



CRI (99) 7

## **European Commission Against Racism and Intolerance**

### **First report on Austria**

Adopted on 13 March 1999

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## **INTRODUCTION**

The European Commission against Racism and Intolerance (ECRI) was set up in 1994, at the instigation of the first Summit meeting of Heads of State and Government of the member States of Council of Europe, to combat the growing problems of racism, xenophobia, anti-Semitism and intolerance threatening human rights and democratic values in Europe. The members of ECRI were chosen for their recognised expertise in questions relating to racism and intolerance.

The task given to ECRI was to: review member States' legislation, policies and other measures to combat racism, xenophobia, anti-Semitism and intolerance and their effectiveness; propose further action at local, national and European level; formulate general policy recommendations to member States; and to study international legal instruments applicable in the matter with a view to their reinforcement where appropriate.

One aspect of the activities developed by ECRI to fulfil its terms of reference is its country-by-country approach, which involves carrying out an analysis of the situation in each of the member States in order to provide governments with helpful and concrete proposals.

The procedure adopted for the preparation of country-specific reports can be summarised thus:

- a. The preliminary collection of information as well as the preparation of the texts of the preliminary draft reports are carried out in small working groups of ECRI. Preliminary sources of information used are wide-ranging, including, inter alia, replies provided by governments to a questionnaire sent out by ECRI, input from the relevant national members of ECRI, information on national legislation collected for ECRI by the Swiss Institute of Comparative Law<sup>1</sup>, information from international and national non-governmental organisations, various publications and the media.
- b. ECRI examines and discusses the preliminary draft report on each country in plenary session and adopts a draft report.
- c. The report is sent to the relevant government for a process of confidential dialogue conducted through a government-appointed national liaison officer. The draft country report is re-examined and possibly revised in the light of the comments provided by the latter.
- d. The report is then adopted in its final form by ECRI in plenary session, and transmitted through the Committee of Ministers of the Council of Europe, to the government of the country in question. Two months after this transmission, the report is made public, unless the government of the country concerned expressly requests that it is not made public.

To date, four series of ECRI's country-specific reports have been made public, in September 1997, in March 1998, in June 1998 and in January 1999 respectively<sup>2</sup>. A fifth series of country-

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<sup>1</sup> The report prepared by the Swiss Institute (ref: CRI (98) 80), covering relevant legislation in member States of the Council of Europe is available on the web site [www.ecri.coe.int](http://www.ecri.coe.int) and, in hard copy, from ECRI's Secretariat.

<sup>2</sup> The first four series comprise reports on Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Liechtenstein, Lithuania, Luxembourg, Malta, the

specific reports was transmitted to the governments of the countries concerned in January 1999, and is thus now being made public<sup>3</sup>.

The following report contains ECRI's analysis and proposals concerning Austria.

It should be noted that ECRI is carrying out its country-by-country procedure by preparing reports for all forty member States of the Council of Europe. This fifth series of reports, for which the procedure was completed by January 1999, will be followed during 1999 by the reports on the remaining member States of the Council of Europe. The order in which the reports are produced has no significance other than that these are the first reports to be completed.

The publication of this report represents the start of an on-going and active process of exchange between ECRI and the authorities of each of the member States, in order to identify solutions to the problems of racism and intolerance facing Europe. ECRI will also welcome the input of non-governmental organisations and other parties working in this field to ensure that its work is as constructive and helpful as possible.

As from 1999, ECRI has begun a follow-up procedure to its country reports, examining what action governments may have taken on the proposals they contained, up-dating their contents generally and focusing on specific issues of concern in greater depth. Some 10 countries will be addressed annually in this way, over the period 1999-2002.

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Netherlands, Norway, Poland, Portugal, the Russian Federation, San Marino, Slovakia, Slovenia, Spain, Switzerland and the United Kingdom.

<sup>3</sup> Reports on Austria, Latvia, Romania and Ukraine.

