



Third report on Austria

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Foreword

The European Commission against Racism and Intolerance (ECRI) was established by the Council of Europe. It is an independent human rights monitoring body specialised in questions relating to racism and intolerance. It is composed of independent and impartial members, who are appointed on the basis of their moral authority and recognised expertise in dealing with racism, xenophobia, antisemitism and intolerance.

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.

The country-by-country approach deals with all member States of the Council of Europe on an equal footing. The work is taking place in 4-5 year cycles, covering 9-10 countries per year. The reports of the first round were completed at the end of 1998 and those of the second round at the end of the year 2002. Work on the third round reports started in January 2003.

The third round reports focus on "implementation". They examine if ECRI's main recommendations from previous reports have been followed and implemented, and if so, with what degree of success and effectiveness. The third round reports deal also with "specific issues", chosen according to the different situations in the various countries, and examined in more depth in each report.

The working methods for the preparation of the reports involve documentary analyses, a contact visit in the country concerned, and then a confidential dialogue with the national authorities.

ECRI's reports are not the result of inquiries or testimonial evidences. They are analyses based on a great deal of information gathered from a wide variety of sources. Documentary studies are based on an important number of national and international written sources. The in situ visit allows for meeting directly the concerned circles (governmental and non-governmental) with a view to gathering detailed information. The process of confidential dialogue with the national authorities allows the latter to propose, if they consider it necessary, amendments to the draft report, with a view to correcting any possible factual errors which the report might contain. At the end of the dialogue, the national authorities may request, if they so wish, that their viewpoints be appended to the final report of ECRI.

The following report was drawn up by ECRI under its own and full responsibility. It covers the situation as of 25 June 2004 and any development subsequent to this date is not covered in the following analysis nor taken into account in the conclusions and proposal made by ECRI.

Executive summary

Since the publication of ECRI's second report on Austria, progress has been achieved in a number of areas covered in that report. Austria has ratified the European Charter for Regional or Minority Languages and made the declaration under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, enabling individuals to file petitions before the Committee for the Elimination of Racial Discrimination. Some steps have been taken to improve the conduct of law enforcement officials *vis-à-vis* non-citizens and members of other minority groups, including measures to prevent the use of excessive violence during deportations and provision of human rights training and training in policing a multicultural society. The Human Rights Advisory Board has provided useful guidance in effecting changes in these fields. Progress has been made in the provision of human rights education in schools. Non-EU citizens have been granted eligibility and voting rights in municipal elections in Vienna. Furthermore, anti-discrimination legislation is currently pending before the Parliament and is planned to be adopted in 2004.

However, several recommendations made in ECRI's second report have not been implemented, or only partly so. Measures adopted in the asylum field since ECRI's second report have diminished the protection awarded to this group of persons in Austria and have had a seriously negative impact on public opinion's support for these persons. Public debate in the political arena and in the media on issues relevant to asylum seekers, non-EU citizens and other minority groups has often been characterised by racist and xenophobic overtones. Racism and racial discrimination still affects the daily lives of members of minority groups, and particularly of Black Africans, Muslims and Roma, in many areas of public life. Manifestations of antisemitism also still represent an issue of concern of ECRI in Austria. The continuing marked differentiation in law and practice between, on the one hand, Austrian and other EU citizens and, on the other, non-EU citizens, negatively affects the social and political integration of all segments of Austrian society. Furthermore, a number of international treaties relevant to combating racism and intolerance have not yet been ratified by Austria.

In this report, ECRI recommends that the Austrian authorities take additional measures in a number of fields. These fields include the need to ratify Protocol No. 12 to the European Convention on Human Rights, which lays down a general prohibition of discrimination, and the need to fine-tune national legislation against racism and racial discrimination and to ensure that it is adequately implemented. In this respect, ECRI recommends in particular the establishment of an independent specialised body to combat racism and racial discrimination. ECRI also recommends measures to ensure that the rights of asylum seekers are thoroughly respected. It recommends measures to counter racist and xenophobic speech in public debate and particularly in the political arena. Further action is also suggested to improve the conduct of law enforcement officials *vis-à-vis* non-citizens and members of minority groups. ECRI also recommends measures aimed at reducing the gaps existing in law and in practice between Austrian nationals and non-EU citizens, particularly in employment, education and in the enjoyment of other social as well as civil and political rights.

I. FOLLOW-UP TO ECRI'S SECOND REPORT ON AUSTRIA

International legal instruments

1. In its second report on Austria, ECRI recommended that Austria ratify the Revised European Social Charter, the European Charter for Regional or Minority Languages and the UNESCO Convention against Discrimination in Education. ECRI also recommended that Austria sign and ratify the European Convention on the Legal Status of Migrant Workers and the Convention on the Participation of Foreigners in Public Life at Local Level. ECRI furthermore recommended that Austria make the declaration under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), enabling individuals and groups of individuals to file petitions before the Committee for the Elimination of Racial Discrimination (CERD).
2. ECRI is pleased to note that Austria ratified the European Charter for Regional or Minority Languages in June 2001 and that it has made the declaration under article 14 of ICERD in February 2002. ECRI notes that Austria has not yet ratified the Revised European Social Charter and the UNESCO Convention against Discrimination in Education and that it has not yet signed the European Convention on the Legal Status of Migrant Workers¹. The Convention on the Participation of Foreigners in Public Life at Local Level has also not yet been signed by Austria. The Austrian authorities have stated that signature and ratification of the latter instrument will be considered only after the Constitutional Court has decided on an application concerning the constitutionality of granting eligibility and voting rights to non-European Union (EU) citizens in Vienna at the municipal level².
3. ECRI notes that Austria signed Protocol No. 12 to the European Convention on Human Rights (ECHR) on 4 November 2000. However, the Austrian authorities have stated that, although generally in favour of the establishment of a comprehensive prohibition of discrimination, they do not intend to ratify Protocol No. 12 at present, particularly in consideration of the consequences that the entry into force of the Protocol would have on the workload of the European Court of Human Rights. ECRI notes that Austria signed the Additional Protocol to the Convention on Cybercrime on 30 January 2003. ECRI also notes that Austria has not yet signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Recommendations:

4. ECRI recommends that the Austrian authorities ratify Protocol No. 12 to the ECHR without delay. It reiterates its call for ratification by Austria of the Revised European Social Charter and of the UNESCO Convention against Discrimination in Education. ECRI also reiterates its call for signature and ratification by Austria of the European Convention on the Legal Status of Migrant Workers and of the Convention on the Participation of Foreigners in Public Life at Local Level. ECRI recommends that the Austrian authorities apply the provisions contained in Chapters A, B and C of the latter instrument. ECRI recommends that the Austrian authorities ratify the Additional Protocol to the Convention on Cybercrime and that

¹ See below, Employment

² See below, Reception and status of non-citizens

they sign and ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Constitutional provisions and other basic provisions

5. The Austrian constitutional order contains several equality and non-discrimination provisions with different scope, including Article 1 of the Federal Constitutional Act of 3 July 1973³. In its second report, ECRI noted that these constitutional provisions, as interpreted by the Constitutional Court, prevented public authorities, on the one hand, from discriminating among Austrian nationals and, on the other, from discriminating among non-citizens. ECRI considered that these provisions did not adequately protect against all forms of discrimination between Austrian nationals and non-citizens. The Austrian authorities have stated that the Constitutional Court has interpreted Article 1 of the Federal Constitutional Act of 3 July 1973 as guaranteeing that non-citizens are covered by the general principle of equality. This principle prohibits discrimination in a general way, since it prohibits any differential treatment that is not justified by the facts, and requires the authorities to refrain from arbitrary treatment and to respect the principle of proportionality. The Austrian authorities have underlined that, as consistently held by the Constitutional Court⁴, this general prohibition of discrimination also covers differential treatment between Austrian nationals and non-citizens.
6. In consideration of the fact that discrimination is rarely based on the *sole* basis of race, colour, descent and national or ethnic origin and that these grounds of discrimination are usually combined with other reasons, in its second report ECRI recommended that the Austrian authorities consider a different wording of Article 1 of the Federal Constitutional Act of 3 July 1973. The Austrian authorities have stated that, since the principle of equality prohibits discrimination in a general way, the fact that the Federal Constitutional Act of 3 July 1973 covers discrimination on the *sole* basis of race, colour, descent and national or ethnic origin cannot be seen as a restriction.
7. ECRI notes that, at the time of writing, an Austrian Convention is working to consolidate in a single document all the constitutional provisions that are at present scattered throughout the Austrian legal order. ECRI considers that this situation provides an opportunity for the Austrian authorities to review the existing constitutional provisions against racism and racial discrimination. In this respect, ECRI draws the attention of the Austrian authorities to its General Policy Recommendation N°7 on national legislation to combat racism and racial discrimination⁵ (hereafter: General Policy Recommendation N°7), where ECRI recommends that the constitution “should enshrine the principle of equal treatment, the commitment of the State to promote equality as well as the right of individuals to be free from discrimination on grounds such as race, colour, language, religion, nationality or national or ethnic origin”. ECRI also draws the attention of the Austrian authorities to the Explanatory Memorandum to General

³ Federal Law Gazette No. 390/1973. Art. 1.1 of the Act establishes that legislation and administration must refrain from making distinctions on the sole basis of race, skin colour, descent, or national or ethnic origin. Art. 1.2 clarifies that this provision does not prevent Austrian citizens from being granted special rights or being subjected to special obligations as far as this is not contrary to Article 14 of the ECHR.

