the political opposition.<sup>9</sup> It has been heavily criticized that, although in the future the preliminary investigation will be carried out mainly by the police under the guidance of the prosecutor (instead of the examining magistrate), the minister of justice will retain the right to issue instructions towards the prosecutor. Therefore, it cannot be ruled out that the minister might use his power to influence the investigation in favor or against a certain outcome. Furthermore, the suspected person's rights, such as access to records or the right to legal assistance, can be constrained or even suspended if it is considered as necessary to prevent any interference with the investigation or with evidence. The new code also provides for the possibility for the coercive taking of blood samples from people not directly suspected of a crime, a provision that has triggered criticism as being in breach of the Austrian Constitution and the ECHR.<sup>10</sup>

Among other things, the draft Criminal Code contains some important and long overdue improvements to legislation on sex offenses. It proposes that in the future, rape within a marriage would be dealt with in the same manner as every other form of rape, whereas previously it was considered a less severe offense. Additionally, the element of "sexual assault" is expanded to include "grabbing." The draft also tightens the regulations concerning trafficking in human beings.

The controversial proposal of the Minister of Justice, Dieter Böhmdorfer, to build prisons in Romania, led to a public debate. The minister's plan is to hold there Romanians who are caught in Austria and whose conviction seem likely.<sup>11</sup> Although this proposal faced fierce criticism, an agreement to that effect was signed between Romania and Austria in early 2004.<sup>12</sup>

No progress was made in the rehabilitation of the victims of the National Socialist military justice system. In 1999 the Austrian parliament decided to exonerate those unjustifiably convicted by Nazi military courts,<sup>13</sup> however, since then, almost no progress was made on the matter.

---

<sup>7</sup> Ministry of Justice, *Strafrechtsänderungsgesetz 2003*, at <http://www.justiz.gv.at/gesetzes/download/straeg2003.pdf>

<sup>8</sup> Ministry of Justice, *Strafprozessreformgesetz*, at <http://ris1.bka.gv.at/authentic/index.aspx?page=doc&docnr=1>.

<sup>9</sup> Austrian Parliament, "Strafprozessreform im Justizausschuss verabschiedet," 20 February 2004, at [http://www.parlament.gv.at/portal/page?\\_pageid=908,649421&SUCHE=J&P\\_TEXT=1&P\\_MEHR=J&\\_dad=portal&\\_schema=PORTAL](http://www.parlament.gv.at/portal/page?_pageid=908,649421&SUCHE=J&P_TEXT=1&P_MEHR=J&_dad=portal&_schema=PORTAL)

<sup>10</sup> *Kurier*, "SP ficht Strafprozessordnung an," 17 February 2004; the Green Party, "Verfassungswidrigkeit, mangelnde Beschuldigtenrechte und Defizite beim Opferschutz in der StPO-Reform," press conference, 17 February 2004, at [http://www.gruene.at/texte/dokument\\_21933.doc](http://www.gruene.at/texte/dokument_21933.doc).

<sup>11</sup> FPÖ, "Böhmdorfer: Eckpunkte für Gefängnisbau in Rumänien fix," at [http://www.fpoe.at/bundneu/home/news/index\\_news\\_1444.htm](http://www.fpoe.at/bundneu/home/news/index_news_1444.htm).

<sup>12</sup> Ministry of Justice, "Justizminister Dr. Böhmdorfer in Rumänien – Verstärkte Zusammenarbeit beim Strafvollzug," at <http://www.bmj.gv.at/presse/detail.php?id=212>.

<sup>13</sup> Politik portal.at, "Grüne beantragen Rehabilitation von Opfern der NS-Militärjustiz," at [http://www.politikportal.at/?goto=%2Fmeldung.php?schluessel=OTS\\_20040220\\_OT0195](http://www.politikportal.at/?goto=%2Fmeldung.php?schluessel=OTS_20040220_OT0195).

## Torture, Ill-treatment and Police Misconduct

As in previous years, there were repeated reports of police misconduct especially in relation to people of different skin-color or ethnic origin than the majority population. The types of abuses ranged from verbal assaults to ill-treatment.

