

APPENDIX

The following appendix does not form part of ECRI's analysis and proposals concerning the situation in Austria

ECRI wishes to point out that the analysis contained in its third report on Austria, is dated 25 June 2004, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, ECRI's draft report on Austria was subject to a confidential dialogue with the Austrian authorities. A number of their comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the Austrian authorities requested that the following viewpoints on their part be reproduced as an appendix to ECRI's report.

**“Observations by the Republic of Austria
in respect of the third report
by the European Commission against Racism and Intolerance (ECRI) on Austria**

General Observations

The report contains remarks of a very general nature, in particular where it refers to “reports” on cases of discrimination on the part of public authorities and state organs without specifying the concrete incidents (e.g. item 82: (...) reported action during controls at railway stations and airports). More detailed information about these incidents, as has repeatedly been requested by the Austrian authorities, would have been helpful in examining and clarifying those allegations.

Specific Observations

Item 3: As regards the statements referring to Austria’s position on the ratification of Protocol No. 12 to the Convention, it must be pointed out that the concerns about the Court’s workload are also shared by the European Court of Human Rights itself. In its “Opinion on draft Protocol 12 to the European Convention on Human Rights adopted at the plenary administrative session of the Court on 6 December 1999” the Court stated with unusual clarity in item 6 that

“... it is foreseeable that the entry into force of Protocol No. 12 will lead to a substantial increase in the Court’s case-load. The Court draws the attention of the Committee of Ministers to the impact of such increase on a mechanism that is already under great pressure. While the extent of this impact can only be assessed at a later stage and would in any event not be immediate, it should be taken into account in mid- and long-term planning and provision for the Court and the Convention system.”

In the meantime Protocol No. 14 to the Convention has been adopted and opened for signature; it is aimed at a further reorganisation and streamlining of the Convention system in order to enable the Court to cope with growing numbers of individual applications. Austria has signed Protocol No. 14 on 10 November 2004; ratification is envisaged for 2005.

Items 5 et seqq: It needs to be stressed again that Article I para. 1 of the Federal Constitutional Act, Federal Law Gazette No. 390/1973 protects foreigners in the same way as Article 7 of the Federal Constitution (B-VG) in conjunction with Article 2 of the Basic Act (Staatsgrundgesetz) protects Austrian nationals. The Constitutional Court has made it sufficiently clear in its case-law that the Federal Constitutional Act also protects foreigners against discrimination vis-à-vis Austrian nationals (cf. Coll VfSlg. 15.668/1999 as well as its ruling of 25 November 2002, B 792/02, and most recently of 21 June 2004, B 531/02). The amendment of the Federal Constitutional Act, (Federal Law Gazette No. 390/1973) suggested by ECRI both in its Second Report on Austria (relating to marginal no. 3) and in the present draft, would thus not result in a better position of foreigners compared to their present one. To illustrate the effectiveness of this guarantee, we beg to point out that since January 2001 eight in twelve complaints filed with the Constitutional Court invoking that guarantee, have been successful; moreover, the Constitutional Court has set aside a passage in the law, holding that it violated that guarantee (ruling of 8 October 2002, G 348/01).

Items 9 and 10: Austrian Citizenship law aims at avoiding double and multiple nationalities in accordance with the Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality, CETS No.: 043, of 6 May 1963. If ECRI finds fault with the underlying concepts of this Council of Europe Convention it might be helpful to give reasons and arguments.

Having said this it should be noted that a number of exceptions to the general rule of avoidance of double or multiple nationality exist, such as i. a. the case of children with one Austrian and one foreign parent, who automatically acquire by law double nationality; or in case of naturalisation in the public interest.

Items 26 - 29 (Specialised bodies and other institutions): On 1 July 2004 the amendment of the Equal Treatment Act, BGBl. I Nr. 66/2004, entered into force. It provides for the mandate and status of national specialised bodies in this respect, i.e. the Commission for Equal Treatment and the Office for Equal Treatment (Ombudspersons for Equal Treatment).

The Commission for Equal Treatment at the Federal Ministry for Health and Women's issues consists of representatives of the social partners (organisations of workers and employers) and of ministries. The chairperson of the Commission is a civil servant. However, the Commission chairperson and his/her substitute are independent in their functions.

Its main tasks are to draw up expert opinions on general questions, surveys as well as recommendations. It may also examine individual cases of alleged discrimination. Being a conciliation board, its rulings are not binding on courts. Rather, its primary objective is to help parties reach an agreement rapidly and unbureaucratically.