# **REPORT ON AUSTRIA<sup>4</sup>**

## **Introduction**

Austria is a federal Republic, sharing borders with eight other countries of both Western and Eastern Europe. It is a predominantly mountainous country in which a quarter of the population lives in Greater Vienna.

Austria has recognised the following minority groups as "Volksgruppen<sup>5</sup>": the Croat, Czech, Hungarian, Roma/Gypsy, Slovak and Slovene minorities. It also has a large population of migrant workers, many of whom are citizens of non-European Economic Area (EEA) member States and who are covered by the Aliens' Employment Act<sup>6</sup>, mainly living around the Vienna area (18% of the population of Vienna are non-citizens).

Migration into Austria, as in many other European countries, has been affected over the last few years by the influx of refugees from the former Yugoslavia. Many of these de facto refugees have received residence permits and have been guaranteed the possibility of continuous residence in Austria. In recent years, a high level of immigration has taken place over a short space of time. This has led the government to reduce the number of new foreign workers allowed into the country: most non-refugee immigration today consists of immigration for family reunification with migrant workers already in the country. Austria fixes a quota for the numbers of foreign workers on the labour market each year.

Despite efforts made on a national level to combat racism, xenophobia, anti-Semitism and intolerance, Austria still faces problems in this area, including incidents of extreme violence against non-citizens, certain minority groups and even public figures who are accused of being over-friendly to such groups, and a high degree of support among the electorate for the right-wing populist Freedom Party.

Some of the key areas identified by ECRI as meriting particular attention include:

- the possibility of considering a more flexible approach as regards the legal situation of migrant workers;

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<sup>4</sup> Note: Any development subsequent to 19 June 1998 is not covered by the following analysis and is not taken into account in the conclusions and proposals.

<sup>5</sup> These ethnic groups are recognised by Austria in virtue of the 1976 Ethnic Groups Act, according to which ethnic groups are groups of Austrian nationals with non-German mother tongues and their own ethnic characteristics, who have their residence and homes in parts of the Federal Territory. In the following report, the term "Volksgruppe" is used when reference is specifically being made to these groups, and the term "minority groups" to refer in a more general sense to groups of the population which may be subject to problems of racism, xenophobia, anti-Semitism and discrimination.

<sup>6</sup> The term "migrant workers" as used hereafter in this text refers principally to citizens of non-EEA member States who are covered by the Aliens' Employment Act in Austria.

- the possibility of setting-up a specialised body dealing exclusively with the problems of racism and intolerance and covering all minority groups in Austria;
- the need for more extensive awareness-raising concerning xenophobia which in some cases leads to harassment and discrimination of minority groups;
- the need for reliable data concerning the situation of the various minority groups living in Austria.

# I LEGAL ASPECTS<sup>7</sup>

## A. International legal instruments

1. Austria has ratified the majority of the relevant international legal instruments in the field of combating racism and intolerance. It has not ratified the UNESCO Convention against Discrimination in Education or the European Charter for Regional or Minority Languages. As regards the UNESCO Convention, Austria has stated that it has not ratified this instrument since it would need to make reservations, which are not permitted under the Convention: however, ECRI feels that further consideration of the matter might permit a solution to be identified. As concerns the European Charter for Regional or Minority Languages, Austria has stated its intention to ratify this instrument and is encouraged to do so as soon as possible.
2. It is also felt that Austria should accept Article 14 of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and thus recognise the competence of the Committee for the Elimination of Racial Discrimination to examine individual complaints. Austria has stated that the possibility of individual complaint exists since a constitutional law implements the CERD and thus allows for the usual judicial recourse: ECRI nevertheless stresses that acceptance of Article 14 of CERD is most desirable.
3. Given the large numbers of migrant workers in Austria, Austria might also consider ratification of the European Convention on the Legal Status of Migrant Workers.

