

# ECRI

European Commission against Racism and Intolerance  
Commission européenne contre le racisme et l'intolérance

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## European Commission against Racism and Intolerance

### SECOND REPORT ON AUSTRIA

Adopted on 16 June 2000

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## **Foreword**

*The European Commission against Racism and Intolerance (ECRI) is a body of the Council of Europe, composed of independent members. Its aim is to combat racism, xenophobia, antisemitism and intolerance at a pan-European level and from the angle of the protection of human rights.*

*One of the pillars of ECRI's work programme is its country-by-country approach, whereby it analyses the situation as regards racism and intolerance in each of the member States of the Council of Europe and makes suggestions and proposals as to how to tackle the problems identified.*

*At the end of 1998, ECRI finished the first round of its country-by-country reports for all member States. ECRI's first report on Austria is dated 19 June 1998 (published in March 1999). The second stage of the country-by-country work, initiated in January 1999, involves the preparation of a second report on each member State. The aim of these second reports is to follow-up the proposals made in the first reports, to update the information contained therein, and to provide a more in-depth analysis of certain issues of particular interest in the country in question.*

*An important stage in ECRI's country-by-country work is a process of confidential dialogue with the national authorities of the country in question before the final adoption of the report. A new procedure in the second round of country reports is the organisation of a contact visit for the ECRI rapporteurs prior to the drafting of the second report.*

*The contact visit to Austria took place on 27-29 March 2000. During this visit, the rapporteurs met with representatives of various ministries and public administrations responsible for issues relating to ECRI's mandate. ECRI warmly thanks the Austrian national authorities for their wholehearted co-operation in the organisation of the contact visit, and in particular would like to thank all the persons who met its delegation each of whom provided much valuable information on their own field of competence. ECRI would also like to thank the Austrian national liaison officer whose efficiency and collaboration were much appreciated by ECRI's rapporteurs.*

*Furthermore, ECRI would like to thank all the representatives of non-governmental organisations with whom its rapporteurs met during the contact visit for the very useful contribution they made to the exercise.*

***The following report was drawn up by ECRI under its own responsibility. It covers the situation as of 16 June 2000 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposals made by ECRI.***

### ***Executive summary***

Over recent years, Austria has taken steps which are relevant to combating racism and xenophobia, including the adoption of measures aimed at improving access of members of minority groups to education and their performance, the introduction of initiatives to raise awareness of key actors and the general public of the issues of racism and discrimination, and the establishment of an Advisory Board of Human Rights to monitor the compliance of the work of the police with human rights principles.

Problems of racism, xenophobia and discrimination persist, however, and concern particularly non-EU citizens – notably immigrants, asylum-seekers and refugees – but also Austrian nationals of immigrant background. People perceived to be Black Africans appear to be particularly vulnerable to these phenomena. Most of the existing legal provisions aimed at combating racism and discrimination do not appear to provide for effective protection against these phenomena. Of deep concern is the widespread use of racist and xenophobic propaganda in politics. The behaviour and attitudes of the police vis-à-vis members of minority groups is also of especial concern.

**In the following report, ECRI recommends to the Austrian authorities that further action be taken to combat racism, xenophobia, discrimination and intolerance in a number of areas. These recommendations cover, *inter alia*, the need to ensure that the legal framework aimed at combating these phenomena is adequate and effective and the need to ensure that immigration and integration policies favour a genuine social cohesion between the members of different people living in Austria. ECRI also stresses the need effectively to address manifestations of racist or discriminatory behaviour on the part of the police and, more generally, to raise awareness of the issues of racism, discrimination and intolerance amongst law enforcement officials. Urgent action is also called for to fight against the use of racist and xenophobic propaganda in politics.**

## **SECTION I: OVERVIEW OF THE SITUATION**

### **A. International legal instruments**

1. Austria has signed and ratified a large number of international legal instruments relevant in the field of combating racism and intolerance. Since the publication of ECRI's first report, Austria signed, in May 1999, the Revised European Social Charter. ECRI welcomes this development and encourages a swift ratification of this instrument by the Austrian authorities. As concerns the European Charter for Regional or Minority Languages, to which Austria is a signatory, the authorities have stated that the preparatory work for ratification of this instrument is well underway. ECRI encourages a rapid finalisation of this process. As noted in ECRI's first report, Austria has not ratified the UNESCO Convention against Discrimination in Education since it would need to make reservations -- which are not permitted under the Convention -- for safeguarding some provisions of the laws on minority schools. ECRI considers, however, that ratification of this instrument would strengthen the legal protection against discrimination in a vital area and therefore reiterates its call for the adoption of the necessary changes in domestic legislation and for ratification of this instrument by Austria. ECRI furthermore reiterates that Austria should sign and ratify the European Convention on the Legal Status of Migrant Workers, notably in consideration of the considerable number of non-citizens living and working in Austria. ECRI also urges the authorities to consider the signature and ratification of another Council of Europe convention, the Convention on the Participation of Foreigners in Public Life at Local Level.
2. ECRI understands that the question of accepting Article 14 of the UN Convention on the Elimination of All Forms of Racial Discrimination, allowing individual communications to be considered by the Committee for the Elimination of Racial Discrimination, is under consideration by the Austrian authorities and urges the latter to accept this article without delay.