- In August, the regional court Linz (Upper Austria) ruled that a policeman who, in the line of duty, verbally assaulted a black African refugee in a derogatory way (“*Scheiß Neger*”) insulted the man’s honor but did not injure his human dignity. This would only have been the case if the policeman had “denied his right of existence, directly or indirectly,” i.e., for instance, if he had been labelled as “sub-human” or addressed with the addition “all of you should be wiped out.”<sup>14</sup> The case was referred to the Supreme Court for revision, which overturned the regional court’s decision and stated that the insult indeed degraded the man as “ethnically inferior” and therefore injured his human dignity.<sup>15</sup> Yet, this decision did not lead to disciplinary measures against the police officer.

The most serious alleged case of alleged police misconduct was connected to the tragic death of Seibane Wague.

- Seibane Wague, a 33-year-old Mauretanian, died on 15 July during a police and ambulance operation in Vienna.<sup>16</sup> The police was called because Seibane Wague was allegedly rampaging, upon which police handcuffed him and tried to bind his legs with a safety belt. Further, he had allegedly tried to escape whereupon the police, according to some witnesses, started beating and kicking the man. Wague was sedated by the ambulance doctor and the police forced him into a face down position, apparently hampering his breathing. The case became the focus of heated debate due to the fact that part of the incident was filmed by an outsider. The videotape was made public by the Viennese weekly *Falter*, showing Seibane Wague lying motionless on the ground for several minutes. At least one paramedic was standing on the man and the doctor stood next to Wague with his hands in his pockets. When Seibane Wague was finally carried into the ambulance, he nearly slipped off the stretcher. The first autopsy suggested that Wague’s death could have been the result of a previous heart condition combined with the medication given by the emergency doctor and the excessive stress factor. However, some experts pointed out that the cause of death could also have been suffocation; it was medically unjustifiable to hold a sedated person face down and to put any weight on him.<sup>17</sup> A criminal proceeding was instituted which was still pending as of early 2004. However, the Independent Administrative Court (UVS), the court responsible for dealing with complaints filed for misconduct by the executive, ruled that the 15 July incident was in breach of the ECHR. It specifically stated that the form and length of the man’s “fixation,” the use of handcuffs and the mistreatment and abuse of Seibane Wague were unlawful and caused an “acute and concrete” endangerment to his life.<sup>18</sup> According to the UVS, there was no evidence that the actions taken were of immediate necessity, as there was no evidence that the man had been excessively aggressive. At the time of writing, the Viennese police considered appealing against the judgment.

---

<sup>14</sup> No-racism.net, “Rassistische Rechtsprechung: Bezeichnung ‘Scheiß Neger’ verstößt nicht gegen Menschenwürde,” 12 August 2003, at [http://www.no-racism.net/staatsrassismus/rassistische\\_justiz120803.htm](http://www.no-racism.net/staatsrassismus/rassistische_justiz120803.htm).

<sup>15</sup> *Der Standard*, “‘Scheiß Neger’ verletzt doch Menschenwürde,” 6/7 March 2004.

<sup>16</sup> For further information, see [http://www.orf.at/040130-70331/index.html?url=http%3A//www.orf.at/040130-70331/70332txt\\_story.html](http://www.orf.at/040130-70331/index.html?url=http%3A//www.orf.at/040130-70331/70332txt_story.html).

<sup>17</sup> *Der Standard*, “Staatsanwalt ermittelt wegen fahrlässiger Tötung,” 22 July 2003.

<sup>18</sup> *Der Standard*, “Schuldpruch für Wiener Polizei,” 2 February 2004.

## Freedom of Religion

Articles 14 and 15 of the Constitutional Act on General Human Rights of Citizens provided for freedom of religion and created a system of state-recognized and non-recognized churches and religious communities.

Three legislative acts provided the framework for legal recognition: the 1874 Law on Recognition of Churches and Religious Communities for “state-recognized churches and religious communities” (*staatlich anerkannte Kirchen und Religionsgemeinschaften*); the 1998 Law on the Status of Religious Communities providing for “confessional communities” (*Bekennnisgemeinschaften*); and the 2002 Law of Association providing for a status of “associations” (*Vereine*).

Thirteen religious organizations were recognized by the state: the Catholic Church, the Lutheran Church, the Islamic Community, the Eastern Orthodox Church, the Old Catholic Church, the Buddhist Community, the Jewish Community, the New Apostolic Church, the Church of Jesus Christ of Latter-day Saints, the Armenian Apostolic Church, the Syrian Orthodox Church, the Methodist Church and the Coptic Orthodox Church. “State-recognized religions” were granted various privileges such as exemption from taxation, government funding, free broadcasting time, religious instruction in public schools and pastoral care in prisons and hospitals.