Structure

The Commission for Equal Treatment, which from 1979 till 1 July 2004 dealt with gender discrimination in employment and occupation only, now consists of three panels.

- The first panel for equal treatment of women and men in employment and occupation,
- the second for equal treatment irrespective of ethnic belonging, religion or belief, age or sexual orientation in employment and occupation and
- the third for equal treatment irrespective of ethnic belonging in other areas than employment and occupation.

The Office for Equal Treatment consists of Ombudspersons for Equal Treatment, their substitutes and additional staff. The Ombudspersons for Equal Treatment are civil servants. However, the Office for Equal Treatment is entitled to conduct independent surveys, publish independent reports and make recommendations on any issue relating to such discrimination.

Its main tasks are to advise, support and assist victims of discrimination. It can be addressed directly by individuals. It assists victims of discrimination who wish to address the Commission for Equal Treatment or sue in court. The Office may hold office hours and/or all over Austria. If need be Regional Offices for Equal Treatment may be established by regulation in order to advise and support victims living at a distance from the capital Vienna.

Structure

The Office for Equal Treatment is divided in three departments (Ombudspersons for Equal Treatment) along the same lines as the Commission.

The Equal Treatment Act covers discrimination on ethnic grounds (“ethnische Zugehörigkeit”)

- in employment and occupation, such as
 - access to employment relationships, self-employment and to occupation,
 - remuneration,
 - voluntary social contributions, which are not a remuneration,
 - measures with regard to training, further education and retraining,
 - other working conditions,
 - ending of the employment relationship,
 - vocational training, training, further education and retraining outside an employment relationship,
 - membership of and involvement in an organisation of workers or employers or any organisation, whose members carry on a particular profession, including the benefits provided by such organisations,
- and in other areas than employment and occupation, such as
 - social protection, including social security and healthcare,
 - social advantages,
 - education,
 - access to and supply of goods and services available to the public, including housing.

The wording "on ethnic grounds" (“ethnische Zugehörigkeit”) covers discrimination based on ethnic as well as on racial origin. The term "racial" was finally omitted upon request of many NGOs, because of its negative connotations.

Item 31: The Servicestelle Politische Bildung (Civics Education Service Desk, www.politische-bildung.at), the Servicestelle Menschenrechtsbildung (Human Rights Education Service Desk) and the Gesellschaft für Politische Aufklärung (Society for Civics Education) continue to provide support structures for Civics Education and teacher training in Austria. They focus their publication series 2003 - 2005 on priority topics of the Civics Education Action Days.

Items 33 and 37: We wish to point out, that the share of nationals of third countries (outside the EU) among the workforce in Austria as a percentage of the overall workforce in Austria is the highest in the EU. Any further facilitation of access to the Austrian labour market by non-citizens other than EU-citizens and “integrated workers” would need to be seen in the context of this specific Austrian situation.

Item 45 and Item 46 concerning recommendation 47: The focus of the section for Intercultural Education in the Federal Ministry of Education, Science and Culture is on the immigrant pupils' linguistic development (in their first language as well as in the additional language German) so as to enhance their self-confidence, their integration in class and their chances at school and later in their lives. The major activities have therefore centred around information for relevant target groups (school authorities, head teachers, teachers), information for immigrant parents and research.

The brochure "Gesetzliche Grundlagen schulischer Maßnahmen für SchülerInnen mit anderer Erstsprache als Deutsch" ("Legal basis for school-based measures for pupils whose first language is another than German") is updated every year.

The publication "Den ersten Schritt gehen wir gemeinsam. Eine Handreichung für SchulleiterInnen und LehrerInnen an Volksschulen zur Integration fremdsprachiger SchulanfängerInnen" ("The first step is our common effort! Guidelines for headteachers and teachers at primary schools for the integration of school beginners with a foreign language") was published in 2002 and has since been very successful with schools and teachers.

Special efforts are made to support the teachers for mother tongue instruction. Two seminars were held in 2001, the results of which were published in "Wir sollten immer zwei Schritte voraus sein." ("We always have to be two steps ahead.").

In December 2003 a seminar on language acquisition and the role of the schools was held for teacher trainers at the teacher training colleges (Pädagogische Akademien).

Several brochures were translated into the most common languages of immigrants in Austria and disseminated among advice centres, NGOs and the like.

Two large studies were conducted in the past years so as to give future school-based measures a solid scientific basis.

"Bilingualer Spracherwerb in der Migration" (" bilingual language acquisition under migration circumstances").

"Interkulturelles Lernen in der Praxis - eine Fallstudie an Wiener und niederösterreichischen Schulen" ("Intercultural education in practice - a case study in schools in Vienna and Lower Austria").