### **B. Constitutional provisions and other basic provisions**

3. As noted in ECRI's first report, equality clauses with different scope are contained in the various laws and provisions which compose the Austrian Constitutional order. In particular, the Federal Constitutional Act of 3 July 1973 implementing the International Convention on the Elimination of All Forms of Racial Discrimination prohibits discrimination by public institutions, including judicial courts and administrative authorities. More precisely, Art. 1 (para.1) of the Act establishes that «legislation and administration must both refrain from making distinctions on the "sole" basis of race, skin, colour, descent, or national or ethnic origin». Art. 1 (para.2) clarifies that the above mentioned provision does not prevent Austrian citizens being granted special rights or being subjected to special obligations as far as this is not contrary to Art. 14 of the European Convention on Human Rights. ECRI notes that these constitutional provisions, as repeatedly interpreted by the Constitutional Court<sup>1</sup>, prevent public authorities, on the one hand, from making distinctions amongst Austrian nationals and, on the other, from making distinctions amongst non-citizens

<sup>1</sup> *Constitutional Court judgements of 02 July 94, 29 June 95 and 30 November 95.*

unless there is reasonable justification for differential treatment and the degree of inequality is not disproportionate. ECRI notes, however, that Art. 14 offers protection against discrimination only with regard to the enjoyment of certain, specified rights and freedoms. The constitutional provisions mentioned above do not therefore appear to ECRI to prevent all possible unjustified discriminations or differential treatment between Austrian nationals and non-citizens. Furthermore, in consideration of the fact that discriminatory actions are rarely based on the "sole" basis of race, colour, national or ethnic origin and that these grounds of discrimination are usually combined with other reasons, ECRI wonders whether a different wording of Article 1 (para.1) of the Federal Constitutional Act of 3 July 1973 would not provide for a more thorough protection against discrimination.

### **C. Criminal law provisions**

4. As noted by ECRI in its first report, The Austrian Criminal Code contains provisions aimed at combating racism and intolerance. These include Section 283 (para. 1) - which punishes incitement to hostile action against a church or religious community established in the country or a group determined by their affiliation to such a church or religious community, or to a race, nation, ethnic group or state - and Section 283 (para. 2) - which punishes publicly agitating against such a group or insulting or disparaging it in a manner violating human dignity. Section 115 penalises public insult, injure or threat to injure. According to Section 117 (para. 3), an offence contained in Section 115 is pursued *ex officio* by the Public Prosecutor, provided that it is committed for reason of the injured party's belonging to one of the groups mentioned in Section 283 and that it constitutes a violation of human dignity. In addition, Section 33 (para. 5) cites racist or xenophobic motivation as a particular aggravating circumstance of any crime. Other relevant criminal law provisions are contained in the Prohibition Statute. The Statute penalises the establishment, support and promotion of National Socialist organisations which aim to undermine the sovereignty of the State or jeopardise public order; participation in such organisations; and acts committed as a means towards furthering the aims of such organisations, including the denial or trivialisation of National Socialist crimes using means which are accessible to many people.
5. ECRI notes the considerable number of cases brought, and sanctions imposed, under the offences covered by the Prohibition Statute in the last years and urges the Austrian authorities to continue their efforts to fight against organisations or movements of National Socialist inspiration through the effective implementation of these provisions. In this respect ECRI reiterates its call for strengthened efforts to counter the dissemination of all racist material.
6. As concerns the provisions contained in the Criminal Code, the use of such provisions has been considerably more limited. This can partly be explained by the subsidiary nature of Section 283 of the Criminal Code to the provisions contained in the Prohibition Statute, in that illegal behaviour which constitutes an offence under the two paragraphs of Section 283 is in fact punished using the offences provided for by the Prohibition Statute. In ECRI's view, however, the limited recourse had to the provisions of the Criminal Code can also be connected to other reasons. In this respect, ECRI notes for example that, for

Section 283 (para. 1) to be applied, it is necessary that the act of incitement be likely to jeopardise public order and that it target a specific group. ECRI urges the Austrian authorities to keep the application of this Section under review and to introduce the necessary changes to ensure an effective response of the criminal justice system to all acts of incitement to racial hatred, including those which are not targeted against a specific group and those which are not considered a threat to public order. In this context, ECRI stresses once again the importance of measures aimed at raising the awareness of those working in the criminal justice system of the need to actively counter all manifestations of the perpetration of racist acts and incitement to racial hatred.

