

APPENDIX

ECRI wishes to point out that the analysis contained in its second report on Austria, is dated 16 June 2000, and that any subsequent development is not taken into account.

In accordance with ECRI's country-by-country procedure, a national liaison officer was nominated by the authorities of Austria to engage in a process of confidential dialogue with ECRI on its draft text on Austria and a number of her comments were taken into account by ECRI, and integrated into the report.

However, following this dialogue, the national liaison officer expressly requested that the following observations on the part of the authorities of Austria be reproduced as an appendix to ECRI's report.

OBSERVATIONS PROVIDED BY THE AUTHORITIES OF AUSTRIA CONCERNING ECRI'S REPORT ON AUSTRIA

"General Observations

The report contains several comments of a very general nature, especially where ECRI refers to "reports" of instances of racial discrimination by state authorities and its organs, without further specifying the concrete events (e.g., item 10: "(...) reported instances of racially derogatory speech and racial stereotyping used by some judges (...)"). More detailed information on these occurrences as repeatedly requested by the Austrian authorities would have been helpful in order to investigate allegations or clarify them.

Regarding the general statement "numerous reports of incidents of discriminatory behaviour and sometimes violent behaviour on the part of the police vis-à-vis people of immigrant origin" (see item 39), Austria would like to emphasise that the fight against racist, xenophobic or antisemitic attitudes is a key element in the training and work of the Austrian police force. All complaints, including those against individual police officers, are thoroughly investigated. The entire legal system is at the disposal of complainants, first and foremost the procedure before independent courts and the Independent Administrative Tribunals.

Specific Observations

Item 24: The programme of the Austrian Federal Government, which refers to "pupils who need support in the field of linguistic and socio-cultural integration", has been specified by a decree of the Federal Ministry of Education, Science and Culture dated 25 July 2000. The decree states that the definition "pupils who need support" does by no means include all children of foreign origin or all pupils of non-German mother tongue, but only those whose mastery of German is not yet sufficient for fully comprehending the lessons. The decree, which was addressed to the head teachers, recommends that the number of these pupils should not exceed one third of the total number of pupils in a given class, so as to ensure favourable learning conditions for all pupils and to facilitate, in particular, the learning progress of the aforementioned group.

Item 30: Laws providing for support of ethnic minorities as defined by the Ethnic Groups Act 1976 are applied in a way that Roma, who do not belong to the autochthonous Roma minority, may also participate in specific minority projects financed by the Austrian Government.

Section II, Chapter N: The remarks by ECRI give the impression that the result achieved by the Austrian Freedom Party (FPÖ) in the general elections held in October 1999 can primarily be put down to its allegedly racist and xenophobic propaganda.

Regardless of the question whether it is admissible to qualify such a complex phenomenon as an electoral campaign wholesale as racist and xenophobic, it must be stressed that under no circumstances one can draw the conclusion that the FPÖ's electoral success was based on racist and xenophobic motives. It is undisputed that election results - as is evident also from electoral analyses - are influenced by a large number of social and political factors.

Several scientific investigations on the motivation of voters for choosing the FPÖ during the last elections proved that the main reasons why voters supported the FPÖ were, inter alia, the desire for a political change, strict measures against corruption and the modernisation of Austria. Only the fifth reason was the immigration policy, thus, not being as decisive as the above-mentioned reasons.

Moreover, it should be recalled that the President of the European Court of Human Rights had mandated Mr. Ahtisaari, former President of Finland, Professor Frowein, Director of the Max-Planck Institute at Heidelberg and former Vice-President of the European Commission of Human Rights, and Mr. Oreja, former Secretary-General of the Council of Europe and former Minister of Foreign Affairs of Spain, to examine, inter alia, the evolution of the political nature of the FPÖ. Whereas ECRI expresses concern about the participation of the FPÖ in the current government coalition (see item 36), it should be noted that the report of the above-mentioned persons, adopted three months later, comes to the following conclusion in paragraph 113: in carrying out their governmental activities "the Ministers of the FPÖ have by and

large worked according to the Government's commitments" (i.e. inter alia, "respect, tolerance and understanding for all human beings irrespective of their origin, religion or weltanschauung", see paragraph 85 of the report by Mr. Ahtisaari, Mr. Frowein and Mr. Oreja adopted in Paris on 8 September 2000).

Section II, Chapter O

Item 41: In connection with ECRI's call for the establishment of an independent commission it should be emphasised that in accordance with the Security Police Act the Advisory Board on Human Rights is entitled to instruct committees to pay visits without prior notice to all services of the security forces and all places, where administrative command and enforcement powers are exercised by the security forces. Such a committee consists of independent experts and is headed by a personality of renown in the field of human rights.

Items 42, 43, 44: It is ensured that the Public Prosecutor and the permanent special committee established within the Ministry of the Interior are immediately informed of all complaints of alleged ill-treatment by police officers. In the context of arrests and complaints of maltreatment lodged against officials of the public security service, reference is made to the Decree of 4 December 1996 concerning the "documentation of injuries suffered during measures of deprivation of liberty". This Decree ensures, inter alia, that another service or officers not involved record all necessary evidence with regard to complaints on alleged maltreatment immediately. Accurate medical evidence taking and the preparation of an expert opinion by the police surgeon is ensured by service instructions.

Item 45: The Advisory Board on Human Rights has issued 32 recommendations on so-called "problematic deportations" in October 1999; utmost attention is given by the competent authorities to their effective implementation. Moreover, since May 1999, special guidelines for deportation by aircraft have been enacted. Thereby, deportation by aircraft where accompaniment by an escort is necessary may be effected only by specially trained officers of the public security service. To verify the physical condition for flying, a medical examination has to take place no more than 24 hours before deportation and the results have to be recorded.

Item 46: Austria makes every effort to convey the significance of human rights in all areas of basic and advanced training, in particular, as regards the "enforcement services". The following training sessions are, inter alia, organised to prevent prejudices and discrimination as well as to cope adequately with conflict situations:

- *Applied psychology in order to strengthen social action skills; rhetoric, communication skills and conflict handling; leadership behaviour, creating awareness of the significance of human rights;*
- *Human rights, fundamental freedoms and the Constitution; seminars on the "situation of and dealing with foreigners"; project "Police and Africans" aiming at improving the daily contacts between police officers and Africans; project on "what is the attitude of the enforcement bodies towards non-nationals in Austria. How do they deal with them?"; the PAVEMENT project towards a successful implementation of Article 13 TEC by using the police service as an example;*
- *Human Rights Week in the framework of the Council of Europe's Programme "Police and Human Rights 1997 - 2000" "*