## B. Constitutional provisions

4. The European Convention on Human Rights and principles of the International Convention on the Elimination of All Forms of Racial Discrimination have been attributed constitutional rank. Each of these instruments contains some kind of equality clause, but these clauses vary in scope. While Art. 7 of the Federal Constitutional Statute and Art. 2 of the Basic Law of the State do not expressly mention the criterion of race, Art. I of the Law on the Implementation of the CERD and Art. 14 of the Human Rights Convention as well as some provisions of the Treaty of St. Germain dealing with minority issues refer to racial discrimination in particular. The Federal Constitutional Statute, the Basic Law of the State and the Treaty of St. Germain guarantee equality to Austrian citizens only. Art. I of the Law on the implementation of the CERD prohibits discrimination only as between non-citizens: subsection I (2) of the Law stipulates that Austrian citizens may be granted special rights as far as this is not contrary to Article 14 of the European Convention on Human Rights. The Constitutional Court has interpreted the provision by finding that differential treatment of non-citizens is only admissible if and when there is reasonable justification and the treatment is not disproportionate<sup>8</sup>. In this context, ECRI would stress that this interpretation should be adequately implemented in practice.

### - *Legislation concerning status of non-citizen residents*

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<sup>7</sup> A full overview of the legislation existing in Austria in the field of combating racism and intolerance is provided in the publication CRI (98) 80 prepared for ECRI by the Swiss Institute of Comparative Law (see bibliography).

<sup>8</sup> Constitutional Court judgements of 29 June 1995 and 30 November 1995.

5. Austria has a restrictive legislation as regards the legal status of non-citizen residents (residence rights, access to employment, family reunification, rights of second generation born in Austria). New legislation has recently been introduced in this field (Aliens Act, 1997). This Act introduced special regulations designed to promote the integration of residing non-citizens, giving priority to such measures over the acceptance of new arrivals. An "integration package", which took effect early in 1998, placed an even stronger emphasis on integration than before. The aim of the integration policy is to promote the participation of non-citizens in economic, social and cultural life; measures include language courses, education, lectures on Austrian culture and history, and information on the housing market. ECRI does not as yet have full details concerning the implementation of the new Aliens Act, but hopes, in the light of recent developments in other European countries which extend the rights of migrant workers, that Austria's legislation and policies in this area are tending towards a more liberal approach.
6. There have been reports<sup>9</sup> that the situation of certain long-term residents, particularly those Roma/Gypsies who were not considered to form part of the Austrian Roma/Gypsy "Volksgruppe" when this group was recognised in 1993, may have been made more precarious since the introduction of the new Law on Aliens and Residence Law in 1993. It is claimed that many Roma/Gypsies lost the right of long-term legal residence and acquired the status of "new immigrants", which made re-acquisition of residence and work permits very difficult. It is felt that such reports should be investigated and measures taken to remedy possible problems faced by such individuals.

**C. Criminal law provisions**

7. Relevant provisions in the Criminal Code include Section 115 (prohibition of public insult which violates human dignity, injury or threat to injure). The offence is pursued by the Public Prosecutor, with the agreement of the injured party, if it is directed against the injured party because of his or her religion, race, nation, ethnic group or State. Section 283 prohibits incitement to hostile action against a church or religious community existing in the State or against a group determined by appurtenance to such a church or religious community, race, nation, ethnic group or State. Paragraph 33/5 of the Criminal Code provides that racist or xenophobic motivations are considered as a special aggravating circumstance of any crime. Several other provisions of the Criminal Code - the Prohibition Statute - deal with prohibition of National Socialist organisations, participation in such organisations, or acts committed as a means towards furthering the aims of such organisations.

As regards the Prohibition Statute, it is noted that the dissemination of racist printed matter and other material, including dissemination on the Internet, is illegal under this Statute. The possession and import of a certain amount of racist material with an intent to revive nazism are generally punished according to paragraph 3g of the Prohibition Statute (possession with a view to dissemination). Given the spread of racist networks across Europe, consideration might be given to extending the scope of this Statute to restrict more effectively the import of racist material.