⁴ Coll. VfSlg. 15.668/1999; ruling of 25 November 2002, B792/02

⁵ CRI (2003) 8

Policy Recommendation N°7, where it considers that “[t]he use of restrictive expressions such as ‘difference of treatment *solely* or *exclusively* based on grounds such as ...’ should [...] be avoided”.

Recommendations:

8. ECRI recommends that the Austrian authorities review their constitutional provisions against racism and racial discrimination, taking into account ECRI’s General Policy Recommendation N°7. In particular, ECRI recommends that protection against discrimination on the basis of nationality be enhanced and that the use of restrictive expressions in the definition of discrimination be avoided.

- Citizenship legislation

9. The number of persons who have been naturalised Austrian citizens has steadily increased in recent years and was 36 011 in 2002. ECRI notes, however, that a considerable number of persons born in Austria and of persons born abroad but fulfilling the residency requirements to obtain naturalisation still live in Austria without Austrian citizenship. The requirement of renouncing previous citizenship to obtain Austrian citizenship appears to represent a particularly important factor in determining this situation. However, there is reportedly little public debate at present in Austria on the need to take a more flexible approach on dual nationality.

Recommendations:

10. ECRI recommends that the Austrian authorities initiate a public debate in view of the adoption of a more flexible approach to dual nationality, especially for persons born in Austria.

Criminal law provisions

11. In its second report, ECRI recommended that the Austrian authorities continue their efforts to counter organisations that pursue Nationalist Socialist aims and their activities, through a thorough implementation of the Prohibition Statute. ECRI called in particular for strengthened efforts to counter the dissemination of racist material. The Austrian authorities have registered a marked increase in the reported offences and charges brought under the Prohibition Statute in 2003. The main forms of illegal behaviour to be observed are the use of slogans and of typical Nazi symbols for propaganda purposes, the favourable presentation of National Socialist crimes, and the use and the dissemination of music CDs containing illegal content. The Austrian authorities report that, compared with these offences, the dissemination of illegal content via the Internet plays a minor role. The majority of such offences are reported to be committed by juveniles and young adults that belong to the skinhead scene.

12. In its second report, ECRI recommended to the Austrian authorities to keep the application of Section 283 of the Criminal Code⁶ 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. The situation does not appear to have changed since ECRI's second report: no changes in legislation have been introduced and Article 283 is still relatively rarely applied. As already noted in ECRI's second report, this situation is not only connected with the subsidiary nature of Article 283 -- in that behaviour which constitutes an offence under Section 283 is in fact punished under the Prohibition Statute when it is linked with Nationalist Socialist ideas – but also to the fact that for Section 283 to be applied, it is necessary that the act of incitement be likely to jeopardise public order (283.1) and that it target a specific group. It has also been reported to ECRI that the elements constituting the offences contained in Section 283 are not clearly defined, which results in them being construed very narrowly in jurisprudence. A restrictive approach in the implementation of the legal provisions against racism can also be noted with respect to the provisions against racist insults⁷. Thus, for instance, ECRI notes the August 2003 decision of the regional Court of Linz, according to which a policeman who had racially insulted a man during a routine traffic check was not punishable, as the man's human dignity had not been violated⁸.
13. More generally, ECRI notes that there is still a prevailing approach in Austria to consider racist behaviour as deriving essentially from extreme right-wing groups or groups inspired by National Socialist ideology. While it welcomes the determination in countering racist behaviour coming from these groups, ECRI stresses that such behaviour in Austria is not the exclusive resort of these groups and that legislation should be geared towards pursuing all types of racist behaviour effectively. In this respect, ECRI draws the attention of the Austrian authorities to its General Policy Recommendation N°7, which recommends the establishment of a set of offences including: incitement to racist violence, hatred or discrimination; racist insults and defamation; expression of a racist ideology; and dissemination or distribution of racist material.

Recommendations:

14. ECRI recommends that the Austrian authorities keep the effectiveness of the existing criminal law provisions against racism and xenophobia closely under review. In this respect, it encourages the Austrian authorities to pursue their efforts to counter extreme right-wing groups or groups inspired by National Socialist ideology and their activities. In addition, ECRI recommends that

⁶ Section 283.1 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. Section 283. 2 punishes publicly agitating against such a group or insulting or disparaging it in a manner violating human dignity.

⁷ Section 115 of the Criminal Code penalizes public insult, injure or threat to injure. According to Section 117 (para. 3), an offence provided for in Section 115 is pursued by the Public Prosecutor with the consent of the victim, provided that it is committed for reason of the injured party's belonging to 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 that it constitutes a violation of human dignity.

⁸ The Court of second instance rejected the appeals filed by both the victim and the Public Prosecutor. The Supreme Court later found that the decision was unlawful, but could not quash the judgment on technical grounds.

legislation aimed at countering other forms of racism and xenophobia be complemented or fine-tuned. In this respect, ECRI draws the attention of the Austrian authorities to its General Policy Recommendation N°7.

15. In its second report, ECRI recommended to the Austrian authorities to improve their system of monitoring the implementation of all criminal law provisions against racism and xenophobia. In particular, it recommended that official statistics distinguish between general insults and racist insults and that they cover the use made by the courts of Section 33.5 of the Criminal code, which establishes racist and xenophobic motivation as an aggravating circumstance for all crimes. ECRI notes that, at present, the only statistics available concern the implementation of the provisions of the Prohibition Statute and of Section 283 of the Criminal Code. Statistical data on the implementation of the provisions against racist insults and of Section 33.5 of the Criminal Code are not yet collected. However, the Austrian authorities have pointed out that, as a follow-up to ECRI's recommendation, they have instructed all Public Prosecutor's Offices to explicitly report on all offences related to racism and xenophobia (including the application of Section 33.5 of the Criminal Code) in their annual observation report. Although ECRI understands that a fuller picture of the results of this initiative will be available shortly, it has not been made aware of Public Prosecutors reporting cases of application of these provisions so far.
16. In its second report, ECRI recommended measures aimed at raising the awareness of those working in the criminal justice system of the need to actively counter all manifestations of racism and xenophobia, including incitement to racial hatred. The Austrian authorities have underlined that the instruction to Public Prosecutors to report on racist and xenophobic offences mentioned above was also intended as an awareness raising measure. ECRI notes that training in provisions against racism and xenophobia is provided in both initial and on-going training to judges and that the Ministry of Justice co-operates with non-governmental organisations to this end.

Recommendations:

17. ECRI recommends to the Austrian authorities to collect statistical data on the implementation of all criminal law provisions against racism and xenophobia, including Section 33.5 of the Criminal Code. These data should include information on complaints filed, charges brought, convictions and acquittals. As an interim measure, ECRI recommends to the Austrian authorities to actively pursue the non-statistical monitoring of these provisions through the system of reporting from Public Prosecutors and to take any necessary action to improve their implementation. ECRI furthermore encourages the Austrian authorities to strengthen their efforts to train all those working in the criminal justice system on the existing provisions against racism and xenophobia and to raise their awareness of the need to actively counter all such manifestations.