7. ECRI also considers that the monitoring of the application of all criminal law provisions relevant to combating racism and intolerance could be improved. In this respect, as mentioned in its first report, ECRI notes that official statistics still do not distinguish between general injures and racist injures, both of which are penalised under Section 115 of the Criminal Code. Furthermore, ECRI stresses the importance of data concerning the use made by the courts of the provision allowing for more severe sentences for all offences to be handed down in case of racist or xenophobic motivation.

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

8. As noted by ECRI in its first report, some civil and administrative provisions specifically referring to racial discrimination exist in Austria. These are contained in Article IX (1) No. 3 of the Introductory Provisions to the Code of Administrative Procedure (EGVG) and in Section 87 of the Trade Licence Act. The relevant provision of the EGVG prohibits expressions of prejudice against persons on account of their race, colour, national or ethnic origin in an unjustified manner and the hindrance of persons from entering places or from availing themselves of services that are intended for general public use, although the sanction is minimal. Furthermore, Section 87 of the Trade Licence Act includes discrimination among the grounds on which the offender's trading licence must be revoked. However, the above-mentioned provisions appear to be virtually unused. They have been criticised for their elusive nature in juridical terms and for not being specific enough on which concrete type of behaviour the legislator wanted to prohibit. ECRI urges the Austrian authorities to address the issue of the effective implementation of the existing civil and administrative provisions dealing with racial discrimination. In this respect, ECRI considers that it is necessary, on the one hand, to raise awareness of the general public of their rights and, on the other, to raise awareness of the legal community in this field.
9. However, ECRI considers that the existing legal, civil and administrative tools are not adequate to effectively combat discrimination in such vital fields as employment and housing, where anecdotal evidence indicates that this phenomenon actually occurs. ECRI believes that the principle of equality before the law does not suffice to prevent discrimination on the basis of race or nationality and therefore reiterates that, alongside improving implementation of existing provisions, the adoption of comprehensive civil and administrative provisions against discrimination, *inter alia*, in employment and housing, covering also the private sector, is primordial. In this respect, ECRI notes with

interest that the Ministry of Justice is examining the question of the adoption of anti-discrimination legislation. ECRI understands that this question will be examined also within the framework of current developments taking place in the European Union concerning the application of Article 13 of the Amsterdam Treaty. ECRI hopes for a swift and successful conclusion of this process and, as will be discussed below<sup>2</sup>, stresses the fundamental role that a specialised body on combating racism and intolerance could play in supervising the implementation of such anti-discrimination legislation.

## **E. Administration of justice**

10. ECRI notes with concern reported instances of racially derogatory speech and racial stereotyping used by some judges in the exercise of their functions or in public occasions. ECRI understands that the Austrian authorities have undertaken surveys on the incidence of discrimination in the justice system and encourages the latter in their efforts to detect and address any existing problems in this area.

### **- Legal aid**

11. No special provision is made concerning free legal assistance for victims of racist acts or of racial discrimination. ECRI stresses that the question of legal assistance for alleged victims of racial discrimination could be examined within the context of the adoption of anti-discrimination legislation.

## **F. Specialised bodies and other institutions**

12. As noted by ECRI in its first report, the Austrian Office of the People's Advocate is entrusted with the task of examining all alleged or presumed grievances arising in connection with the public administrative system. Although part of the complaints filed with this Office are brought by foreigners, notably as concerns the behaviour of the police and the application of asylum law and procedures, the People's Advocates have stated that it is impossible, on the basis of these cases, to identify a trend towards discriminatory acts or practices on the side of the public administration. In its first report, however, ECRI suggested the establishment of a specialised institution which would deal with the problems -- notably of racism, intolerance and discrimination -- faced by members of minority groups, and particularly non-citizens. In this respect, ECRI draws the attention of the Austrian authorities to its General Policy Recommendation N° 2 on specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level. As mentioned above<sup>3</sup>, ECRI considers that the establishment of such an institution should also be examined within the context of the adoption of anti-discrimination legislation, in view of the central role it could play in supervising the implementation of such legislation.

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<sup>2</sup> *Special governmental initiatives to promote tolerance and equality – Specialised bodies and other institutions*

<sup>3</sup> *Civil and administrative law provisions*



13. As noted by ECRI in its first report, Advisory Boards have been established at the Federal Chancellery for each recognised ethnic minority. These boards, which are composed by members of the ethnic minority, church representatives and members of other representative bodies, offer advice on minority issues to the Federal Government, the Federal Chancellor and other Ministers and provide assistance to regional governments upon request. ECRI supports the continuation of the activities of these Boards and encourages the regular assessment of their effectiveness. ECRI furthermore notes the establishment of human rights co-ordinators in all federal ministries and in the government of all *Länders*.