8. It is hoped that attention is particularly paid to the implementation of legislative provisions in force in the field of combating racism and intolerance, since it is often the

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<sup>9</sup> See "Divide and Deport: Roma and Sinti in Austria" (cf bibliography).

case that legislation exists but is not fully effective. Furthermore, it may be difficult to assess the effectiveness of legislation in this area since official statistics do not distinguish between "general" injuries and racist injuries, both of which are criminalised under Article 115 of the Criminal Code. Additional measures may sometimes be necessary to ensure that legislation is of real use in combating racism and discrimination: such measures may include for example awareness-raising among those working within the criminal justice system, awareness-raising among the public concerning their rights and obligations, monitoring of incidents reported and the follow-up accorded to them.

#### **D. Civil and administrative law provisions**

9. Civil and administrative law contains provisions prohibiting public expressions of prejudice against persons on the ground of their race, colour, national or ethnic origin, religion or creed in an unjustified manner and prohibiting discrimination in the provision of services or entry into places which are intended for common public use. Paragraph 33 of the General Civil Law specifies that all persons share the same civil rights, unless Austrian citizenship is specifically required. However, there do not appear to be provisions in civil or administrative law specifically dealing with discrimination in the provision of housing or discrimination in employment. Austria might consider introducing such provisions.

#### **E. Specialised bodies**

10. The Office of the People's Advocate was established in 1977. Although it is open to complaints about racism and intolerance, few complaints have been submitted to it in this field, and in no case were the alleged facts proved true. Ethnic advisory councils deal with matters pertaining to national minorities, and have competence to advise the Federal Government and Federal Ministers in this field and to make proposals. However, a body seems to be lacking which covers the problems faced by other minority groups, particularly non-citizens. In order to highlight its commitment to combating racism and intolerance, Austria might consider setting up a national mediation commission or ombudsman dealing with all the different minority groups in Austria and the problems they face. Concerning the tasks and powers of such a body, inspiration may be drawn from countries where similar institutions already exist.

## II POLICY ASPECTS

### F. Reception and status of non-citizens

11. As mentioned in the introduction above, following an increase in the influx of immigrants in recent years, Austria has adopted measures to reduce the entry of immigrants into the country. The number of asylum-seekers is steadily, yet modestly, increasing.
12. A Division for Integration and Migration exists within the Federal Ministry of the Interior providing assistance in matters of integration for asylum seekers and non-citizens. At a local level, the Vienna City Council set up in 1992 the "Vienna Integration Fund", which co-ordinates initiatives and strategies for ensuring the harmonious co-existence of the local population and non-citizen population in Vienna. Furthermore, the "Foreigners' Council" of the City of Graz is a body composed entirely of non-citizens, elected by secret ballot among non-citizens resident in Graz, which acts as an advisory body to the municipal authorities in all matters involving the interests of non-citizens. Such initiatives could be developed further in different areas of Austria.
13. There have been reports of ill-treatment of non-citizens - including some asylum-seekers - by police and prison officers. The authorities are encouraged to take all possible steps to punish the perpetrators and to take further preventive measures as necessary (see item G below). Moreover, ECRI notes that there is sometimes a tendency to portray immigrants and asylum-seekers in a negative fashion, and considers that politicians and opinion leaders could play a role in stressing the valuable contribution that persons belonging to such groups can bring to the country.

### G. Education and training

#### - *Police training*

14. It seems that despite special training in human rights and seminars for police trainers and police academies to improve understanding of ethnic and cultural differences, there is still a problem with police brutality and other maltreatment, often directed towards persons from minority groups. It is felt that special measures should be taken to counter such problems, including more intensive awareness training for police at all levels (in this respect, attention is drawn to the Council of Europe publication on "Police training concerning immigrants and ethnic relations"), the creation of an independent commission to investigate all allegations of human rights violations by the police, and the imposition of severe penalties for violations of this kind.