Civil and administrative law provisions

18. In its second report, ECRI recommended that the Austrian authorities improve the implementation of the provisions contained in Article IX (1) 3 of the Introductory Provisions to the Code of Administrative Procedure (EGVG)⁹ and in Section 87 of the Trade Licence Act¹⁰. Since ECRI's second report, these provisions are reported to have remained virtually unapplied. Non-governmental organisations note, in particular, that Section 87 is not specific enough concerning the type of behaviour that is to be considered illegal, and that Article IX (1) 3 of the EGVG is worded and applied too restrictively. They report, for instance, that, in November 2003, the Independent Administrative Panel of Upper Austria quashed the penal order of the Mayor of the city of Linz, which had sentenced the managers and door staff of a bar to a fine for discriminating against three black men by denying them access to their bar. The Administrative Panel found, *inter alia*, that there had been no discrimination since entry to the bar was not refused *solely* on grounds of race, colour or national or ethnic origin. ECRI has learnt that amendments to Section 87 of the Trade Licence Act are being considered by the Parliament, so that an innkeeper would lose his or her license if found guilty of violating Article IX (1) 3 of the EGVG a second time.
19. ECRI considers that these provisions are inadequate to address the problems of racial discrimination that members of minority groups are reported to face in everyday life in vital fields such as employment, housing, education and access to public places. In its second report, ECRI already recommended to the Austrian authorities to adopt comprehensive civil and administrative law provisions against racial discrimination covering, *inter alia*, the fields mentioned above. ECRI regrets that, at the time of writing, no such legislation is yet in force. It notes, however that draft legislation is currently pending before the Parliament in order to transpose the European Council Directives 2000/43/EC¹¹ and 2000/78/EC¹². ECRI welcomes this development. However, non-governmental organisations have reported to ECRI that, although the government launched a round of consultations of these organisations on the draft law in the Summer 2003, they have been unable to provide any input during the drafting process.
20. ECRI draws once more the attention of the Austrian authorities to its General Policy Recommendation No. 7, where it addresses many of the issues that have been raised by national non-governmental organisations with respect to the draft legislation currently being examined. In particular, these issues include: the need to ensure that anti-discrimination legislation apply to all public authorities as well as to all natural or legal persons, both in the public and in the private sectors; the need to provide for a shared burden of proof between the

⁹ Article IX (1) 3 of the EGVG prohibits publicly expressing prejudice against persons solely on account of their race, colour, national or ethnic origin, religion or disability in an unjustified manner, and hindering these persons from entering places or from availing themselves of services that are intended for general public use.

¹⁰ Section 87 of the Trade Licence Act includes discrimination on grounds of race, colour, national or ethnic origin, religion or disability among the circumstances on the basis of which the offender's trading licence must be revoked.

¹¹ European Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin

¹² European Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation

alleged victim and discriminator; the need to ensure that organisations which have a legitimate interest in combating racism and racial discrimination, are entitled to bring cases to the competent judicial and administrative bodies; and the need to place public authorities under a duty to promote equality and to prevent racial discrimination. ECRI would also like to stress that, in its General Policy Recommendation No. 7, it recommends that the law explicitly prohibit discrimination on grounds such as race, colour, language, religion, nationality or national or ethnic origin and that announced intention to discriminate be explicitly considered as a form of discrimination. ECRI considers that these provisions would be useful, *inter alia*, to counter the reportedly continuing practice of advertising for employment or housing opportunities that are reserved for Austrians only or that explicitly exclude persons of certain nationalities.

Recommendations:

21. ECRI recommends that the Austrian authorities fine-tune the existing administrative provisions against discrimination and that they strengthen their efforts to train all those working in the administrative legal system on these provisions.
22. ECRI recommends that the Austrian authorities adopt civil and administrative anti-discrimination legislation in all key fields of public life without delay. ECRI encourages the Austrian authorities to ensure that, in examining the different options, the need to grant the highest level of protection to victims of racial discrimination is taken into consideration. In this context, ECRI strongly recommends that the Austrian authorities take into account its General Policy Recommendation No. 7, notably as concerns the areas highlighted above. ECRI also recommends that the Austrian authorities ensure that non governmental organisations specialised in combating racism and racial discrimination are thoroughly involved in the evaluation and, possibly, revision, of the legislation and that they can provide meaningful input to such processes.

Administration of justice

23. In its second report, ECRI encouraged the Austrian authorities in their efforts to detect and address any problems of racial discrimination in the criminal justice system. ECRI notes the seriously disproportionate representation of non-citizens in the Austrian prison population. Over 60% of persons held in pre-trial detention are reported to be non-citizens. ECRI also notes that the differential between pre-trial detention and final convictions is remarkably higher for non-citizens than for Austrian nationals. Although the Austrian authorities have pointed out that there are objective reasons for this situation (for instance, non-citizens are deemed to be at a higher risk of absconding) ECRI considers that direct and indirect discrimination may also play a role.
24. In its second report, ECRI noted that no special provision was made for victims of racism and racial discrimination. The Austrian authorities have informed ECRI that the newly adopted Code of Criminal Procedure will improve the position of victims of violent crimes, including violent racist crimes. The establishment of a specialised body to combat racism and racial discrimination

should also improve the situation as concerns access to free legal assistance for alleged victims of racial discrimination¹³.

Recommendations:

25. ECRI recommends that the Austrian authorities undertake research on the incidence of direct and indirect racial discrimination in the criminal justice system, with particular focus on pre-trial detention and imprisonment. It stresses in this context its recommendation concerning the need for data broken down according to categories such as religion, language, nationality and national or ethnic origin in order to better assess the situation and to take appropriate corrective action¹⁴.

Specialised bodies and other institutions

26. In its second report, ECRI recommended that the Austrian authorities establish a specialised body to combat racism and racial discrimination. ECRI notes that this question is the object of part of the draft anti-discrimination legislation presently pending before the parliament. The Austrian authorities have informed ECRI that, at present, the draft provides for the establishment of a Commission for Equal Treatment and of an Office for Equal Treatment. Set up at the Federal Ministry for Health and Women's issues, the Commission for Equal Treatment will be tasked, *inter alia*, with rendering expert opinions and declaratory judgments in individual cases of discrimination. The Office for Equal Treatment shall also be set up at the Federal Ministry for Health and Women's issues and be responsible, *inter alia*, for counselling and supporting alleged victims of discrimination.
27. In its General Policy Recommendations, ECRI has provided detailed guidance as to the status, role and functions that it believes should be attributed to national specialised bodies to combat racism and racial discrimination. ECRI would like to stress in particular the recommendations made in its General Policy Recommendation No. 2¹⁵ concerning the need to ensure the independence and accountability of such bodies. It would also like to stress that, in its General Policy Recommendation No. 7, ECRI recommends that the competence of national specialised bodies include: assistance to victims; investigation powers; the right to initiate, and participate in, court proceedings; monitoring legislation and advice to legislative and executive authorities; awareness-raising of issues of racism and racial discrimination among society; and promotion of policies and practices to ensure equal treatment.
28. As already noted in ECRI's second report, the Office of the People's Advocate examines grievances arising in connection with the activities of the public administration. ECRI welcomes the fact that, since 2001, the Parliamentary Report of the People's Advocate includes a section on human rights. ECRI notes that non-citizens sometimes file individual complaints before the Office of

¹³ See below, Specialised bodies and other institutions

¹⁴ See below, Monitoring the situation

¹⁵ CRI (97) 36: ECRI General Policy Recommendation n° 2: Specialised bodies to combat racism, xenophobia, antisemitism and intolerance at national level.

the People's Advocate. However, complaints of discrimination on the grounds covered by ECRI's mandate have been extremely limited.

Recommendations:

29. ECRI recommends that the Austrian authorities establish a specialised body to combat racism and racial discrimination. ECRI strongly recommends that the Austrian authorities take into account its General Policy Recommendations No. 2 and No. 7, notably as concerns the independence and accountability of these bodies and the functions that should be attributed to them.

Education and awareness raising

30. The Austrian authorities report a considerable number of initiatives in the field of human rights education. These include the elaboration of manuals, training of teachers and, already since 1997, the establishment of a service centre for human rights education in collaboration with the Ludwig Boltzmann Institute of Human Rights. ECRI welcomes these initiatives. It notes that human rights form part of the curriculum for Civic Education for students from ninth grade.

Recommendations:

31. ECRI encourages the Austrian authorities to pursue their efforts in the field of human rights education. It also recommends that the Austrian authorities ensure that human rights education is introduced as a compulsory subject in all levels of schools throughout Austria.