## **G. Education and awareness raising**

14. ECRI notes efforts made by the Austrian authorities to raise awareness of the issues of racism, xenophobia, antisemitism and related intolerance, including the publication of research on these topics under the auspices of the Ministry of Science and Transport for use by key actors such as journalists and civil servants and initiatives aimed at providing information, advice and training on these issues, notably in schools. ECRI encourages the authorities to assess the impact of, and extend, these initiatives. Teaching material based on research and aimed at combating racism and stereotypes is also available for teachers; ECRI encourages the authorities to ensure that adequate use of this material is made in the classrooms.
15. ECRI emphasises the importance of adequate provision of genuine intercultural education. As noted in the first report of ECRI, "intercultural education", was introduced as an educational principle in the academic year 1991/1992. Its aim is to ensure mutual understanding between pupils of different backgrounds, make them aware of similarities and differences and counter racism and ethno- and Eurocentrism. This educational principle, however, is not taught as a separate subject in itself, but rather takes the form of a recommendation to teachers to take certain issues into account across all subjects. ECRI considers that it is paramount that all teachers receive adequate training in this respect and feels that it should be ensured that teachers actually apply this principle in their daily classroom practice. ECRI considers that, in order to make genuine intercultural education possible, curricula, schoolbooks, and other teaching materials need to be regularly reviewed to ensure that they constitute effective tools to combat racism, xenophobia, antisemitism and related intolerance. While noting efforts made in this field, ECRI feels that these should be continued and strengthened.

## **H. Reception and status of non-citizens**

### **- *Immigration***

16. As mentioned by ECRI in its first report, following an increase in the influx of immigrants in the nineties, Austria has adopted measures to reduce the entry of immigrants into the country. Since 1 January 1998, the new Aliens Act and Asylum law, which *inter alia* incorporate the provisions of the Schengen Agreement and the Dublin Convention, are in force. The Aliens Act has

reformed legislation on entry and residence as well as on integration of the foreign population legally residing in Austria. The Austrian authorities state that the main aim of the act is to provide security of residence to long-term legal residents and give priority to the integration of the foreign population already living in Austria. The Act accordingly provides for a stricter immigration control system, including the establishment of a special annual quota, which is mostly filled by family reunification. Potential immigrants have to apply from abroad.

17. In conformity with the Act, an Integration Board was established in February 1998. The Board Advises the Ministry of Interior in matters concerning the integration of aliens and the granting of humanitarian status (a new status provided for by the Aliens Act) to persons illegally residing in Austria.
18. While welcoming the emphasis put on integration, ECRI feels that, on the whole, immigration policies still appear to be to a large extent influenced by a guest worker approach. This is also reflected in the long periods of time necessary for the members of the family of immigrants coming to join them in Austria to enter the labour market<sup>4</sup>. In ECRI's opinion, the relative precariousness of the status of immigrants which follows such approach affects the latter's possibilities to organise themselves to defend their common interests as well as the emergence of a social, intellectual and economic *élite* of immigrant background in the country. In this context, ECRI notes that the participation of foreigners in public life at the local level, notably as concerns local elections, does not currently appear to be a subject of public debate and, as mentioned above<sup>5</sup>, it encourages the Austrian authorities to consider this question.

#### ***Refugees and asylum seekers***

19. ECRI notes that the asylum law in force since January 1998 contains positive elements in order to guarantee refugee protection, notably as concerns second-instance asylum decisions. However, ECRI expresses concern at reports that asylum seekers are sometimes detained pending examination of their applications. Concern is also expressed at episodes of use of excessive violence during deportations and of ill-treatment of asylum-seekers during police operations aimed at clamping down on drug dealing. ECRI stresses that asylum seekers, even if their claims are not considered to be valid by the authorities, should not be treated as criminals and that any measures taken with regard to such persons should reflect this approach.
20. The Federal Act on Assistance to Asylum Seekers governs the provision of social assistance granted to asylum seekers under the "federal assistance scheme" during the asylum procedure. Although some asylum seekers are eligible for this scheme and others receive assistance by the *Länder* authorities, a large number of asylum-seekers reportedly do not receive public assistance. ECRI considers that the Austrian authorities should ensure that asylum-seekers are

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<sup>4</sup> In this respect, ECRI notes that the Federal Ministry for Economic Affairs and Labour has issued a decree stipulating that the requirements for work permits will be facilitated for foreigners who have stayed in Austria for more than five years or in case of important social or humanitarian reasons

<sup>5</sup> International legal instruments

not left in a destitute condition while awaiting the examination of their asylum claims and stresses in this respect that such poor conditions may reinforce prejudice, stereotypes and hostility towards such individuals.