The 1998 law introduced additional criteria in order to gain the status of a “state-recognized religion”: membership of at least 0.2% of the population (approximately 16,000) and a 20-year period of existence, at least ten of which must be as a “confessional community.” However, should the 0.2% criteria have been systematically applied in practice, only four of the 13 state-recognized churches and religious communities would have been recognized. In 2003, the Coptic Orthodox Church was granted the status of a state-recognized religion by a special law, although it only had 1,600 members and had only been a “confessional community” since 1998.

“Confessional communities” (under the 1998 law) had to have at least 300 members. Their doctrine and statutes needed to be submitted to the Federal Ministry of Education, Science and Culture for examination and decision. Their official status did not provide for fiscal and educational privileges enjoyed by “state-recognized religions.” Their legal status was similar to the status of “associations” under the 2002 law, which entitled them to own property. Apart from that, they were given some insignificant privileges, unlike “associations.” The confessional communities were: Jehovah’s Witnesses, Free Christian Society/Pentecostals, Evangelical Alliance, Seventh-day Adventists, Hindu Religious Community, Baptists, Movement of Religious Renewal, Baha’i Faith and Mennonites.

- Vishwa Nirmala Dharma Austria was denied recognition as a “confessional community” on the grounds that the required information about the content of its doctrine was “neither specific nor definite” and that therefore the status of a “confessional community” could not be awarded. On 15 September, the Highest Administration Court upheld the decision.
- A Philippino living in Italy, who was supposed to work as a Jehovah’s Witnesses religious minister in Austria, was denied a residence permit on the basis of the Law on the Employment of Foreigners because he was a member of a non-recognized religious community. On 10 October, the Constitutional Court upheld the decision referring to article 15 of the Constitutional Act on General Human Rights of Citizens, which provided for the distinction between state-recognized and non-recognized churches and religious communities.

The existing system and in particular the 1998 Law on Confessional Communities was inherently discriminatory as it *de facto* prevented religious organizations from obtaining a state-recognized status and relegated them to a second-class status.

Islam was granted the status of “state-recognized religion” by a special law in 1912. Under a separate act, the “Islamic Denomination” had public legal status and had represented the Islamic

community since 1988. Besides, there had been Islamic religious instruction in public schools since 1982/83.

There was no law banning headscarves (*hijab*) and many girls wore them to school. Teachers were allowed to wear headscarves in Islamic religious lessons in public schools. Problems, however, were encountered in everyday life: wearing a headscarf led to cases of intolerance and some discrimination in various sectors such as housing and employment.

A new law on animal protection was in the drafting process. Some members of the FPÖ questioned the appropriateness of allowing the slaughter of animals on religious grounds in the new law, despite the 1998 decision of the Constitutional Court on the unconstitutionality of prohibiting such slaughter.

In 1998, the Austrian Parliament passed the Federal Law for the Establishment of a Documentation and Information Office for Matters Concerning Sects. The tasks of this office, whose head was appointed and supervised by the minister for social security and generations, were to collect and distribute information about dangers originating from programs or activities of sects or sect-related activities.

The law was not applied to state-recognized churches and religious communities and was therefore discriminatory. Besides, there was no legal protection in cases of defamation of religious organizations.

The distribution in public schools of a CD-ROM entitled “The Search for Meaning: an Orientation Guide to Organizations that Offer the Solution” caused some controversy. It was prepared by the Catholic Diocese of Linz in collaboration with the deputy governor of Upper Austria. It contained information about more than 350 religious organizations. As a result of complaints lodged by academics and the Austrian Branch of the International Coalition for Religious Freedom (ICRA), “state-recognized religious communities” could at least submit a description of themselves to the Upper Austrian Education Intranet. There was no new edition and no further distribution of the CD-ROM.

### **National and Ethnic Minorities**

Six national minorities were officially recognized under the 1976 National Minorities Act (*Volkgruppengesetz*): Croats, Slovenes, Hungarians, Czechs, Slovaks, and Roma and Sinti. Furthermore, the Croatian and Slovenian minorities enjoyed special cultural rights (e.g., using their language in administration) in the federal entities of Carinthia and Burgenland.