Reception and status of non-citizens

32. As already noted in ECRI's second report, the Austrian authorities have stated that current immigration policies in Austria aim at promoting the integration of those non-citizens who already reside in the country rather than at favouring new immigration. ECRI notes that immigration control is effected through the establishment of an annual immigration quota, which includes labour immigration and immigration on grounds of family reunification. Since the Aliens Act of 2002, the annual sub-quota of new labour immigration is limited to highly qualified personnel (so called "key workers") and to seasonal workers¹⁶. ECRI notes that the sub-quota set for family reunification covers most of the total annual immigration quota. However, it also notes that many voices have been raised in Austria in favour of the abolition of the sub-quota for family reunification, notably for reasons of incompatibility with the right to private and family life.
33. In its second report, ECRI noted the relative precariousness of the status of many immigrants and the long periods necessary for the members of the family of immigrants coming to join them in Austria to enter the labour market. ECRI notes that, in 2002, a long-term residence permit ("certificate of residency") was introduced for immigrants residing legally and permanently in Austria for at least

¹⁶ See below, Employment

five years, granting them unlimited right of residence and unrestricted access to the labour market. As concerns the possibility for members of the families of immigrants to access the labour market, The Austrian authorities have reported that, if the result of the required labour market needs test is positive, these persons may receive a work permit immediately and that, in practice, a work permit is usually given after one year of residence. ECRI notes that the Aliens Employment Act provides that, for a work permit to be granted to a non-citizen, it is necessary that no Austrian or other EU citizen and no “integrated worker” (i.e. a foreign worker having already worked in Austria for a certain period of time) with the same qualifications are available for the job. It has been reported to ECRI that such a strict order of preference has a considerably negative impact on the possibilities for a non-citizen not falling in one of the categories mentioned above to find employment.

34. In its second report, ECRI recommended that the Austrian authorities consider the question of granting political rights to non-EU citizens in local elections. ECRI welcomes the fact that the Vienna Election Regulations enacted in 2002 extend to non-EU citizens with 5 years of residence eligibility and voting rights in municipal elections, rights already recognised to EU citizens since 1996. ECRI notes, however, that a claim has been lodged before the Constitutional Court to test the conformity of the new regulations with the Constitution.
35. More generally, ECRI notes that the social and political integration of all segments of Austrian society is still, as a whole, negatively affected by a marked differentiation in law and practice between, on the one hand, Austrian and other EU citizens and, on the other, non-EU citizens. Legal restrictions on non-EU citizens with regard to employment, housing, and specific social, civil and political rights are, in ECRI’s opinion, still meaningful obstacles to the creation of an integrated society in Austria.

Recommendations:

36. ECRI recommends to the Austrian authorities to ensure that the right to private and family life of non-citizens is thoroughly respected and that the setting of immigration quotas does not encroach on their enjoyment of this right.
37. ECRI recommends that the Austrian authorities consider facilitating further the access to the labour market of family members of non-citizens coming to join the latter in Austria, and that of non-citizens other than EU-citizens and “integrated workers”.
38. ECRI reiterates its recommendation to the Austrian authorities to grant eligibility and voting rights in local elections to non-EU citizens throughout Austria.
39. ECRI notes that in July 2002, the so-called “integration contract” was introduced as an amendment to the Aliens Act. The “integration contract” introduces German lessons and civic education classes for all non-citizens who have arrived in Austria after 1 January 1998. Citizens of the EU or the European Economic Area (EEA), “key workers” and immigrants who already have appropriate German knowledge, can be exempted from the courses. The existence of these grounds for exemption in each individual case is assessed by the relevant residence permit office. The state covers half of the course fee

for those who successfully complete the course within the first eighteen months. Those who need longer time to complete the course have to cover with their own funds increasing portions of the total cost. Failure to attend the prescribed classes can lead to fines, refusal to prolong residence permits, and, ultimately, to deportation. The Austrian authorities have stated that the aim of the “integration contract” is to enhance the newcomers’ chances to integrate the labour market and other spheres of public life. ECRI notes, however, that the introduction of the “integration contract” has met with considerable criticism on the part of non-governmental organisations working with non-citizens and integration issues. These organisations confirm that there is a strong demand from the immigrant communities for German language training. However, they highlight that, for such training to be effective, it must be of good quality, voluntary, tailored on the individual circumstances of the person concerned and free or inexpensive, all elements, it is argued, that are lacking from the courses imparted under the “integration contract”. More generally, it has been reported to ECRI that only a very limited number of persons are found to be in need of “integration contract” courses¹⁷.

Recommendations:

40. ECRI recommends to the Austrian authorities to provide non-citizens without sufficient knowledge of the German language with German language training that meets their demands. ECRI stresses that such training should be of good quality, tailored as much as possible on the individual competences and needs of the person concerned and inexpensive. ECRI also considers that the imposition of fines is not an appropriate means to persuade non-citizens to attend integration classes and that positive incentives should be regarded as a sufficient means of persuasion. In this connection, ECRI considers that the provision of public support to organisations with long and successful experience in providing German language training to non-citizens would be a more effective measure than the current “integration contract”.

41. ECRI notes that a number of successful initiatives have been taken by the Vienna Integration Fund, for instance in areas such as naturalisation, provision of information and orientation services to newly arrived non-citizens and language courses. ECRI also welcomes the stated intention of the Vienna administration to work for a better representation of minority groups in the municipal administration. ECRI understands that the Fund, which has so far existed outside the municipal administration, will soon be integrated within it and turned into a diversity unit.

¹⁷ Between 1 January and 31 December 2003, 75 170 persons were exempted either because of legal exemptions or because they had sufficient knowledge of German. 9 114 were required to take a German exam. Of these, 951 had taken an exam at year’s end (833 attended an “integration contract” course and 118 prepared otherwise) and the remaining 8 163 are still required to take the exam or face the sanctions provided for in the law.

Recommendations:

42. ECRI strongly encourages the establishment of units within the municipal administrations in Austria with a strong focus on working for an integrated society and on promotion of diversity. It recommends, in this respect, that best use be made of existing good practices in these areas.

Access to public services

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

43. Instance of racial discrimination in the private housing market have continued to be reported since ECRI's second report. Non-governmental organisations monitoring racism and racial discrimination report that a considerable number of complaints they receive concern the housing sector. ECRI notes that housing is one of the areas covered by the current draft anti-discrimination legislation. ECRI also notes that, in Austria, social housing is accessible to non-EU citizens only in some small towns and that in the majority of Austrian cities non-EU citizens have no, or only restricted, access to a rental contract in public housing.

Recommendations:

44. ECRI recommends that research be carried out into discriminatory practices and barriers or exclusionary mechanisms in public and private sector housing affecting the housing possibilities of minority groups, in order to inform targeted policy responses. It recommends that access of non-EU citizens to social housing be improved.

- **Access to education**

45. In its second report, ECRI recommended that attention be paid to the implementation of intercultural education, an educational principle that must be applied as a crosscutting principle to all aspects of education. These aspects include language competence, as concerns both mother tongues other than German and German as a second language. The Austrian authorities report a wide range of activities in this field, centred on the provision of training to school authorities and teachers and of information to parents of immigrant children. It has been reported to ECRI, however, that not all teacher-training institutions provide training in intercultural education and that the number of teachers who, in practice, provide education in German as a second language or in a non-German mother tongue is decreasing. Funds available for these courses are also reported to be very limited and, in some cases, to threaten the continuation of successful projects. In this respect, in its second report ECRI already recommended that initiatives such as provision of bilingual education (with curriculum taught partially in German and partially in other languages) be further extended.
46. ECRI notes that 9.4% of students in all Austrian schools in 2002/2003 were non-citizens. On the whole, non-citizens children appear to be well represented in primary schools (12%) and in general secondary schools (11,4%) and underrepresented in higher general and vocational secondary schools (5,7%),

although the representation in this last type of school seems to be on the rise. ECRI expresses concern, however, at the still extremely high representation (19,2% in 2002/2003) of non-citizen children in special needs schools (*Sonderschulen*), which are designed for children with special educational needs resulting from mental or physical handicaps and which do not provide possibilities for further educational attainment. More generally, ECRI notes that research seems to indicate that, even when the disadvantages linked to being of non-German mother tongue and to belonging to families with modest socio-economic conditions are taken into account, the educational gap between Austrian and non-Austrian children still appears to be disproportionate.

Recommendations:

47. ECRI recommends to the Austrian authorities to strengthen their efforts in the field of implementing the principle of intercultural education. In particular, it stresses the need for thorough training of all teachers in this area, the need to ensure that the number of teachers who provide education in German as a second language or in a non-German mother tongue is adequate and the need for sustainable funding of initiatives aimed at putting the principle of intercultural education into practice.
48. ECRI recommends to the Austrian authorities to address the disadvantaged educational position of non-Austrian children. In particular, ECRI urges the Austrian authorities to examine and address, as necessary, the disproportionate representation of non-citizen children in special needs schools as a matter of priority.