- ***General climate concerning immigrants***

21. ECRI is concerned at the negative climate in Austria concerning non-EU citizens, notably immigrants, asylum-seekers and refugees. The widespread presence in public debate of stereotypes and misrepresentations regarding these categories of people has, in ECRI's view, played a primordial role in creating such climate. This situation appears to be at least in part connected to the use of racist and xenophobic propaganda by parties active in the Austrian political arena. ECRI deals with this particular aspect in Section II of this report. However, ECRI registers here its concern at the impact of this situation on immigration and asylum policies which appear to be increasingly inspired by a conception of the foreigner as a danger and a threat for public order, economic stability and social peace. ECRI considers that this trend runs counter to efforts to develop a culture of tolerance and respect for difference in Austria, and constitutes a dangerous development for the social cohesion of the people living in this country.

**I. Access to public services**

- ***Access to social services such as health care, welfare and housing and access to public places***

22. There have been reports of instances of discrimination of foreigners and members of "visible minorities" in the housing market and access to public places. As noted above, the existing civil legal provisions do not appear to provide an adequate protection against such manifestations<sup>6</sup>. ECRI stresses the need for clear and adequately implemented legal provisions prohibiting discrimination in these fields. In this context, it urges the authorities to ensure that housing and access to public places are covered by the antidiscrimination legislation whose adoption is currently under consideration<sup>7</sup>.

- ***Access to education***

23. While acknowledging efforts made in the field of access to education which can impact favourably upon the imbalances in the representation of children of immigrants in the different types of schools in Austria (especially as concerns academic secondary schools and higher level technical and vocational colleges), ECRI reiterates its call for further measures to improve the situation. In this respect, ECRI considers that it would be extremely beneficial, on the one hand, to further encourage and generalise the teaching of children's mother tongues other than German and, on the other, to ensure adequate provision of German for pupils of non-German mother tongue. As concerns the first aspect, ECRI

<sup>6</sup> *Civil and administrative law provisions.*

<sup>7</sup> *See Civil and administrative law provisions*

notes interesting initiatives taking place, for example, in some primary schools which practice bilingual alphabetisation and feels that similar initiatives should be encouraged and extended. In addition, as suggested in the first report, special attention could be paid to recruitment and training of teachers from minority groups. As regards German for pupils of non-German mother tongue, while noting a positive increase in the number of teachers of this subject (around 1,700 additional posts according to the Government), ECRI feels that it should be ensured that all German teachers are properly trained in this respect. In order to contribute to a more uniform representation of children of immigrants in all schools in Austria, ECRI furthermore stresses that measures aimed at meeting the needs of the immigrant and refugee communities should also be extended to higher education. This does not only imply programmes for teaching German to pupils of non-German mother tongue and curricula for non-German mother tongues, but also an intercultural approach in general and new methods of teaching and learning. Measures to improve awareness and involvement among the parents of such children in their children's education would also be of value.

24. ECRI is seriously concerned to learn that the Austrian Freedom Party (FPÖ), which has since become part of current governmental coalition, has proposed to limit the maximum number of a certain category of children in classrooms to 30%. Although it is not clear whether this proposal concerns foreign children or children of non-German mother tongue, it seems to be motivated by an assumption that such children do not have a sufficient mastery of the German language. The Austrian authorities have stated that the programme of the Federal government refers to "pupils who need support in the field of linguistic and socio-cultural integration". ECRI urges the Austrian authorities not to pursue this policy and to ensure that any similar policies at the local level are discontinued.

## **J. Employment**

25. Discriminatory practices, especially at point of recruitment, are widely reported by human rights organisations. Such practices appear to concern mainly foreigners, but also Austrian nationals of immigrant background.
26. Although the law on the employment of foreigners prohibits employment of foreigners at rates of remuneration and under conditions of work worse than those stipulated for workers in the country, these do not appear to ECRI to provide adequate legal protection and sanctions against all discriminatory practices in employment. In particular, these provisions do not cover discrimination at point of recruitment. ECRI urges the Austrian authorities to consider the adoption of comprehensive antidiscrimination legislation in employment, covering also the private sector. Once again, ECRI believes that this question will be examined also within the framework of current developments taking place in the European Union concerning the application of Article 13 of the Amsterdam Treaty. ECRI hopes, however, that consultations concerning adoption of antidiscrimination legislation in this particular field will be particularly rapid and successful, since it considers this to be a priority area.