The long-standing conflict regarding bilingual topographic signs in municipalities continued in Carinthia. On 13 December 2001, the Constitutional Court gave the parliament until the end of 2002 to bring the National Minorities Act into line with the State Treaty and provide for the instalment of bilingual topographic signs in municipalities where more than 10% of the population are members of the officially recognized minorities. This decision continued to be vehemently opposed by the governor of Carinthia, Jörg Haider. By the end of 2003 there was neither a change of legislation nor were additional bilingual signs installed in municipalities with large minorities in Carinthia despite the fact that a high number of its municipalities would qualify to have bilingual signs.

On a positive note, in June the ORF began to expand its “ethnic minority program.” As a result, radio stations in Burgenland and Carinthia started to broadcast weekly transmissions in Hungarian. Radio stations in Burgenland also started to broadcast in Croatian. Furthermore, a further program in Romani started in January 2004 while the already existing programs in Czech and Slovak continued. This expansion increased Austrian ethnic group programs by eight hours per week.

## Intolerance, Xenophobia, and Racial Discrimination

During 2003, two EU directives came into force, setting minimum standards for legal protection against discrimination: Directive 2000/43/EC (“Race Equality Directive”) and Directive 2000/78/EC (“Employment Directive”). The former directive prohibited racial and ethnic discrimination in employment, education, social security and healthcare, access to goods and services and housing. The latter prohibited discrimination in employment on grounds of religion and belief, disability, age and sexual orientation.

On 13 November, draft legislation for an Equal Treatment Act (*Gleichbehandlungsgesetz*), an act on the establishment of an Equal Treatment Commission and an Office of the Ombudsperson for Equal Treatment were referred to in the Equal Treatment Committee of parliament. At the end of 2003 these were still pending, but were expected to be adopted soon. The nine provinces of Austria that still have to adopt anti-discrimination laws regarding their civil servant, were lagging behind.<sup>19</sup>

The wording of the Equal Treatment Act does, in most parts, follow that of the underlying EU directives, which ought to ensure its smooth application without major difficulties of interpretation. This, however, cannot be said of the important issue of burden of proof. Whereas the EC directives intend to fully shift the onus to the discriminator once a *prima facie* discrimination can be established, the Austrian Equal Treatment Act requires that an action for compensation be rejected when the defendant’s version appears to be more plausible.<sup>20</sup>

Further critique regards the composition of the draft Equal Treatment Commission, which will draw its staff from several ministries and the “social partners” but not from independent civil society organisations or pressure groups. The draft law does not foresee any co-determination of NGOs and does not establish them as privileged actors with the right to file actions in cases of discrimination. Moreover, work in the commission is unpaid, meaning that its members can only work for the cause of equal treatment on the side, in addition to working their regular jobs, a fact that could erode the efficiency and credibility of the institution.<sup>21</sup>

Political commentators have broadly regretted that the government has not taken the opportunity to elaborate a general anti-discrimination law (a comprehensive draft was prepared by the Ludwig Boltzmann Institute of Human Rights in 2001) and has largely refused to involve NGOs in the preparation of the law, which could have positively contributed to the effort.<sup>22</sup>

The NGO ZARA published its fourth annual report on racism and discrimination in Austria, documenting an enormous increase in racist incidents in 2003, apparently largely due to the fact that more people were willing to report racist incidents. Although the forms of racist incidents varied greatly, most reported cases dealt with acts of discrimination such as barring foreigners entry to discotheques or restaurants and racially motivated insults in places public or means of transportation. However, a number of violent attacks were also recorded, especially by groups of skinheads. In cases where the victims took the crimes to court, the accused were often acquitted or received only very lenient sentences.<sup>23</sup>

- The UVS of Upper Austria revoked the conviction of two owners and a doorman of a bar in Linz, who had been ordered to pay an administrative penalty after the doorman had refused dark-skinned guests entry to his bar. The ruling argued that denying entry had not been an act of discrimination but the action had been taken in order to uphold the respectability of the business. Furthermore, according to the UVS, the doorman had been led to giving the “desired

---

<sup>19</sup> E.U. Network of Independent Experts on Fundamental Rights, “Report on the Situation of Fundamental Rights in Austria in 2003,” January 2004, at [http://europa.eu.int/comm/justice\\_home/cfr\\_cdf/index\\_en.htm](http://europa.eu.int/comm/justice_home/cfr_cdf/index_en.htm).