Employment

49. Instances of racial discrimination in employment have continued to be reported since ECRI's second report. Non-governmental organisations monitoring racism and racial discrimination report that over 20% of the complaints they receive concern the employment sector. ECRI notes that employment is one of the areas covered by the current draft anti-discrimination legislation.
50. In its second report, ECRI recommended measures aimed at reducing the disparity of citizens and non-citizens on the labour market, and in particular special provision of training for foreigners. The Austrian authorities have underlined that the certificate of residency introduced in 2002¹⁸, constitutes a step in the direction indicated by ECRI. As mentioned above¹⁹, the annual sub-quota of new labour immigration is limited to "key workers" and to seasonal workers. ECRI notes that seasonal work has been extended to categories of work other than agriculture and tourism, such as industrial enterprises that work without interruptions. It has been noted that lowly qualified workers needed by the Austrian industry are therefore employed as short-term workers with a consequent erosion of their social rights, a situation that is bound to impact negatively on the employment disparities between citizens and non-citizens. More generally, ECRI notes that issues relevant to the position of non-citizens

¹⁸ See Reception and status of non-citizens

¹⁹ Reception and status of non-citizens

and persons of immigrant background on the labour market are virtually absent from national action plans for employment.

51. ECRI notes that labour market initiatives in the fields covered by ECRI's mandate are being funded by the European Social Funds and the Federal Ministry of Economics and Labour under the EU EQUAL Programme. These initiatives, which involve non governmental organisations, including research institutions, the Chamber of Labour and Commerce and trade unions, aim, *inter alia*, at challenging racist attitudes and prejudices of different actors in the employment sector, training staff as intercultural mediators, recognising immigrants' competence enabling their access to the labour market, establishing codes of conduct against discrimination and equal opportunities policies, and promoting diversity management in companies.
52. In its second report, ECRI recommended the abrogation of Article 8(2) of the Aliens Employment Act, which establishes that, when reducing their labour force, employers are obliged primarily to release their foreign employees. ECRI notes, however, that, at the time of writing, this provision is still in force.
53. In its second report, ECRI recommended to the Austrian authorities to grant foreign workers the right to be elected to works councils and to the Chamber of Labour. ECRI notes the April 2002 decision of the UN Human Rights Committee according to which the exclusion of non-citizens from eligibility to works councils was incompatible with the non-discrimination principle contained in Article 26 of the International Covenant on Civil and Political Rights. ECRI also notes the May 2003 decision of the European Court of Justice declaring that Turkish nationals cannot be excluded from eligibility to the Chamber of Labour. At the time of writing, however, legislation in force still excludes non-citizens from eligibility rights both to the works councils and to the Chamber of Labour, although ECRI notes that persons working in Austria and originating from other countries of the European Economic Area or from countries that have an association agreement with the European Union were made eligible at the last Chamber of Labour elections.

Recommendations:

54. ECRI recommends that the Austrian authorities take further measures to reduce the disparity between citizens and non-citizens on the labour market. It recommends that issues relevant to the position of non-citizens and persons of immigrant background on the labour market be awarded greater consideration in the national action plans for employment. It encourages the Austrian authorities to support initiatives in this field in co-operation with non-governmental organisations, including research institutions, and the social partners.
55. ECRI reiterates its call for the abrogation of Article 8(2) of the Aliens Employment Act.
56. ECRI reiterates its call to the Austrian authorities to grant all foreign workers, irrespective of their nationality, the right to be elected to works councils and to the Chamber of Labour.

Vulnerable groups

- **Black Africans**

57. Black Africans living in Austria, and particularly in Vienna, are reported to be especially vulnerable to racism and racial discrimination. As highlighted in other parts of this report²⁰, ECRI considers that this situation is closely connected with hostile attitudes being displayed in public opinion, political and media discourse, but also in the behaviour of officials, notably the police. ECRI has received numerous reports according to which black Africans are stigmatised as being involved in the drug trade and in other illegal activities and that this stigmatisation has had an extremely negative effect on the daily life of black persons, and notably black Africans, living in Austria.

- **Muslims**

58. Non-governmental organisations report that, following the sudden rise in Islamophobia in Austria subsequent to the events of 11 September 2001, this phenomenon has decreased, although not to a significant scale. Muslims are particularly vulnerable to harassment and discrimination when displaying visible signs of their faith. In this respect, it has been reported to ECRI that, since its second report, the climate around Muslim women wearing the headscarf has deteriorated. There have been cases of insults and harassment of these women in the streets and of harassment and discrimination in employment. Teachers have also been reported in some cases to have forcibly removed the headscarves from schoolgirls.

- **Roma**

59. Roma in Austria include autochthonous Roma (formally recognised as a national minority since 1993), persons who came to Austria as guest workers and their descendants, and refugees and asylum seekers. As already mentioned in ECRI's second report, recognition of a group as a national minority entails special rights, including State financial support for cultural projects, the possibility of mother tongue education and other language rights. In its second report, ECRI suggested that the Austrian authorities consider including the non-autochthonous Roma among the categories of persons that make up the Roma national minority. However, the Austrian authorities have underlined that non-autochthonous Roma may also benefit, in practice, from projects financed by the authorities for national minority Roma.
60. ECRI notes, however, that many Roma continue to face serious situations of socio-economic disadvantage compared to the rest of the population resulting, at least in part, from racism and racial discrimination. The disadvantaged position of Roma, for the most part non-autochthonous Roma, in education at all levels plays a central role in excluding them from most other areas of public life. ECRI notes that initiatives aimed at improving access of Roma youths to education are in place at the local level, although funds available for these initiatives are reportedly extremely limited. Roma are also reported to encounter serious obstacles in securing Austrian citizenship and to face prejudice and discrimination in their relations with law enforcement officers.

²⁰ See Conduct of law enforcement officials, Media, Exploitation of racism and xenophobia in politics and Asylum policies and practices

Recommendations:

61. ECRI urges the Austrian authorities to implement the recommendations it has formulated in different parts of this report, as it considers that they will be beneficial to countering manifestations of racism and racial discrimination targeting all minority groups vulnerable to racism and racial discrimination mentioned in this section.
62. ECRI recommends to the Austrian authorities to take steps to effectively combat and prevent racism and racial discrimination *vis-à-vis* black Africans living in Austria. ECRI stresses in particular in this context the need to address the behaviour of law enforcement officials and to avoid the stigmatisation of entire communities and generalisations in public debate.
63. ECRI recommends to the Austrian authorities to take steps to effectively combat and prevent racism and discrimination *vis-à-vis* Muslims in Austria. In this respect, it draws the attention of the Austrian authorities to its General Policy Recommendation No. 5, which proposes a range of legislative and policy measures governments can take to this end²¹.
64. ECRI recommends that further steps be taken to improve the situation of Roma in Austria in order to combat and prevent racism and racial discrimination *vis-à-vis* this part of the Austrian population. ECRI draws the attention of the Austrian authorities to its General Policy Recommendation No. 3, which proposes a range of legislative and policy measures governments can take to this end²².

- Other national minorities

65. In its second report, ECRI noted the establishment at the Federal Chancellery of advisory boards for each recognised ethnic minority and recommended that the Austrian authorities support the work of these boards. These boards provide, *inter alia*, a forum through which representatives of national minorities can advise the government on matters of their concern. ECRI is particularly concerned at the climate of hostility reportedly promoted against the Slovenian minority in Carinthia. The Governor of Carinthia is reported to have played a particularly active role in this respect, especially in connection with his open refusal to implement rulings of the Constitutional Court that recognise certain rights to the members of this group. ECRI is also concerned that such a reported negative climate may favour the adoption of discriminatory practices. It has been reported to ECRI, for instance, that the negative climate promoted against the Slovenian minority in Carinthia has had a negative impact on the access of this group of persons to media in the Slovenian language, although the situation has now reportedly improved.

²¹ CRI (2000) 21: ECRI General Policy Recommendation n° 5: Combating intolerance and discrimination against Muslims, European Commission against Racism and Intolerance

²² CRI (98) 29: ECRI General Policy Recommendation n° 3: Combating racism and intolerance against Roma/Gypsies, European Commission against Racism and Intolerance

Recommendations:

66. ECRI recommends that the Austrian authorities closely co-operate with the representatives of the national minorities sitting on the Advisory Boards in order to address their concerns. It strongly recommends to the Austrian authorities at all levels to refrain from racist and stigmatising remarks against national minorities.