27. ECRI also notes that Article 8 (2) of the law on the employment of foreigners establishes that, when reducing their labour force, employers are obliged primarily to release the foreign employees. The Austrian authorities have explained that this provision was adopted to avoid the exploitation of cheap foreign labour and that sanctions for employers who do not comply with this obligation are never applied; ECRI considers, therefore, that this provision should be abrogated.
28. In its first report, ECRI focused mainly on the precariousness of the situation as concerns non-citizens workers in Austria. It noted their rather more uncertain position on the labour market due to the system of work permits which 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. ECRI reiterates its call for measures aimed at reducing the disparity of citizens and non-citizens on the labour market. In this respect, special provision of training for foreigners could be envisaged.
29. In its first report, ECRI noted the ineligibility of foreigners to works council and the Chamber of Labour and the limited presence of foreigners among trade union officials. Since the preparation of the first report, ECRI notes some positive developments in this respect, including a proposal of the Ministry of Social Affairs to give all workers the right to be elected to works councils. ECRI encourages the Austrian authorities to adopt such proposal and, more generally, to ensure that non-citizens living and working in Austria are given adequate opportunities to actively participate in all labour organisations, in order to secure their rights, employment conditions and equal opportunities.

## K. Vulnerable groups

***This section covers certain minority groups which may be particularly vulnerable to problems of racism, discrimination and intolerance in the country in question. It is not intended to provide an exhaustive overview of the situation of all minority groups in the country, nor to imply that groups not mentioned face no problems of racism and discrimination***

### - ***Roma/Gypsies***

30. Roma/Gypsies in Austria include descendants of Roma/Gypsies who have lived for generations in the country, immigrants or descendants of immigrants who came to Austria in the last decades and, more recently, refugees and asylum-seekers from Central and Eastern Europe. Only the first category of persons, holding Austrian citizenship, is considered to constitute the Roma/Gypsy *Volksgruppe*. The formal recognition of a group as a *Volksgruppe* entails special rights, including State financial support for cultural projects, the right to form an advisory board to the Government<sup>8</sup>, the possibility of bilingual schooling and other language rights. As noted by ECRI in its first report, the recognition of the Roma/Gypsy *Volksgruppe* in 1993 improved the situation for those

<sup>8</sup> See *Special governmental initiatives to promote tolerance and equality – Specialised bodies and other institutions*

Roma/Gypsies who are considered to form part of this group. In general, however, Roma/Gypsies face serious social disadvantage and are confronted with prejudice and discrimination in such fields as employment, housing and access to public places. Racial attacks and harassment have also been reported as well as, in some cases, incidents of maltreatment of Roma/Gypsies by police officers. In addition, due to the unstable employment situation of many Roma/Gypsies, members of this group, including long-term residents of Austria, are reported to have been particularly affected by the consequences of precarious employment on residence rights. ECRI notes that the National Action Plan for employment (NAP) aims at improving the situation of Roma/Gypsies as concerns employment and housing. ECRI reiterates its call for the adoption of measures to improve the situation of the Roma/Gypsy community and for further consideration of the possibility of widening the definition of the categories of Roma/Gypsies which fall under the statute of a recognised minority in Austria.

- ***Jewish community***

31. Despite the small size of the Austrian Jewish community today (around 7,000), antisemitism is still present in Austria and manifests itself in a variety of ways. These include circulation of antisemitic material (notably via the Internet), graffiti, harassment and desecration of cemeteries. Articles with antisemitic undertones are also reported to have appeared in the press. As mentioned above, the implementation of the criminal legislation aimed at fighting against organisations or movements of National Socialist inspiration has contributed to countering the most virulent forms of antisemitism. However, ECRI encourages the Austrian authorities to take all manifestations of antisemitism seriously and to keep the situation under close scrutiny. ECRI encourages the Austrian authorities to strengthen their efforts aimed at raising awareness of the general public of the issues of antisemitism and its dangers.

**L. Monitoring the situation in the country**

32. In its first report ECRI noted that it was difficult to obtain reliable data about the situation of all minority groups living in Austria. In particular, as concerns immigrants or people of immigrant background, the main categories used appear to be based on nationality. ECRI considers that the collection of reliable and comparable data broken down by ethnic origin could help better assess and evaluate the situation and experiences of the various minority groups living in Austria in different fields, such as employment, housing, education, etc. This should of course be carried out in accordance with European laws, regulations and recommendations on data protection and protection of privacy and the principle of freedom of declaration. In addition, ECRI considers that further efforts could be made to assess the effectiveness of various measures already undertaken to combat racism and intolerance and 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. In this respect, the attention of the Austrian authorities is drawn to ECRI's general Policy Recommendation

N°4 on national surveys on the experience and perception of discrimination and racism from the point of view of potential victims.

#### **M. Media**

33. ECRI is concerned that some mainstream newspapers regularly report on immigration and asylum issues in a manner which contributes to creating an atmosphere of hostility and rejection towards members of minority groups. These newspapers often portray immigrants in a negative and stereotypical fashion and sensationalise any incidents involving members of minority groups. ECRI believes that the influence that these newspapers exercise on public opinion is very strong. As noted by ECRI in its first report, a Code of Ethics of the Austrian press exists within the Austrian Press Council which condemns discrimination and defamation. In this respect, ECRI considers that ways should be considered to discourage this type of reporting.