Since the results of the PISA-study have proved that the performance of immigrants pupils is far below the performance of monolingual native Austrians, a workshop has been set up to discuss measures to increase their literacy.

Item 48: The high percentage of students with foreign citizenship or migrant background in schools for special needs or special promotion concerning this target group is significant for years and is the subject for ongoing criticism (EUMC - Annual Report Part 2, pp. 84-85; Raxen 4: National Report on Education, pp. 23-24).

The significantly inferior performance of young people with a migrant background within the PISA study 2000 was the reason why the ministry founded a PISA project group (Bachmann, Horschinegg, Wöckinger) for ongoing monitoring of the obstacles for children of migrant families concerning the access to the Austrian school system.

The ministry financed a feasibility study where the status quo was acknowledged and possible need for research was shown. It was mentioned, that there is no analysis for the reason of this phenomena so far and that there is urgent need for action, e.g. that some of the recommendations of the study should be taken into consideration by the ministry.

Item 59: As we have repeatedly stressed vis-à-vis ECRI, the Minorities Act (Volksgruppengesetz) covers the autochthonous minorities in Austria, referring to them as national minorities (Volksgruppen). The so-called Staatszielbestimmung (a provision included in the Austrian Federal Constitution in 2000) corroborates this view. Article 8 para. 2 loc. cit. reads as follows: "The Republic (Bund, Länder and Gemeinden) is committed to its linguistic and cultural variety, which has evolved in the course of time and finds its expression in the autochthonous minorities. The language and culture, continued existence and protection of these national minorities are to be respected, safeguarded and promoted."

Item 60: The majority of the non-autochthonous Roma in Austria live in Vienna. A Roma association located in Vienna is especially trying to raise the educational level of Roma children by providing 65 teaching assistants (Lernhelfer) and three Roma assistants. The former are students who assist (6 to 15 year-old) children with their school studies and act as contacts with teachers. The latter are Roma active in schools with a high percentage of Roma pupils; they contact the pupils' parents who often don't come to school even if invited by the teachers, and also take care of Roma children, giving them a better standing.

The work of these assistants for Roma is subsidised by the Federal Ministry for Education, Science und Culture, the Federal Chancellery and the Wiener Integrationsfonds (Vienna Integration Fund).

Items 66 et seq.: The legislator was well aware of the importance of an interface between persons belonging to a minority and the public administration. The Minorities Act therefore provides for the establishment of minority advisory councils at the Federal Chancellery designed to offer advice to the Federal Government and the federal ministers on minority issues. The Federal Chancellery is in constant contact with the members of the minority advisory councils, and these contacts are generally regarded as constructive by both sides.

As regards the “implementation of rulings of the Constitutional Court that recognise certain rights to the members of this group“ referred to in the Report in respect of the Slovene minority, reference must be made to the programme prepared by the Austrian Federal Government for the 22nd legislative period, which provides for a solution to the issue of place identification signs as offered to that minority in accordance with the results achieved during the consensus conference at the Federal Chancellery by the parties represented in the regional parliaments and the National Council.

Items 67 and 68: With respect to humanitarian residence status to victims of trafficking in accordance with the Aliens Law we wish to point out that these residence permits are predominantly granted to victims of trafficking who do not cooperate with the authorities. In Austria granting of a residence permit on humanitarian grounds is not conditional upon co-operation with the authorities.

Item 71: Unfortunately we must agree with ECRI in its assessment that the Press Council formally exists but is ineffective at the moment. It must, however, be pointed out that the Press Council is a self-regulating body and that any state interference is excluded from the outset. Nevertheless, it is to be noted that the “Code of Honour of the Austrian press”, which is still in force, naturally condemns xenophobic and racist reporting.

Item 73: As regards the Press Council, we refer to our observations made in respect of item 71. As far as the Austrian Broadcasting Corporation (ORF) is concerned, it must be noted that in accordance with its principles the corporation must see to it that its programmes “do not incite hatred on grounds of race and nationality” (see s. 10 of the Broadcasting Act (ORF-Gesetz). This similarly applies to advertisements broadcast by the ORF (see s. 14 para. 1 of the Broadcasting Act). Provisions of the same wording are to be found in ss. 31 para. 2 and 37 para. 2 of the Private Television Act (Privatfernsehgesetz) and s. 16 para. 4 of the Private Radio Act (Privatradiogesetz).