<sup>20</sup> Ibid.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> ZARA, *Zivilcourage und Anri-Rassismus-Arbeit, Rassismus Report 2003*, at [http://www.zara.or.at/01\\_06.html](http://www.zara.or.at/01_06.html).

answer” by suggestive questions. The UVS decision caused vehement criticism by human rights groups.<sup>24</sup>

In many reports received by ZARA, police officers had also used racist vocabulary or acted in an inappropriate manner. Racist graffiti—especially against Africans—on the walls of public buildings and on public transport were also increasingly reported in 2003. Furthermore, numerous incidents indicated a widespread attitude that black skin-colour was considered a synonym for drug-dealer, danger, aggression and provocative behaviour. Discriminatory attitudes against foreigners looking for a job or at their working place were also relatively common.

Due to the lack of an appropriate anti-discrimination law, it was difficult for the victims to take effective measures to defend themselves in the face of racially motivated discrimination or acts of violence.

### *Restitution*

A report, published by the so-called Austrian Historical Commission (*Historikerkommission*) presented its comprehensive report on the systematic confiscation of property of Jews and other victims during NS times, as well as on restitution and compensation by the Republic of Austria after 1945. The value of the confiscated fortune registered in 1939 amounted to at least two billion *Reichsmark*. About 75% of 25,440 Jewish businesses had been liquidated as of 1940, almost all Jewish banks were closed down and 59,000 rented apartments were “aryanized.” Jewish property levy amounted to approximately 147.3 million *Reichsmark* in Austria and the “flight tax” (*Reichsfluchtsteuer*) between 40 and 181 million *Reichsmark*. The amount of confiscated movables and properties stolen during lootings was not assessable since not only the state but also individual people were involved.<sup>25</sup>

Other victims of confiscation (and in many cases deportation) were the nearly 10,000 Roma and Sinti, several other ethnic groups (among them Slovenes), political opponents (from Catholics and conservatives to Communists), homosexuals and handicapped people. Property of the Catholic Church was also confiscated. In the post-war period seven restitution laws were enacted, but they remained insufficient (e.g. they ignored lost rented property, copyright and licenses). The report concluded that the amount of money which has been spent on restitution, has been largely insufficient.<sup>26</sup>

### **Asylum Seekers**

The Austrian government adopted a new asylum law in the fall of 2003, which will come into force on 1 May 2004. The law will make it more difficult than before to gain asylum status in Austria. Asylum seekers from a list of “safe countries of origin” are automatically rejected. Moreover, while it is necessary to speed up the asylum determination procedure, the new plans to accelerate the proceedings can seriously undermine an in-depth and personal investigation of all cases.

During 2003, 32,240 asylum applications were filed, compared with 39,350 in 2002.<sup>27</sup> The official approval rate was 28.4%. In 2003, the largest group of applicants by far were persons from the Russian Federation, mainly Chechens.<sup>28</sup>

---

<sup>24</sup> *Der Standard*, “Amnesty: Blanker Rassismus,” 21 January 2004.

<sup>25</sup> *Der Standard*, “Juden mussten Vernichtung selbst finanzieren,” 24 February 2003, at <http://derstandard.at/?id=1220897>.

*Der Standard*, “Ungeheure Dimension,” 24 February 2003, <http://derstandard.at/?id=1220721>. The report of the Historical Commission can be found at <http://www.historikerkommission.gv.at>.

<sup>26</sup> *Ibid.*

<sup>27</sup> UNHCR, “Asylum Levels and Trends: Europe and Non-European Industrialized Countries, 2003,” 24 February 2004, at [www.unhcr.ch](http://www.unhcr.ch).

<sup>28</sup> Asylkoordination Österreich, “Asylstatistik 2003 – Jeder Vierte erhält Asyl, jeder Dritte Schutz,” 19 January 2004, at [www.asyl.at](http://www.asyl.at).



In 2003, the police at Vienna Airport started to carry out so-called gate checks, i.e., identity and documents checks in areas where the passengers had not yet reached the transit hall, in order to hinder potential asylum seekers from veiling their transit countries by destroying necessary documents. Such checks were mainly used for flights arriving from “problem destinations” such as Charkov (Ukraine) or Istanbul (Turkey).<sup>29</sup>

- At the beginning of November a group of 70 Chechen asylum seekers, entering Austria from the Czech Republic, was sent back the next day. The interior minister publicly claimed that the group had been “invited” to return to the Czech Republic because there were no vacancies in the government-run shelters. The Viennese weekly *Falter* found that some of the persons had returned from the border and reported that they had indeed asked for asylum and had been sent back against their will. If true, the behaviour of the respective border officials would have been illegal, as the asylum law still in force in 2003 did not exclude asylum requests on Austrian land borders. A similar incident occurred again in January 2004, with 40 persons from the Russian Federation, most likely all Chechens.