### **SECTION II: ISSUES OF PARTICULAR CONCERN**

34. In this section of its country-by-country reports, ECRI wishes to draw attention to a limited number of issues which in its opinion merit particular and urgent attention in the country in question. In the case of Austria, ECRI would like to draw attention to the exploitation of racism in politics and the conduct of law enforcement officials.

#### **N. Exploitation of racism in politics**

35. ECRI is deeply concerned at the widespread use of racist and xenophobic discourse in the Austrian political arena, and, in this context, at the considerable electoral success of the Austrian Freedom Party (FPÖ) which has resorted to racist and xenophobic propaganda. As mentioned above<sup>9</sup>, the main targets of such propaganda are non-EU citizens, including immigrants, asylum seekers and refugees. Typically, these categories of people are held to be responsible for unemployment, street crime, social security abuse and increased expenditure in border control and internal security budgets. The presence of people of non-Austrian origin in Austria, presented as excessive, is portrayed as a threat to the preservation of Austrian national identity and of a secure environment. ECRI expresses its deep concern at the negative consequences that such propaganda has on the perception of non-EU foreigners by the majority population and at the climate of general intolerance and xenophobia that it fosters.
36. ECRI also expresses its concern at the influence exercised by the extreme-right on mainstream political parties, which -- for fear of losing electoral support from wide segments of the population supposed to be hostile to foreigners -- tend to move away from a concept of society based on principles of justice and solidarity for all its members. This encourages the adoption of restrictive measures as well as the establishment of practices, notably as concerns

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<sup>9</sup> *Reception and status of non-citizens.*

immigrants and asylum seekers, which do not always guarantee full respect of human rights and the principle of non-discrimination. In this context, the participation in the current government coalition of a political party which has resorted to explicitly xenophobic and intolerant propaganda cannot be but of serious concern to ECRI.

37. ECRI reiterates that political parties must resist the temptation to approach the subject of minority groups in a negative fashion and should instead emphasise the positive contribution made by different minority groups to Austrian society, economy and culture. Political parties should also take a firm stand against any forms of racism, discrimination and xenophobia. Politicians should make special efforts to ensure that immigration policies do not impact negatively on immigrants and individuals of foreign descent already living in the country. In its first report, ECRI suggested that, in order to raise awareness of these issues among politicians, an annual debate could be instigated in Parliament on the subject of racism and intolerance and the various disadvantages faced by members of minority groups. However, ECRI has received no information on developments in this sense.
38. ECRI urges the Austrian authorities to make all possible efforts to fight against the exploitation of xenophobic and intolerant feelings and racism in politics. On the one hand, as mentioned above<sup>10</sup>, these efforts should include a more effective implementation of the existing criminal law provisions aimed at combating racism and intolerance, adding to and modifying these provisions where necessary. At the same time, however, *ad hoc* measures could be adopted targeting more specifically the use of racially inflammatory or xenophobic discourse by exponents of political parties. These could include, for example, the adoption of legal provisions allowing for the partial or total suppression of public financing for those political parties whose members are responsible for racist or discriminatory acts.

## **O. Conduct of law enforcement officials**

39. ECRI is concerned at numerous reports of incidents of discriminatory behaviour and sometimes violent behaviour on the part of the police *vis-à-vis* people of immigrant origin. Although foreigners and Austrian citizens of immigrant background are not the only alleged victims of this type of behaviour, a considerable number of allegations come from members of these groups. The acts most frequently cited are discriminatory identity checks, insults, bodily injuries, humiliating treatment and arbitrary detention. In some instances, police officers are also alleged to have used racist language.
40. When formal complaints have been lodged, the victims have in most cases been accused of resisting a public officer in the execution of his duties or defamation. ECRI is concerned that this situation discourages potential complaints of abuse committed by the police and considers that an impartial and effective complaint mechanism should be available to alleged victims of misbehaviour by the police, including alleged victims of racist or racially discriminatory behaviour.

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<sup>10</sup> *Criminal law provisions*