#### - *School education*

15. School attendance is compulsory for all children, regardless of their nationality or home language. The childrens' mother tongues - other than German - can either be taught as optional subjects in separate (afternoon) classes or integrated into the general schedule (collaborative teaching). In the first case, classes require a minimum of 5-15 pupils (according to provincial school laws). Since it appears that it is not always easy to find qualified teachers to teach such classes, extra efforts might be made to recruit and train teachers from minority groups. Such provision might also be further extended to non-compulsory schooling.

16. It is noted that the children of immigrants are over-represented in lower-level "vocational" secondary schools and special schools for under-achievers, and very under-represented in "grammar" and medium and higher level technical and vocational schools. While acknowledging efforts made in this area, ECRI feels that further measures might be considered to improve this situation, such as more provision for mother tongue tuition in the educational system at primary and secondary level. More emphasis might also be put on intercultural education, special training for teachers of German in teaching German as a second language, adoption of more innovative teaching models and in-depth research into the different educational paths of children from the majority and minority groups.
17. "Intercultural education" was introduced as a so-called "educational principle" in 1991/2: it was recommended to teachers that this issue should be taken into account in all subjects. To reinforce this recommendation, special training might be provided for teachers to acquaint them with the issues at stake, the current situation in Austria, the particular difficulties sometimes faced by the children of immigrants, etc.

- ***Awareness-raising***

18. There appears to be a high level of negative attitudes towards the minority groups living in Austria, reflected in the support expressed for the Freedom Party in opinion polls and voting patterns. It is hoped that other political parties will resist the temptation to approach the subject of minority groups in a negative fashion and will take a firm public stand against any forms of discrimination or xenophobia. Stress should be laid on the positive contribution made by different minority groups to Austria's society and culture. Furthermore, it should be made clear that immigration policies are not the same as policies dealing with immigrants already living in a country, and politicians should at the very least engage themselves to ensuring that immigrant groups already living in Austria are treated in a fair and decent manner. One possibility to raise awareness among the political class would be to instigate an annual debate in Parliament on the subject of racism and intolerance and the various disadvantages faced by minority groups.
19. It is also noted that there appears to exist prejudice as regards the Jewish community, as reflected in responses to an opinion poll<sup>10</sup>. Further special awareness-raising measures might be taken to counteract anti-Semitic sentiments in Austria.

**H. Employment**

20. Non-citizens, in order to work in Austria, require a residence permit and a labour market permit. There are four kinds of labour market permit, none of which are permanent. The law sets a limit to the non-citizen labour force, which at present stands at nine percent of the total labour force. Very few new entries into the labour market are now permitted, even from those legally residing in Austria<sup>11</sup>. It is mostly women returning to the labour market, young people leaving school and refugees who are affected by this restriction.

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<sup>10</sup> Report conducted by the Gallup Institute of Austria on behalf of the American Jewish Committee (see bibliography).

<sup>11</sup> It should be noted, however, that in recent years some refugees from the former Yugoslavia and some long-term resident family members of non-citizens have been admitted to the labour market.

Non-citizens appear to face numerous disadvantages on the labour market. 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<sup>12</sup>. In addition, their rather more uncertain position on 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. Such unequal conditions on the labour market for citizens and non-citizens are discriminatory and may also lead to an increase in xenophobic attitudes amongst the general public.

21. The works councils in Austria form a very important element in labour relations. Non-citizens may vote in works councils elections but are not eligible for election. The same is true of the Chamber of Labour. The Austrian Trade Union Federation, while it has relatively high membership among non-citizens, has very few officials from this group. ECRI feels that non-citizens should be given more opportunities to participate on an active basis in labour organisations, in order to secure their rights, employment conditions and equal opportunities.

#### **I. Statistics**

22. It appears difficult to obtain reliable data about the various minority groups living in Austria and their situation. Since it is difficult to develop and effectively implement policies without good data, ECRI feels that a reliable system of data collection should be established, in accordance with European laws, regulations and recommendations on data protection and protection of privacy and the principle of freedom of declaration, in order to assess and evaluate the situation and experiences of the various minority groups living in Austria. In particular, further efforts might be made to establish the real situation as regards discrimination and racism, for example by means of opinion polls among the majority but also among minority populations to ascertain how they perceive levels of discrimination and intolerance. Another important area for research is the evaluation of various measures already undertaken to combat racism and intolerance.