### *The New Asylum Law*<sup>30</sup>

The October amendments to the asylum law are aimed at expediting the processing of asylum claims, but it was also officially stated that another aim was to make the law more restrictive. Interior Minister Ernst Strasser, for example, pointed out that the changes must fit into the European context, which in his view meant aligning Austrian law to the more rigorous laws in Germany, the United Kingdom and Denmark.<sup>31</sup> Concepts of the UNHCR on how to accelerate asylum procedures adequately were not taken into account.

The amended law foresees a procedure on admissibility (*Zulassungsverfahren*) with a first interview within 48-72 hours of filing a claim. After that, the applicant is informed orally if his/her claim is declared admissible or if “there is an intention” to declare it inadmissible. If the claim is declared admissible, the Federal Asylum Office shall decide within the following 20 days whether to grant asylum already at this stage, to declare it inadmissible, or to start a procedure on the merits of an admissible application. The asylum seeker can appeal against inadmissibility but can be deported pending appeal.

The new law puts an end to possibility to submit asylum claims at land borders altogether, as all Austria’s neighbouring countries are explicitly declared “safe third countries.”<sup>32</sup> Asylum seekers trying to enter Austria from those countries will be turned back. As a result, even refugees who are clearly in need of international protection will be refused access to the Austrian asylum procedure, which may in some cases lead to chain deportations and, ultimately, to *refoulement*. Interior Minister Strasser stated openly that the only way to enter Austria as a refugee will be “by arriving at the airport” and in cases “when it cannot be demonstrated where an asylum seeker has arrived from.”<sup>33</sup> The UNHCR has on several occasions made clear that the concept of “safe third countries” will only lead to a shift of the burden from EU countries to more far away countries and shows their reluctance to share burden and responsibility.<sup>34</sup>

---

<sup>29</sup> BBC Monitoring International Reports, “New checks implemented at Austrian airport to discover illegal immigrants,” quoting *Die Presse*, 24 July 2003.

<sup>30</sup> The law *Asylgesetz 1997 (AsylG-Novelle 2003)* is posted at [http://www.parlament.gv.at/portal/page?\\_pageid=908,145444&\\_dad=portal&\\_schema=PORTAL](http://www.parlament.gv.at/portal/page?_pageid=908,145444&_dad=portal&_schema=PORTAL).

<sup>31</sup> BBC Monitoring International Report, “Austrian interior minister defends new asylum bill,” quoting *Der Standard*, 16 October 2003.

<sup>32</sup> Additionally from May 2004, the neighboring countries, the Czech Republic, Slovakia, Hungary and Slovenia, will become EU members and therefore parties of the two so-called Dublin Agreement.

<sup>33</sup> BBC Monitoring International Report, “Austrian interior minister defends new asylum bill,” quoting *Der Standard*, 16 October 2003.

<sup>34</sup> UNHCR, “UNHCR-Chef Lubbers warnt: EU-Asylregeln könnten internationale Standards untergraben,” 24 November 2003, at [www.unhcr.at](http://www.unhcr.at).

Of major concern is the fact that, under the new law, the submission of new evidence and motives for flight at the appeal stage is only permitted in very restricted cases, including if the asylum seeker was not able to present the facts earlier due to a traumatization that can be “medically certified.”<sup>35</sup> The UNHCR and other refugee organizations have noted that trauma is a condition that is notoriously difficult to diagnose or measure. This provision does not take into account that victims of torture or of gender-based persecution, including sexual assault, are often understandably hesitant toward providing details of the ordeal they have suffered, either because of feelings of pain and humiliation, or because of strong cultural or religious taboos.<sup>36</sup> Likewise it ignores the fact that many asylum seekers are distrustful, exhausted, or wrongly informed, which makes them unable to disclose their situation, even when they are informed of the necessity to do so.<sup>37</sup>