- **Victims of trafficking**

67. Austria is a country of transit and destination for trafficking in human beings. Although the vast majority of reported cases concern trafficking in women for purposes of sexual exploitation, there are also reported cases of trafficking in women for purposes of labour exploitation and of trafficking in children for begging. The legal provisions presently in force prohibit trafficking in human beings only for purposes of sexual exploitation (Article 217 of the Criminal Code). However, ECRI understands that a recent amendment to the Criminal Code that will shortly enter into force extends protection to victims of other forms of human trafficking. In 2002, 27 persons were convicted on the basis of Article 217 of the Criminal Code. There is only one officially recognised organisation for support of victims of trafficking in Austria, which is funded by the government and provides assistance, counselling and shelter to victims. In 2003, 80% of the persons to whom assistance was provided by this organisation, were citizens of Eastern European countries, while the rest came mainly from Asia, Africa and Latin America. The Aliens Law provides for a humanitarian residence status to be granted to victims of trafficking. However, there are reports that, in practice, such permits are only granted to victims who are willing to testify against the traffickers.

Recommendations:

68. ECRI encourages the Austrian authorities in their efforts to combat trafficking in human beings. It recommends that the Austrian authorities consider ways to enhance the assistance currently provided to victims of trafficking, including by ensuring that humanitarian residence status is granted to them irrespective of their willingness to testify against the traffickers.

Antisemitism

69. Since ECRI's second report, manifestations of antisemitism have not decreased in Austria, as shown by official statistics²³, but also by monitoring carried out by non-governmental organisations. The latter have, for instance, reported an increase in the number of antisemitic physical attacks in 2003. As already noted in ECRI's second report, the implementation of the Prohibition Statute has enabled the authorities to counter many virulent forms of antisemitism in Austria. In this respect, ECRI notes reports that, since its second report,

²³ The Federal Ministry of Interior issues data collected in connection with antisemitism under the heading "right-wing extremism" in its annual reports on the protection of the Constitution.

revisionist and Holocaust denial material has been on the rise on the Internet and that the skinhead movement has gained ground. Representatives of the Jewish communities in Austria have underlined, however, that current manifestations of antisemitism in Austria are wider than those connected with National Socialist ideology that the Prohibition Statute is designed to address. In particular, they have stressed that manifestations of antisemitism are increasingly coming from members of Muslim fundamentalist groups and from representatives of the extra-parliamentary extreme-left opposed to capitalism, the policies of the United States of America and globalisation. These groups reportedly work increasingly together with antisemitic right-wing extremist groups, especially through the Internet. Antisemitism is also often reported to surface in connection with criticism of the policies of the State of Israel. It has also been reported to ECRI that public statements by opinion leaders and in the media with antisemitic undertones have continued. More generally, representatives of the Jewish community have registered a deterioration of the climate as concerns antisemitism in Austria in recent years, in connection with contemporary world events, notably events in the Middle East and in Iraq.

Recommendations:

70. ECRI recommends to the Austrian authorities to continue and intensify the efforts to address all manifestations of antisemitism in Austria, including those not connected with Nationalist Socialist ideology. In this respect, ECRI stresses the role to be played by the various opinion leaders in society, be they politicians, religious groups, the media or other civil society actors, in consistently speaking out against any manifestations of antisemitism and in taking action to ensure that their own bodies present an unambiguous and consistent stand against this phenomenon.

Media

71. In its second report, ECRI noted that mainstream newspapers regularly reported on immigration and asylum issues in a manner that contributed to creating an atmosphere of hostility and rejection towards members of minority groups. Although the situation seem to have slightly improved since ECRI's second report, ECRI still notes cases of sensationalist reporting on immigration and asylum issues. ECRI is also concerned at the fact that the press has contributed to a certain "ethnicisation" of crimes, particularly as regards Black Africans and drug dealing or Eastern Europeans and certain types of organised crime. ECRI also expresses concern at reports that employment or housing advertisements reserved for Austrians only or that explicitly exclude persons of certain nationalities have continued to appear in some newspapers. ECRI notes that the self-regulatory agency for the press, the Press Council, could play a useful role in improving this situation. However, although still formally in existence, the Press Council is at present not functioning.
72. ECRI notes that direct public funding of radio programmes for national minorities was stopped in 2000. Since January 2002, however, the Austrian Broadcasting Corporation (ORF) is required to broadcast a reasonable proportion of programmes in the languages of the national minorities.

Recommendations:

73. ECRI encourages the Austrian authorities to impress on the media, without encroaching on their editorial independence, the need to ensure that reporting does not contribute to creating an atmosphere of hostility and rejection towards members of minority groups and to the need to play a proactive role in countering such an atmosphere. To these ends, ECRI considers that the adoption and the implementation of codes of self-regulation may be useful tools. It is also important to ensure that media professionals are equipped with special training on reporting in a diverse society. Finally, ECRI stresses that a stronger representation of persons of immigrant background in the media profession could positively affect the image of persons of immigrant background reflected by the press.
74. ECRI recommends to the Austrian authorities to ensure adequate availability of electronic media in the language of national minorities. It also encourages the Austrian authorities to ensure that the public service adequately caters for the needs of all minority groups that compose Austrian society, including groups other than national minorities.

Monitoring the situation

75. In its second report, ECRI suggested that the collection of data broken down by ethnic origin could help the Austrian authorities to better assess the situation of the various minority groups living in Austria in different fields of life, such as employment, housing and education. ECRI stressed that this should be done in accordance with European laws, regulations and recommendations on data protection and protection of privacy, and the principle of freedom of declaration.
76. ECRI notes that, through the census, data are collected on the nationality, place of birth, language and religion of Austrian residents. Data on national and ethnic origin are not collected and ECRI has registered a very cautious attitude towards collection of such data in Austria. ECRI notes, however, that there is no outright prohibition to collect data broken down by national and ethnic origin in Austrian legislation, although, understandably, the collection of such data is subjected to the existence of certain safeguards. ECRI considers that the absence of such data in Austria considerably limits the general awareness of the need to take positive measures to improve the position of certain disadvantaged groups.

Recommendations:

77. ECRI strongly recommends to the Austrian authorities to improve their monitoring systems by collecting relevant information broken down according to categories such as religion, language, nationality and national or ethnic origin, and to ensure that this is done in all cases with due respect to the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. These systems should also take into consideration the gender dimension, particularly from the point of view of possible double or multiple discrimination.

Conduct of law enforcement officials

78. Since ECRI's second report, non-governmental organisations monitoring the conduct of law enforcement officials in Austria have continued to receive allegations of ill treatment of individuals, in some extreme cases resulting in death. ECRI is concerned that a considerable number of these allegations have involved non-citizens but also Austrian citizens of ethnic minority background. Persons of ethnic minority background are also widely reported to have been disproportionately subject to police checks and to have been verbally abused in a racist way by law enforcement officials.
79. In its second report, ECRI recommended that the Austrian authorities ameliorate the response of the criminal justice system and of the persons responsible for internal control within the different police units to allegations of racist or racially discriminatory behaviour on the part of the police. ECRI notes that alleged victims of racist or racially discriminatory behaviour may have their cases investigated by the administrative supervisory authority concerned and, if not satisfied with its findings, may seek a decision of the Independent Administration Review Board²⁴. With effect from 1 January 2000, provision has been made for entering into "settlement talks" with the agent involved in the complaint. The decision on whether "settlement talks" take place rests with the administrative supervisory authority. More generally, however, ECRI notes reports according to which investigations into police ill-treatment have been slow, lacking in thoroughness and often inconclusive, and that counter-charges such as resisting arrest, physical assault or defamation were often brought against those who lodged complaints and eyewitnesses.
80. In its second report, ECRI recommended that the Austrian authorities establish an independent body with powers to investigate individual complaints of human rights violations on the part of the police. As already noted in ECRI's second report, the Human Rights Advisory Board (HRAB) formulates recommendations to the government on how to improve the human rights record of the law enforcement agencies. It visits places of detention and offices of the security police and monitors the exercise of administrative and coercive powers by the security police, by means of six commissions established throughout Austria. The HRAB does not, however, investigate individual complaints.

²⁴ The Directive regulating the interventions of the public security service provides that, police officers and gendarmes "must refrain from all manners or activities that might give rise to the impression of prejudice or that could be perceived as discrimination" on grounds, *inter alia*, of race, colour, national or ethnic origin and religion.