Item 74: On its website <http://volksgruppen.orf.at>, the Austrian Broadcasting Corporation (ORF) provides on a daily basis the latest information on ethnic, minority and human rights issues regarding society, politics and culture. This information is prepared by the Editorial Office for “Ethnic Projects” of the ORF in cooperation with the Hungarian and Croat Editorial Offices of the Studio Burgenland and the Slovene Editorial Office of the Studio Carinthia, in Croatian, Hungarian, Slovene (German) and occasionally in Slovak, Czech and Romany. A re-launch on 15 May 2004 is aimed at a better, more clearly structured and user-friendly layout. Particular attention is being paid to the correct use of diacritical signs, and special language links have been introduced.

The re-launch provides a better opportunity to listen to minority programmes broadcast earlier by the ORF in the respective language also on the Internet (so-called “radio on demand”).

The ORF TELETEXT provides information on all relevant radio and TV programmes for minority groups and since 2003 also informs about the latest pertinent events (“ethno tips“) on a daily basis.

Here, reference must also be made to the large number of homepages of minority organisations subsidised by the Minority Assistance Fund and to e-learning projects in minority languages.

As regards the quality of reporting by the Austrian Broadcasting Corporation, it must be pointed out that its Minority Editorial Office has repeatedly been awarded prizes (such as, for example, the Klaus Gatterer Prize) for its commitment, which is not confined to autochthonous minorities. With the magazine “Heimat, fremde Heimat” (Home, different Home) the Editorial Office wants to address persons belonging to national minorities as well as Austrians interested in ethnic issues, immigrants and other foreign inhabitants. It also provides information, entertainment and services in German, the languages of non-autochthonous minorities as well as the languages of autochthonous minority groups.

Items 75 et seq.: At the national census conducted in 2001 people were asked about the language they spoke in everyday life. The majority of those belonging to national minorities are against investigations into their ethnic affiliations and - according to the present state of information - would even boycott such investigations.

The Federal Chancellery is currently preparing an evaluation report on the results of the 2001 national census based on the six autochthonous minority languages, establishing legally admissible connections that are useful from a minority policy point of view.

Items 78 - 80, 82 and 86, 88 and 89: It would have been helpful to have more details on “reports” of misconduct by law enforcement officials against, in particular, visible minorities such as persons of African descent to launch investigations into such cases. We wish to point out that all complaints against law enforcement officials are thoroughly investigated. If need be the competent public prosecutor’s office is informed without delay, which decides on the further steps to be taken. If the need arises measures to improve police operations are taken.

The “Office for internal affairs” in the Ministry of Interior investigates - following international models - all allegations, including individual complaints of misconduct by law enforcement officials - outside classical police hierarchies, completely independently and according to rules established by the judiciary.

Item 97: It must be pointed out that the provisions governing racism and xenophobia¹, in existence in Austria at the federal constitutional and federal-law levels, are regarded as strict by international standards.

Since the existence and variety of political parties are essential elements of the democratic system of the Republic of Austria (cf. Article 1 of the Federal Constitution; s. 1 of the Political Parties Act (Parteiengesetz), the establishment of political parties is free in Austria, unless - as mentioned above - provided otherwise under federal constitutional law). The activities of political parties must not be restricted by specific legal provisions (cf. s. 1 para. 3 of the Political Parties Act). For similar reasons, the subsidies allocated to political parties, which are also regulated by that act, are not based on substantive/political criteria but are only dependent on the share of electoral votes and the number of seats in the National Council (the lower house of the Austrian Parliament) or the European Parliament (cf. ss. 2 et seqq. of the Political Parties Act).

Item 98: The main goal of the 2003 amendments to the Asylum Act are to improve the efficiency of asylum proceedings in order to distinguish swiftly and reliably between well-founded and unfounded asylum applications. While refugees in need of protection should receive assistance promptly situations of uncertainty during pending proceedings should be reduced to a minimum. The reform of asylum proceedings was, however, not designed to prevent asylum seekers from coming to Austria.

¹ cf. among others, the Prohibition Act (*Verbotsgesetz*) and s. 283 of the Penal Code (*StGB*) incitement to hatred

Item 99: According to the pertaining Austrian legal provisions persons may only be detained in view of deportation on the grounds prescribed under these legal provisions. Moreover, the asylum seeker may lodge a complaint with the independent administrative senate, which is an independent and impartial tribunal established by law in the sense of Article 6 European Convention on Human Rights and Fundamental Freedoms.

Item 105: Following the amendment of the Federal Care Act and the Agreement on Basic Care between the Federation and the Provinces, which both entered into force on 1st May 2004 90 % of asylum seekers in Austria receive support by federal or provincial authorities since 1st of May 2004.”