#### **J. Media**

23. The mass media should ideally play a role in promoting tolerance and improving awareness about different cultures and minority groups. A Code of Ethics for the Austrian Press exists within the Austrian Press Council which condemns discrimination or diffamation. However, some popular newspapers tend to portray immigrants in a negative fashion and sensationalise any incidents involving minority groups. Such reporting should be discouraged by the professional media bodies as it may tend to distort public perceptions and opinions concerning minority groups.
24. One possible way to raise public awareness of the culture and lifestyles of the various groups living in Austria and to illustrate the benefits of cultural diversity is to facilitate the access of minority groups to the public broadcasting networks and to ensure that the diversity of society is reflected in mainstream broadcasting.

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<sup>12</sup> Non-citizens pay the same amount of national unemployment insurance as Austrian citizens, but the duration of their payments is curtailed. If no work is found within the period of statutory unemployment benefit, a system of "distress relief" is applied; however, non-citizens may be denied access to distress relief (cf. report "Preventing Racism at the Workplace"; see bibliography).

## **K. Racist violence and harassment**

25. In recent years, events such as a series of letter bombs and other attacks against members of minority groups and individuals or organisations considered as supporters of minority groups have given rise to concern. A government report on rightwing extremism issued by the Ministry of the Interior showed an increase in complaints and reports of incidents of rightwing extremism, xenophobia and anti-Semitism in 1995. Although a downward trend was noted in a similar report for 1996, the number of criminal sentences brought as a result of such complaints remained rather low<sup>13</sup>. ECRI urges the Austrian authorities to continue to monitor the incidence of racist violence and harassment, and to take firm preventive and punitive measures to counter such manifestations. As regards preventive measures, particular efforts should be taken to reach young people, who may be especially susceptible to extreme right-wing propaganda and activities.

### **- Roma/Gypsy community**

26. The Roma/Gypsy population has been a target of racist attacks and harassment over recent years: notably, a bomb attack in 1995 caused the deaths of four members of this community. Incidents of maltreatment of Roma/Gypsies by police officers have also been reported, and the Roma/Gypsy community also faces severe disadvantages as regards access to housing and employment. The recognition in 1993 of the Roma/Gypsy minority as an "Volksgruppe" with special rights (state financial support for cultural projects, right to form an advisory council to the government, possibility for bilingual schooling etc.) has improved the situation for many Roma/Gypsies: however, there have been some suggestions that the definition of which Roma/Gypsies fall under the category of "Volksgruppe" (autochthonous group) excludes many Roma/Gypsies who are nonetheless long-term residents in Austria<sup>14</sup>. Further consideration might be given to widening the definition of which categories of Roma/Gypsies fall under the statute of a recognised minority group in Austria.

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<sup>13</sup> In 1996, there were 290 complaints and incidents reported, of which 32 cases resulted in criminal sentences. Source: US Department of State Report for 1996, citing a report published by the Ministry of the Interior.

<sup>14</sup> See "Divide and Deport: Roma and Sinti in Austria" (cf bibliography).

**General data as supplied by national authorities**

**For reasons of consistency, ECRI, in its CBC reports, has, in this box, reproduced statistical data only from the replies of Governments to ECRI's questionnaire. The questionnaire was sent to the Austrian government on 13 July 1994.**

**ECRI accepts no responsibility for the data below.**

Slovene, Croat, Hungarian, Czech, Slovak, Roma/Gypsies (no figures given) recognised as "Volksgruppen"

Population: 8 million (1993). This figure is taken from the Council of Europe publication "Recent demographic developments in Europe" (see bibliography)

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This bibliography lists the main published sources consulted during the examination of the situation in Austria: it does not cover all the various sources of information (media, contacts within the country, national NGOs etc.) which were utilised).

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