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81. In its second report, ECRI recommended that the authorities condemn publicly any manifestation of racist or racially discriminatory behaviour on the part of the police and that they make clear publicly and at a high level that manifestations of racism shall be promptly and thoroughly investigated and punished. ECRI is not aware of any developments in this field. It has been pointed out to ECRI in this respect that, in the case of the death in police custody in July 2003 of Cheibani Wague, a Mauritanian national whose case attracted much public attention, the police officers involved were not suspended after the death and their behaviour was publicly held in conformity with the law before investigations had taken place.
82. In its second report, ECRI noted reports that visible minorities, and notably black Africans were often subject to discriminatory identity checks and had particularly been targeted by police operations aimed at clamping down on drug dealing. ECRI has continued to receive consistent reports that black African persons, and notably young males, are still subject to police controls based, apparently, solely on the colour of their skin, and have sometimes experienced verbal and physical abuse and harassment on such occasions. They are also disproportionately singled out for controls in railway stations and airports. ECRI notes that, since its second report, the Austrian authorities have introduced regulations to improve the carrying out of large-scale police raids, including the advanced warning of the HRAB with the possibility for the latter to observe such raids. The Austrian authorities have also reported to ECRI that, in addition to general training in human rights and non-discrimination²⁵, training initiatives have been taken in Vienna specifically to improve the relations between the African communities and the police. ECRI notes with interest that the HRAB has issued a report and formulated recommendations concerning the use of racist language on the part of law enforcement officials and that the Ministry of Interior has issued instructions on the use of language by law enforcement officials to prevent discriminatory, humiliating, degrading or prejudiced behaviour or speech.
83. In its second report, ECRI recommended that action be taken to counter episodes of violence by law enforcement officers during deportations, notably by implementing the recommendations issued by the HRAB in this area. The HRAB reports that the government has put in place most of its recommendations on this subject. Thus, for instance, charter flights may be used instead of commercial flights in case of difficult deportations and provision is made for a human rights observer to accompany the deportee in these cases. Provision is also made to stop the deportation proceedings if the health of the deportee is at risk. The Austrian authorities have also informed ECRI that conditions in pre-deportation centres have been improved, although ECRI notes reports that this process still has to be completed. ECRI also notes that the HRAB issued recommendations concerning detention of women and minors in view of deportation. While part of these recommendations have been followed by the Austrian authorities – for instance, instructions have been issued not to detain children below the age of 14 for deportation purposes, and to accommodate minors above the age of 14 and women detained in view of deportation separately from men – other recommendations have not yet been implemented.

²⁵ See below

84. In its second report, ECRI recommended to the Austrian authorities to provide further initial and on-going training to police officers on issues of racism and racial discrimination. The Austrian authorities report that, in the last years, numerous initiatives have been taken to improve knowledge and practice of human rights by law enforcement officials, through both initial and on-going training. The Austrian authorities have also stressed the close co-operation established with the HRAB in matters of human rights education. Finally, ECRI welcomes the fact that the Ministry of Interior has funded a number of training projects, carried out in co-operation with non-governmental organisations, focussing specifically on non-discrimination and policing in a multicultural society. In this respect, some concern has been expressed over the uncertainty of long-term funding of these projects, which is seen as essential to guaranteeing sustainable results.
85. In its second report, ECRI recommended initiatives to encourage recruitment of members of minority groups in the police. Some efforts are reported to have been made to recruit police officers with foreign language competences, especially in Turkish and Serbo-Croat. However, it does not appear to ECRI that there is yet an overall strategy to actively seek to reflect the multi-ethnic composition of Austrian society in the police, although the authorities have stated that they are examining models applied in other countries in this area.

Recommendations:

86. ECRI recommends that the Austrian authorities ameliorate the response of the criminal justice system and of the persons responsible for internal control within the different police units to allegations of racist or racially discriminatory behaviour on the part of the police. ECRI reiterates its call for the establishment of an independent body with powers to investigate individual complaints of human rights violations on the part of the police, including acts of racism and racial discrimination.
87. ECRI recommends that the authorities condemn publicly and unequivocally any manifestation of racist or racially discriminatory behaviour on the part of the police and that they make clear publicly and at a high level that manifestations of racism shall be promptly and thoroughly investigated and punished.
88. ECRI recommends that the Austrian authorities do their utmost 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 of a person. It recommends to the Austrian authorities to consider the introduction of a system of registration in connection with police checks that enables individuals to document how frequently they are checked, in order to identify possible patterns of direct or indirect racial discrimination.
89. ECRI recommends that the Austrian authorities implement all the recommendations of the HRAB concerning the use of racist language on the part of law enforcement officials and all those concerning detention of women and minors in view of deportation.
90. ECRI recommends that efforts be continued in the field of providing adequate initial and on-going training in human rights to law enforcement officials and

notably in non-discrimination and policing in a multicultural society. In particular, it strongly encourages the Austrian authorities to ensure long-term financial commitment to projects carried out in co-operation with non-governmental organisations in these areas.

91. ECRI reiterates its call for measures to ensure adequate representation of members of minority groups in the police. These measures should include the identification of barriers preventing members of minority groups from entering the police force and the adoption of targeted measures to overcome such barriers.

Exploitation of racism and xenophobia in politics

92. In its second report, ECRI expressed its deep concern at the widespread use of racist and xenophobic discourse in politics in Austria. Although the situation in this respect is reported to have somewhat improved, ECRI is concerned that asylum seekers, refugees and non-EU immigrants, but also members of other minority groups are still the targets of racist and xenophobic political discourse. Members of these groups are typically portrayed as being responsible for a deterioration of security conditions in Austria, particularly on the basis of generalisations concerning their involvement in drug trafficking and organised crime, for unemployment and increased public expenditure, or as posing a threat to the preservation of Austrian national or local identity. ECRI expresses its concern at the negative consequences that this type of discourse has on the perception of asylum seekers, refugees, non-EU immigrants and other minority groups by the majority population and at the climate of general intolerance and xenophobia that it fosters.
93. In its second report, ECRI expressed concern at the influence exercised by political parties that resort to racist and xenophobic propaganda on mainstream political parties. It noted, in particular, that such influence favoured the adoption of restrictive measures as well as the establishment of practices, notably as concerns immigrants and asylum seekers, which did not always guarantee full respect of human rights and the principle of non-discrimination. As mentioned in other parts of this report, ECRI remains concerned at this situation.
94. In its second report, ECRI noted that the Austrian Freedom Party (FPÖ) had resorted to racist and xenophobic propaganda. While, generally speaking, the use of this type of propaganda by the members of this party is reported to have decreased since ECRI's second report, ECRI is concerned that some local exponents and members of youth groups affiliated with the FPÖ have increasingly made use in public of terminology directly linked with Nationalist Socialist ideology. An illustration of this is the use made of the notion of "re-peopling" or "population supplantation" (*Umvolkung*), for instance in the context of the naturalisation of long-term residents of non-Austrian origin.
95. In its second report, ECRI recommended that the Austrian authorities undertake all possible efforts to fight against the exploitation of racism and xenophobia in politics. This included efforts to ensure that criminal law provisions aimed at combating racism and intolerance are adequate and rigorously implemented, but also the adoption of *ad hoc* measures targeting more specifically the use of racially inflammatory or xenophobic discourse by exponents of political parties. ECRI also 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 the members of different minority groups. ECRI notes that there are no developments in these fields since its second report.

Recommendations:

96. ECRI reiterates that political parties must resist the temptation to approach issues relating to asylum seekers, refugees, non-EU immigrants, and members of other 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. ECRI recommends that an annual debate be instigated in Parliament on the subject of racism and intolerance faced by members of minority groups.
97. ECRI reiterates its call for the adoption of *ad hoc* measures targeting specifically the use of racially inflammatory or xenophobic discourse by exponents of political parties, including, for instance, legal provisions allowing for the suppression of public financing for those political parties whose members are responsible for racist or discriminatory acts. In this respect, ECRI draws the attention of the Austrian authorities to the relevant provisions contained in its General Policy Recommendation N°7.