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41. In this respect, ECRI suggested in its first report the establishment of an independent commission to investigate all allegations of human rights violations by the police, including cases of racial discrimination or racist and xenophobic behaviour. Although no such commission has been set up, in July 1999, an Advisory Board for Human Rights was established with the task of monitoring and reviewing the compliance of the work of law enforcement officials with human rights principles. The Board, which is composed by eleven members nominated by the Ministers of the Interior and Justice, the federal chancellor, and by five non-governmental organisations appointed by the Minister of Interior, advises the latter on all human rights issues and makes proposals for improvement. An overall report on its evaluations and recommendations shall be annually submitted to the Ministry of Interior, who will integrate these findings into its annual security report to the Federal Parliament and the Upper House of Parliament. ECRI hopes that the Advisory Board will devote priority attention to the fight against manifestations of racism, xenophobia and related intolerance and discrimination on the part of law enforcement officials. It reiterates, however, its call for the establishment of an independent commission, working in close co-operation with representatives of the minority communities concerned, with powers to investigate individual complaints of human rights violations on the part of the police.
42. In the absence of such a body, further efforts to improve the response of internal and external mechanisms to complaints of human rights abuses by the police appear all the more desirable. In this respect, ECRI notes that, in September 1999, the Ministry of Justice has issued instructions whereby, *inter alia*, the Prosecutor's Offices are requested to immediately examine or open investigations on cases of alleged ill-treatment on the part of police officers, irrespective of whether the alleged victim has filed a complaint. These instructions do not contain the exception referring to manifestly unfounded cases, which, present in previous instructions, had often been resorted to by courts. At the same time, the security police authorities were ordered by the Minister of Interior to report immediately any allegations of ill-treatment concerning their own personnel to the competent Public Prosecutor's Office. While these initiatives go in the right direction, ECRI considers that further efforts could be made to improve the criminal justice's system response particularly to complaints of racist or racially discriminatory behaviour on the part of the police. In line with what has been said above concerning the need for a more effective implementation of the criminal provisions aimed at fighting racism and intolerance<sup>11</sup>, ECRI considers that public prosecutors should be made more aware of the necessity to prosecute cases of racist behaviour on the part of law enforcement officials and of the need to ensure that the racist or xenophobic element of the complaint is not overlooked.

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<sup>11</sup> *Criminal law provisions*

43. Efforts to raise awareness of the issues of discrimination and racism are also highly desirable among those responsible for internal control within the different police units. It appears that, in general, the police service is reluctant to acknowledge any incidence of racist behaviour on the part of its officers. In this respect, ECRI believes that there is first and foremost an urgent need for the police service to come to terms with the fact the police is not immune from racism, xenophobia and prejudice. In this respect, ECRI feels that the police authorities should address the question of the extent to which unwitting prejudice, ignorance, thoughtlessness and racist stereotyping on the side of police officers result in attitudes, behaviour and practices which disadvantage people belonging to minority groups<sup>12</sup>. In addition, in order to raise awareness of the problem, ECRI considers that it should be made clear publicly and at a high level, that manifestations of racism on the part of members of the police forces shall not be tolerated and shall be promptly and thoroughly investigated and punished. Furthermore, any episode of racism should be publicly and unequivocally condemned.
44. ECRI expresses particular concern at repeated reports that non-whites, and notably black Africans, are often subject to discriminatory identity checks and have been particularly targeted by police operations aimed at clamping down on drug dealing. ECRI urges the Austrian authorities to ensure that national legislation concerning identity checks and national and international standards on protection from arbitrary arrest and detention are strictly abided by in all circumstances, irrespective of the background or citizenship of a person. ECRI furthermore emphasises that these episodes or practices contribute to reinforcing prejudice in the general population *vis-à-vis* members of minority groups and to creating a climate of rejection and hostility towards immigrants and asylum-seekers.
45. In the same spirit, ECRI expresses its concern at the use of violence by law enforcement officials during deportations and urges the authorities to bring to justice the persons responsible for any such incidents. ECRI notes that in October 1999 the Advisory Board for Human Rights issued a set of 32 recommendations concerning methods to be followed during deportations and that the Austrian authorities have adopted the majority of these recommendations. ECRI urges the Austrian authorities to ensure that these recommendations are implemented in the daily practice of work.
46. In its first report on Austria, ECRI highlighted the need for further training and awareness raising of law enforcement officials of the issues of racism and discrimination. ECRI notes that steps have been taken in this direction<sup>13</sup>. It considers, however, that further initial and on-going training in these areas is still needed. It also encourages the authorities to keep the effectiveness of all training courses and seminars under review.

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<sup>12</sup> ECRI notes that research has been commissioned in February 2000 to a specialised institution on the question of assessing if and to what extent xenophobic tendencies are present in the individual service branches of the Austrian federal police and gendarmerie.

<sup>13</sup> These include human rights weeks organised by the Federal Ministry of Interior, training courses on policing in a multicultural society to improve the action of the Vienna police in dealing with immigrants, as well as training projects aimed at helping the police to combat discriminatory practices ("Pavement")

47. As concerns recruitment, ECRI notes that the composition of the police forces does not reflect at present the multiethnic fabric of the communities they serve, particularly in the big cities, where the population of immigrant background is mainly established. ECRI considers that efforts should be made to encourage members of minority groups to join the police, for instance through provision of free aptitude tests and preparatory courses. Any initiative aimed at enhancing recruitment of members of minority groups should be accompanied by measures to ensure that these persons will wish to remain in the police once recruited.

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