Another worrisome feature of the new law is that it does not allow asylum seekers, who appeal inadmissibility decisions, to stay in Austria pending decision. This is especially true for appeals made at airports, from where asylum seekers can be sent away within a short time.<sup>38</sup> The UNHCR has emphasized the importance of appeals as an essential means to ensure that initial mistaken decision can be corrected, particularly considering that many refugees in Europe have only been recognised after important new fact coming up during an appeal process.<sup>39</sup>

Other problematic provisions of the new law are the fact that a lawyer (or another “person of confidence”) is not allowed to be present during the first interview of the admissibility procedure; that asylum seekers are not allowed to leave the reception center during the admissibility procedure; and that the interior minister can declare a reception center barred for unauthorized persons if he thinks this is necessary for maintaining order in the center. All such measures contribute to further isolation of the asylum seekers and block their access to necessary consultation and care.

Critics of the new law, including some legal experts, have deemed the law unconstitutional because it restricts the possibility to effectively appeal first instance decisions, and because it compromises the principle of individual investigation of claims. The regional government of Upper Austria appealed the new asylum law at the Constitutional Court only ten days after the law was passed by the Austrian Parliament.

### *Federal Care of Asylum Seekers*

In August, the implementation of a controversial 2002 Interior Ministry guideline was stopped after the Supreme Court had ruled for the second time against it. The guideline had barred access to state-run shelters and public care to asylum seekers from EU candidate countries and a number of other countries while their appeals were pending. The court stated that that every asylum seeker must be guaranteed public care during the whole asylum procedure.<sup>40</sup> On 25 August 2003 the UNCHR sharply criticized the treatment of asylum seekers in Austria and noted that nowhere else in the EU but Austria and Greece are asylum seekers left with virtually no public care at all.<sup>41</sup>

After the ruling the interior minister announced that he would try to find new places to accommodate the asylum seekers and appealed to the regional governments, municipalities and relief

---

<sup>35</sup> Other circumstances that would justify new claims during appeal under the new law are: a flawed initial procedure, major changes of facts in the case, and occurrence of new facts after the initial decision.

<sup>36</sup> UNHCR, “UNHCR says Austrian legislation may lead to breaches of UN Convention,” 8 October 2003, at [www.unhcr.ch](http://www.unhcr.ch).

<sup>37</sup> Asylkoordination Österreich, “Presseausendung der asylkoordination Österreich zur Asylrechtsänderung,” 5 May 2003, at [www.asyl.at](http://www.asyl.at).

<sup>38</sup> UNHCR, “Austria’s asylum law may lead to breach of international laws if amended, warns UNHCR,” 8 October 2003, at [www.unhcr.ch](http://www.unhcr.ch).

<sup>39</sup> Ibid.

<sup>40</sup> This list included, for example, the Russian Federation, Azerbaijan, Turkey, Yugoslavia and Nigeria, leading to hundreds of people being evicted from those shelters onto the streets, immediately filling emergency accommodation set up by relief organizations. For more information see last year’s report.

<sup>41</sup> *Der Standard*, “Österreich für Flüchtlinge Schlusslicht in der EU,” 25 August 2003.

organizations to make available additional accommodation. However, he stressed that he would accept such places only if the respective mayors and village councils gave their consent—as a result of which the situation did not change markedly, and the relief organizations still had to accommodate people beyond their capacity. On 12 December the four largest of them, Caritas, Diakonie, Red Cross and Volkshilfe, made an urgent appeal to the interior minister demanding additional state funding for their shelters.<sup>42</sup>

As of July, the administration (housing, care, food supply and social care) of former state-run refugee centers was privatized and a German agency, European Homecare, was contracted to take over the centers because its offer was the least expensive.<sup>43</sup> European Homecare was criticized for alleged inadequate care particularly following a violent incident in the main center Traiskirchen in August 2003, which led to the death of a Chechen man. In another incident that was disclosed in February 2004, a woman had allegedly been raped by a member of the security service hired by European Homecare.

---

<sup>42</sup> *Neue Zürcher Zeitung*, “Neue Kontroverse um Asylpolitik in Österreich,” 13/14 December 2003.

<sup>43</sup> Another offer, which was only slightly more expensive, came from a consortium of the Red Cross, Caritas, Diakonie and Volkshilfe, all organizations with long-time experience in running refugee accommodation centers and shelters for asylum seekers, as well as in providing legal and social services.