II. SPECIFIC ISSUES

Asylum policies and practices

98. ECRI is concerned at the negative climate concerning asylum seekers in Austria. As already noted in its second report, ECRI considers that this situation is closely linked with the consistent presentation by the Austrian authorities of asylum issues not as human rights issues, but almost exclusively as matters posing pressing security concerns. The adoption of changes in asylum policies and practices designed to increasingly prevent asylum seekers from coming to Austria and often openly presented as such to the general public have also contributed, in ECRI's opinion, to creating such a negative climate around asylum seekers. As mentioned above²⁶, some media, and notably print media, have also played a role in determining this situation. ECRI notes that, regrettably, many politicians have not adequately prevented, and in fact in many cases have contributed to, public debate taking on an increasingly intolerant line with at times racist and xenophobic overtones. Public statements of politicians at different levels have tended to depict asylum seekers explicitly or by inference as economic migrants and as a threat to security, economic stability and, in some cases, preservation of national identity. Different groups of asylum seekers have also been consistently singled out for stigmatising remarks and their members have been the subject of sweeping generalisations concerning the carrying out of criminal activities. Support for international instruments protecting the rights of asylum seekers has been publicly questioned. All these elements have, in ECRI's view, resulted in an overall decline in the general public's support for asylum seekers, which, in turn, has

²⁶ Media

made possible the adoption or the continuation of asylum policies and practices in respect of these persons – notably, but not exclusively, in the areas of provision of assistance and of the use of detention -- whose conformity with human rights has been extensively questioned in several circles.

99. In its second report, ECRI stressed that asylum seekers, even when 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. In this respect, ECRI expressed particular concern at the use of detention for asylum seekers pending the examination of their applications. However, ECRI has received reports according to which detention has recently been used systematically in certain Provinces, particularly as a means to deter persons from applying for asylum. Of particular concern is the practice to separate families by detaining the male adult and accommodating his wife and/or children in distant facilities for asylum seekers. ECRI notes that the HRAB has issued recommendations in this respect, and that the situation has now reportedly improved. ECRI also notes that the revised Asylum Act adopted in November 2003, contains new special provisions regulating the grounds for detention of asylum seekers that have entered into force since May 2004. With effect from the same date, the system of reception of asylum seekers has also changed: asylum seekers are now sent to reception centres pending a decision on whether their claims will be examined (admissibility phase). The Austrian authorities have emphasised that freedom of movement in and out of these centres is thoroughly guaranteed. ECRI notes, however, that an asylum seeker may still be detained if she or he leaves the reception centre without authorisation, or if she or he lodges multiple asylum claims. Furthermore, although conditions in facilities where asylum seekers have been detained so far have reportedly been improving, ECRI notes with concern reports of misbehaviour, and, in one case, of commission of a serious crime, on the part of members of private security companies working in these facilities.
100. ECRI welcomes the fact that, in recent years, unaccompanied minor children in Austria have been taken care of through a system of clearing houses, where children are allowed to rest and receive medical and psychological examinations while possibilities for suitable accommodation and further care are considered.

Recommendations:

101. ECRI reiterates that detention of asylum seekers should only be used as a last resort, and recommends to the Austrian authorities to monitor the practice in the newly established reception centres in order to ensure that the right to liberty and security protected by Article 5 of ECHR is thoroughly respected *vis-à-vis* all asylum seekers. ECRI recommends that the authorities discontinue any practice of separating members of families of asylum seekers. ECRI furthermore recommends that the Austrian authorities ensure adequate reception standards, including through provision of professional services, in reception centres. ECRI finally recommends that the Austrian authorities continue to provide specialised assistance to unaccompanied minor children and that the latter be not accommodated in reception centres.

102. As mentioned above, in November 2003, Austria introduced amendments to the Asylum Act that entered into force in May 2004. ECRI notes that, while some of the amendments were drawn up to correct a number of practical problems, they also included changes to speed up asylum procedures, which have been strongly criticised by the United Nations High Commissioner for Refugees, academics and non governmental organisations. These amendments include the limitation of stay for asylum seekers in Austria during the appeals procedure in certain cases, the absence of a procedure for applications submitted at the land border by asylum seekers coming from Switzerland and Liechtenstein, and the prohibition to present – with a few exceptions – new facts in the appeals procedure. ECRI notes that, upon request by the Province of Upper Austria, the Constitutional Court was asked to review the constitutionality of several provisions of the new law.

Recommendations:

103. ECRI recommends to the Austrian authorities to ensure that the right to seek asylum and the principle of *non-refoulement* are thoroughly respected in Austria. It stresses that any provisions that jeopardises the practical exercise and enjoyment of these rights should be abolished.
104. In its second report, ECRI recommended to the Austrian authorities to ensure that asylum seekers are not left in destitution while awaiting the examination of their claims. Although, as will be mentioned below, some changes have recently been introduced which may improve the situation in this area, ECRI considers that the policy followed by the Austrian government on provision of care for destitute asylum seekers since ECRI's second report poses serious problems of conformity with international human rights standards and has been instrumental to deterring asylum seekers from filing their applications in Austria.
105. As already mentioned in ECRI's second report and up until recently, only between 20 and 30 % of the total number of asylum seekers in Austria were provided with federal care, especially housing, food and basic health services. Some other asylum seekers received social assistance from the Provinces, although provision of such assistance is, in most cases, discretionary. As a result, the majority of indigent asylum seekers were only able to receive support from non-governmental organisations, which, however, have only limited resources available. ECRI notes that, as a result of this situation, a considerable number of asylum seekers at each time, including in some cases pregnant women and children, have reportedly been left destitute in the streets.
106. ECRI notes that in two judgments rendered in 2003, the Supreme Court established a legal entitlement for indigent asylum seekers to federal care. The first judgment²⁷ established that non-governmental organisations had a claim to have the expenses they had incurred to assist indigent asylum seekers paid back by the State. In connection with a Decree of the Ministry of Interior in force since 1 October 2002, which excluded from federal care asylum seekers of certain nationalities, the second judgment²⁸ found that entitlement to federal care could not be dependent on the likelihood of the asylum claim. Following

²⁷ OGH, 1 Ob 272/02k, judgment of 24 February 2003

²⁸ 9 Ob 71/03m, judgment of 27 August 2003

these judgments, amendments to the Federal Care Provision Act were adopted. ECRI notes, however, that the amended Act does not provide for a legally enforceable right for indigent asylum seekers to federal care. It notes, in particular, that, in assessing whether an asylum seeker is indigent, support from non-governmental organisations, including humanitarian organisations, has to be taken into account. Furthermore, ECRI notes that significant exemptions from federal care are provided for: these concerns, for instance, asylum seekers that do not contribute to establishing their identity or state of indigence, those who are convicted of criminal offences and those who behave improperly towards their fellow residents. ECRI notes that a further exemption concerning asylum seekers who have submitted an application that is not based on asylum relevant grounds has been removed as of 1st May 2004. There is no legal remedy for an asylum seeker against the decision of the Ministry of Interior to exclude him or her from federal care.

107. As of May 2004, asylum seekers whose applications have been considered admissible are sent from reception centres to other accommodation pending the examination of their claims. ECRI notes that an agreement recently concluded by the Federal government and the Provinces stipulates that the former will cover 60% of the accommodation costs and the latter, the rest. ECRI notes that this agreement may improve the situation as concerns provision of care for asylum seekers. However, there are reports that the capacity to house asylum seekers pending the examination of their claims is at present insufficient. ECRI also notes with concern that the Ministry of Interior has explicitly enabled mayors to refuse accommodation facilities for asylum seekers in their municipalities. Finally, ECRI notes that, from May 2004, asylum seekers are allowed to work after three months of lodging their applications, although they are subject to the system of preference generally applicable to employment of non-citizens²⁹.

Recommendations:

108. ECRI urges the Austrian authorities to ensure that no asylum seeker is left in destitution. To this end, it recommends that the Austrian authorities establish a legally enforceable right to federal care for indigent asylum seekers. ECRI also urges the Austrian authorities to ensure an adequate capacity to house asylum seekers pending the examination of their claims. ECRI considers that mayors should not be allowed to oppose the establishment of accommodation facilities for refugees in their municipalities without a legitimate reason.
109. As mentioned above, ECRI notes that communication on asylum issues, be it on the part of the political representatives or in the media, tends to focus exclusively on negative aspects, such as the commission of crimes by a small minority of asylum seekers or the presumed threat posed by the latter to economic stability. ECRI notes, however, that there are positive aspects of asylum practice in Austria that are completely ignored by current communication strategies. As an illustration of this, ECRI notes that official statistics indicate that 96% of Chechen asylum seekers were recognised as refugees in the first three months of 2004. However, Chechen asylum seekers

²⁹ See above, Reception and status of non-citizens

have been the objects of stigmatising remarks and of generalisations, notably in the press, but also in statements at the highest political level.

Recommendations:

110. ECRI recommends to the Austrian authorities to refrain from generalisations and stigmatising remarks concerning asylum seekers, or specific groups of asylum seekers. It furthermore recommends that efforts be made to communicate widely about more positive aspects of asylum practice.

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